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

2
3 (Anchorage, Alaska - 11/16/2006)

4
5 (On record)

6
7 CHAIRMAN FLEAGLE: Good morning. It's
8 November 16th. The Federal Subsistence Board work
9 session will be called to order and can we get a roll
10 call, Pete, please.

11
12 MR. PROBASCO: Yes, good morning, Mr.
13 Chair. Roll call for Board members. I'll start, good
14 morning, Mr. Bedford, State of Alaska. Go ahead.

15
16 MR. OVIATT: George Oviatt, Bureau of
17 Land Management.

18
19 MR. KESSLER: Good morning. Steve
20 Kessler with the Forest Service. And I'll be just
21 sitting in for a short period of time. Wini Kessler, who
22 will be acting as our Board member for Denny Bschor will
23 be here shortly. Her flight was supposed to land from
24 Juneau at 9:59, so we'll be trading out pretty quickly.

25
26 MR. EDWARDS: Good morning. Gary
27 Edwards, U.S. Fish and Wildlife Service.

28
29 MR. PROBASCO: I'm Pete Probasco, acting
30 Assistant Regional Director for OSM.

31
32 CHAIRMAN FLEAGLE: Mike Fleagle,
33 Chairman.

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

37
38 MR. CESAR: Niles Cesar with the Bureau
39 of Indian Affairs.

40
41 CHAIRMAN FLEAGLE: Okay, it looks like we
42 have all six seats filled, a quorum is established. And
43 we have an agenda before us that has been proposed to be
44 modified by the Staff and the Chair just to fit some
45 concerns that people probably have as far as travel from
46 the Kenai so we decided that it would probably be in the
47 best interest to juggle the agenda a bit to allow the
48 Kenai issues to come up first.

49
50 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
5 After that would be the Item No. 2 which
6 is the Kenai Peninsula Subsistence Region.

7
8 Next will be Item 4, which is the RFR
9 0602/03/08 which is the Kenai River customary and
10 traditional request for reconsideration.

11
12 No. 4 would be No. 3, the RFR for
13 Gustavus C&T.

14
15 Pete, did you have anything you wanted to
16 add?

17
18 MR. PROBASCO: Just, Mr. Chair, when we
19 reviewed the agenda, we were discussing it yesterday, it
20 became quite evident that the issues that we're dealing
21 with have the probability of taking some time and to
22 adjust for that time we have this meeting room all day
23 and into the evening, if necessary, and as a back up we
24 have it for tomorrow, until noon only. So we felt that
25 if we, did, indeed, run out of time, it would be in the
26 Board's best interest to first deal with the Kenai
27 issues, hopefully get through them and if we had to
28 reschedule any item, it'd be easier to reschedule
29 Southeast versus a portion of the Kenai issue.

30
31 Mr. Chair.

32
33 CHAIRMAN FLEAGLE: Thank you, Pete.
34 Board members, is there any objection to modifying the
35 agenda as suggested?

36
37 (No comments)

38
39 CHAIRMAN FLEAGLE: All right, hearing
40 none, that's how we'll proceed then.

41
42 First of all, the first item on the
43 agenda then is to review the agenda, which we just did
44 and information exchange, and just briefly, real quickly,
45 we do intend to allow public testimony. As you see,
46 we're already receiving sign ups. These are available in
47 the back, fill one out and we'll be going down the list
48 in the order that they're received. And consulting with
49 Staff, it's apparent that there's probably going to be a
50 lot of interest at this meeting so we will put a time

1 limit on testimony and that time limit, I think, will be
2 five minutes, which probably should be adequate for
3 discussion on the issues. We'll be doing testimony
4 before we take up any of the items, so, you know, a
5 person could come up and testify on any issue or all of
6 the issues if you want to, and we'll do that as soon as
7 we finish information exchange.

8

9 Board members, any information exchange
10 items.

11

12 (No comments)

13

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

20

21 MR. PROBASCO: Twenty feet or so.

22

23 CHAIRMAN FLEAGLE: Twenty feet or so.
24 And then Pete, do you have some announcements as far as
25 eating establishments and stuff like that.

26

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

36

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

43

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

49

50 MR. EDWARDS: Mr. Chairman. I mean my

1 preference would be that the testimony could accompany
2 the particular item. I think that, at least from my
3 perspective, would provide a better opportunity to ask
4 questions and all.

5
6 CHAIRMAN FLEAGLE: Oh, okay.

7
8 MR. EDWARDS: And otherwise I might
9 forget what people say if they do it all at the start.

10
11 CHAIRMAN FLEAGLE: I think we provided
12 you with a tablet there, Gary.

13
14 (Laughter)

15
16 CHAIRMAN FLEAGLE: That's fine with me.
17 I just hadn't encountered that before. All right, so
18 it's my understanding then what we'll do is take up,
19 first of all, Item No. 5 on the agenda, have the Staff
20 analysis and then public testimony.

21
22 MR. PROBASCO: That's how I would
23 recommend doing it, Mr. Chair.

24
25 CHAIRMAN FLEAGLE: Okay, Pete, we'll do
26 that, for each individual issue. So then how do we.....
27

28 MS. GOTTLIEB: We'll separate those out.
29

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

32
33 MR. PROBASCO: Yeah.

34
35 CHAIRMAN FLEAGLE: I apologize. We'll
36 make this thing work as well as we can for everybody.

37
38 MR. PROBASCO: Okay. And to help the
39 Board and me, particularly, when you fill out your green
40 form, there's a list there, it says agenda items you'd
41 like to speak to, please identify those and just fill out
42 one card. If you're going to speak to multiple issues, I
43 will circle it and then just put it back in the pile.

44
45 CHAIRMAN FLEAGLE: Okay.

46
47 MR. PROBASCO: So please do that, thank
48 you.

49
50 CHAIRMAN FLEAGLE: Other items for

1 information exchange.

2

3 (No comments)

4

5 CHAIRMAN FLEAGLE: I guess not. Yes.

6

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

11

12 MR. MATHEWS: Yes. It's good.

13

14 CHAIRMAN FLEAGLE: We're good to go.

15

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

18

19 CHAIRMAN FLEAGLE: All right, thank you.
20 With that then let's go ahead and take up the first item
21 on our agenda, which is now Item 5, FSA06-01b. Pete,
22 would you like to head off with the Staff analysis
23 portion.

24

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

29

30 CHAIRMAN FLEAGLE: Good morning, Doug.

31

32 MR. MCBRIDE: Good morning, Mr. Chairman.
33 Members of the Board. My name is Doug McBride. I'm a
34 fishery biologist with the Office of Subsistence
35 Management, Fishery Information Services. And what I'll
36 be doing this morning is summarizing the analysis. It's
37 contained in this document dated November 1, 2006, Staff
38 analysis, Request for Temporary Fisheries Special Action
39 FSA06-01b.

40

41 Mr. Chairman. When I go through this
42 what I would like to do is first of all just briefly
43 summarize what was requested, the request for special
44 action. Then -- and I'll be following through this
45 document but I'm going to skip over the regulatory part
46 of it and get then into the analysis of the regulatory
47 history and the biological background, and then I'll end
48 the presentation by coming back to the proposed
49 regulation because there's a bunch of specifics in the
50 proposed regulations that you can see, hopefully you'll

1 be able to see why we have the specifics in there that
2 are there, and where those specifics in the regulatory
3 language come from.

4

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

26

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

40

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

1 would be pertinent only to the community of Ninilchik.

2

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

13

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

24

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

42

43 Then the second timeframe basically
44 starts in 2002. And in 2002 this program did receive
45 proposals, both for customary and traditional use
46 determinations for Kenai Peninsula and proposals for
47 take. And the Board, at that time, recognized that there
48 were some very unique circumstances trying to deal with
49 the Kenai Peninsula, and so all of those proposals were
50 deferred pending collection of information, which we

1 subsequently pursued with the Alaska Department of Fish
2 and Game, Subsistence Division. I think you're all very
3 familiar with what we call the Fall Report, but that was
4 a report looking at subsistence harvest use patterns for
5 present day rural residents on the Kenai Peninsula. And
6 then the other action that the Board took at that time
7 was they created an interim, what they described as an
8 interim subsistence fishery, and so that fishery mirrored
9 State sportfishing regulations so that fishery was put in
10 place in 2002 and exists to this day. And that fishery
11 in the absence of a C&T determination was available to
12 all rural residents.

13

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

23

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

35

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

46

47 As a winter fishery, none of those
48 species spawn in the winter, per se, lake trout and Dolly
49 Varden, they're fall spawners, rainbow trout are spring
50 spawners, so they would be outside, largely of the ice

1 covered period, however, it is likely that these species
2 do congregate in the winter, probably off of tributary
3 and river mouths to feed, so there are very likely
4 feeding and overwintering concentrations near other, you
5 know, sources of flowing waters in the lake.

6
7 The other thing we know about these
8 species is, in general, they cannot withstand a lot of
9 exploitation, certainly not the levels of exploitation
10 that are commonly applied to salmon populations in the
11 state. All these species have complex age structures.
12 They generally are long lived, slow growing. They have,
13 usually, a prolonged, usually on the order of four to six
14 years until age of recruitment and that means is age
15 until they spawn, age until they would recruit to the
16 fishery, so in general, exploitation on these species is
17 low and there is reason to be cautious on these species,
18 particularly for lake trout. There's a very well
19 documented history of over exploitation in other parts of
20 the state, particularly the Copper drainage and the
21 Tanana drainage and the Upper Susitna drainage.

22
23 What we do know specific about these
24 species in this drainage and now, Mr. Chairman, I'm
25 referring to Table 1 which goes on Pages 7 and 8 of the
26 analysis, there is a fairly long history of sportfishing
27 in the waters of Tustumena Lake, and that's what's
28 summarized here. And what we know about that fishery is
29 that it's small. And what you see in Table 1 is
30 estimates of sport harvest by year. Well, let me
31 actually start at the beginning of the table. By year,
32 and that's in the far left column. We have annual
33 estimates of effort, that's what that angler days fished
34 is. And then we have estimates of harvest and catch.
35 Catch is both harvest and release, that's all by species.
36 These data come from the Alaska Department of Fish and
37 Game, Sportfish Division. These are estimates that come
38 from what they call their postal survey or statewide
39 harvest survey, and so these are surveys of licensed
40 anglers, asking about, you know, where they fished and
41 how many fish they caught and harvested on an annual
42 basis. It's a longstanding program. You can see that
43 the data here dates back over 20 years. And there's
44 several things we can glean out of this information.

45
46 First of all, by any measure in the state
47 of Alaska, this is a small sportfishery. Those angler
48 days of effort, those are small numbers in comparison to
49 other, larger fisheries around the state, and
50 particularly on the Kenai Peninsula. The other thing

1 that we see here if you look at the species in question,
2 rainbow trout, and lake trout are on the far right of
3 Page 7 and Dolly Varden are the first column on Page 8,
4 is that the harvest for all of these species has been
5 sustained over a 20 year period of time in generally the
6 low hundreds of fish. The catch, obviously, is a little
7 bit more than that. And, again, that catch includes both
8 harvest and released fish. But the way we looked at this
9 information is that this fishery has shown itself to be
10 sustainable, even with a lack of very specific stock
11 status information and the harvest bounces around.
12 There's on clear trend in any of these data, the harvest
13 just bounces around in the low hundreds. And we used
14 this information to get what we call sustainable harvest,
15 total harvest quotas and you'll see that when I get into
16 the specifics on the regulations. But that's where those
17 harvest quotas come from, is the demonstrated performance
18 history of the sportfishery.

19

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

28

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

32

33 And if you look in paragraph A, the total
34 annual harvest quota for this fishery is 200 lake trout,
35 200 rainbow trout, and 500 Dolly Varden. Those numbers
36 come from the performance history, the sportfishery that
37 we just talked about in Table 1. Those would be the
38 total harvest quota as proposed by Staff for this
39 fishery.

40

41 A1. You may only harvest fish under the
42 ice.

43

44 And it just specifies that this is only
45 about the waters of Tustumena Lake. It does not include
46 the Kasilof River nor does it include the tributaries
47 that enter into the lake, and it also closes the lake
48 waters within a quarter mile of those flowing waters, and
49 that comes from the likelihood that there are
50 concentrations in the winter near those locations.

1 You would need a permit to fish this
2 fishery, that's in A2. That would be issued by the
3 Federal fisheries manager, which is Mr. Gary Sonnevil,
4 with the U.S. Fish and Wildlife Service in Soldotna. And
5 since this is a temporary special action it would only be
6 for this winter. This is not a permanent regulation, it
7 would only be for the winter of 2006/2007.

8
9 Paragraph A3 talks about timely harvest
10 reporting. Staff certainly recognize that that harvest
11 quota, the 200, 200, 500 by species, I mean those are
12 very finite numbers and that we would need to know on a
13 very timely basis what's going on in this fishery. As
14 originally proposed, we had a 24 hour reporting
15 requirement. What that means is that anybody engaged in
16 this fishery would be fishing their net and then once
17 they leave the fishing site, they would be required to
18 report to the Federal manager within 24 hours. You're
19 going to hear later, there certainly was discussion with
20 the Council and with the proponent that a longer
21 reporting time might be desirable and certainly from
22 Staff's perspective, what we need is timely reporting
23 harvest, it doesn't have to be 24 hours. I think you're
24 going to hear 72 hours and that would certainly be timely
25 in our opinion.

26
27 A4 states that the gillnets must be
28 checked at least once every 48 hours. There's a fair
29 amount of time and effort that's going to go into setting
30 gillnets under the ice, and so there's a soak time
31 associated with that, but what this requires is the
32 fishers to check that net at least every 48 hours. They
33 can leave the net in longer than that but they have to
34 check it at least every two days.

35
36 Then A5 is about marking the gear. I
37 think that's very straightforward.

38
39 A6 talks about incidentally caught fish.
40 We have harvest quotas for those three species.
41 Obviously any fish that gets caught in a gillnet, comes
42 through the ice, release of that fish is not likely. We
43 don't anticipate a lot of other species. There may
44 catches of whitefish in particular, but during the time
45 of year this fishery is being prosecuted, salmon and
46 steelhead should not be an issue.

47
48 A7 talks about regulations that are
49 actually specific to the Kenai National Wildlife Refuge.
50 And as proposed here we've got that as a regulation, that

1 could also be handled as a permit condition.

2

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

6

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

10

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

16

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

19

20 CHAIRMAN FLEAGLE: Gary.

21

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

29

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

36

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

41

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

1 it's more of a safety kind of thing.

2

3 CHAIRMAN FLEAGLE: Other questions.

4

5 (No comments)

6

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

12

13 MR. PROBASCO: Okay.

14

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

17

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

20

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

24

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

29

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

41

42 It seems as though that if there truly is
43 merit in forming the RAC, which many of us believe there
44 are -- there is, then it would also seem to follow that
45 decisions of a major nature of this sort that are
46 perceived to be the -- in the purview of the RAC should
47 be left until that RAC was formed. Now, there are many
48 people here to talk about the issue of whether the RAC
49 should be formed or not, but we'll leave that until the
50 next.

1 I recently wrote a letter regarding the
2 fishery itself, and I will just read an excerpt from that
3 letter for the record, and I believe Mr. Fleagle that you
4 do have a copy of this letter.

5
6 I'm writing to you today in opposition to
7 the proposed winter subsistence fishery
8 in the Tustumena Lake area. As well as
9 any proposed boundary changes to areas
10 designated rural within the Kenai
11 Peninsula Borough that will be under
12 consideration at the November 16th
13 meeting.

14
15 There again that blends the RAC back in
16 with it.

17
18 Now, I want it clearly understand -- and
19 I state this unequivocally in the letter.

20
21 I do not offer these objections based on
22 the proposals themselves.

23
24 We're not looking at the veracity of the
25 proposal or whether they're good or bad.

26
27 Rather, I believe that it is premature
28 and inappropriate for the Federal
29 Subsistence Board to approve any
30 proposals related to subsistence
31 activities within the Kenai Peninsula
32 Borough until the proposal to form the
33 Kenai Peninsula Subsistence Rural
34 Advisory Council is fully addressed by
35 the Federal Subsistence Board.

36
37 I realize that you're under a time
38 constraint for this winter's fishery but
39 then again, you know, time is a matter of
40 nature.

41
42 So I would very much appreciate your full
43 consideration in the delay of these
44 decisions until the more important
45 decision is made, and that's whether or
46 not to form the RAC in which the local
47 citizens and the local experts in this
48 area have the opportunity to review it.

49
50 Thank you.

1 And I'll have questions.
2
3 CHAIRMAN FLEAGLE: Thank you. Questions.
4 Thank you. I should just leave that on.
5
6 (Laughter)
7
8 CHAIRMAN FLEAGLE: Questions, Board
9 members.
10
11 (No comments)
12
13 CHAIRMAN FLEAGLE: All right, thank you
14 for the testimony.
15
16 MAYOR WILLIAMS: Thank you, Mr. Chairman.
17
18 CHAIRMAN FLEAGLE: Ricky Gease.
19
20 MR. GEASE: Hi. My name is Ricky Gease.
21 I'm the executive director of Kenai River Sportfishing
22 Association and I've been in that position for about
23 three years. I've lived on the Kenai Peninsula for abut
24 15 years. I came to the Peninsula as a Park Ranger with
25 the Kenai Fjords National Park and after that I moved --
26 was the museum manager and executive director of the
27 Kenai Visitor's and Cultural Center, so I've been on the
28 Peninsula a long time.
29
30 Just two concerns. If you do do this
31 fishery, I know in other Federal fisheries, when you have
32 the use of nets and you're looking at harvest limits,
33 caps on species. If you catch 200 lake trout and you
34 haven't caught 500 Dolly Varden, the question is does the
35 fishery close at that point, and I think that's a --
36 typically in other Federal fisheries, when you reach the
37 limit on one of the species, the fishery closes.
38
39 So I would suggest that you followed the
40 lead in other Federal fisheries in following that.
41
42 Just one of the concerns with integrating
43 in a net fishery, which is indiscriminate with age, sex
44 and length of a fish, is that, the State has spent a very
45 long time on the issue on their wild trout policy where
46 they do try to integrate in the wild trout. A policy
47 that has how many fish over 20 inches you can keep and
48 how many fish under 20 inches, it has to do with the
49 sustainability of the fisheries. And one other thing,
50 when you're looking at the data there, in terms of

1 harvest and catch, a lot of the fish, if you look at lake
2 trout, on the different years, a lot of the fish may have
3 been released in guidance in following of that wild trout
4 policy. And with a gillnet fishery you're not
5 necessarily -- there's no option really to -- the fish
6 will be dead basically, so there's no real option to do a
7 catch and release on something in accordance with the
8 wild trout policy. So that would be a concern, you know,
9 relying on gillnets in fisheries where there are size
10 concerns.

11

CHAIRMAN FLEAGLE: All right, questions.

12

(No comments)

13

14

CHAIRMAN FLEAGLE: Thank you. Is that

15 it?

16

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CHAIRMAN FLEAGLE: All right, questions.

(No comments)

CHAIRMAN FLEAGLE: Thank you. Is that

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.

1 The Council supported this proposal with
2 modifications. One of the modifications was that instead
3 of a 24 hour reporting period, that it be extended to a
4 72 hour reporting period to give the subsistence users
5 adequate time to report back to the Refuge manager in
6 regards to harvest. We felt that this would lessen the
7 potential of legal implications due to holidays,
8 weekends, things like that when Refuge managers are harder
9 to get a hold of.

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

16
17 The Council supported the proposal from
18 Ninilchik. The Council stated that there were no -- not
19 any affected other users, that there are no conservation
20 concerns in the Tustumena Lake fishery, and the Council
21 also heard testimony from the Kenai National Wildlife
22 Refuge manager and the Federal in-season manger stating
23 that he saw no conflicts with other conservation issues.

24
25 We were also very comfortable with the
26 way that the Federal manager and the Staff had proposed
27 that the fishery be managed in regards to that if any one
28 of the three species harvest levels were met, that the
29 gillnet fishery would be closed and that it would just be
30 a jigging fishery. So we felt that the overharvest
31 concern that some people had voiced were lessened due to
32 that.

33
34 So thank you, Mr. Chairman. If there's
35 any questions I'd be happy to help you.

36
37 CHAIRMAN FLEAGLE: Okay, thank you Tom.
38 Questions, Board members.

39
40 (No comments)

41
42 CHAIRMAN FLEAGLE: Looks like you gave
43 your recommendation. And next we have the Alaska
44 Department of Fish and Game recommendation, and seated at
45 the table is Deputy Commissioner David Bedford. Welcome,
46 David.

47
48 MR. BEDFORD: Thank you, Mr. Chairman.

49
50 As stated in previous letters that have

1 been delivered to the Federal Subsistence Board on August
2 8 and September 1st, the State of Alaska opposes the
3 request for a special action made by the Ninilchik
4 Traditional Council requesting a winter fishery through
5 the ice in Tustumena Lake.

6

7

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

13

14

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

17

18

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

23

24

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

32

33

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

37

38

Speaking to the second of the issues.
39 Ninilchik is located within the Anchorage, Mat-Su, Kenai
40 non-subsistence area. However, the state of Alaska
41 provides substantial opportunities for residents of
42 Ninilchik to harvest fish for personal use and for
43 cultural and educational purposes. These fisheries
44 provide adequate opportunity to harvest salmon. A winter
45 fishery through the ice in Tustumena Lake would primarily
46 target trout and char. There may be a bycatch of salmon
47 associated with that. The harvest of trout and char, as
48 well as salmon in Tustumena Lake and its tributaries, is
49 provided by State sportfishing regulations. The State
50 has a longstanding history of sustained yield management

1 for trout and other resident species. These species have
2 been, in the past, subject to overharvest, and a
3 conservative approach has been developed over a long
4 period that assures harvest opportunities while
5 sustaining these stocks.

6

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

11

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

27

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

37

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

41

42 The Court stated:

43

44 The argument that there were extenuating
45 circumstances is that there was no
46 subsistence use fishery for the residents
47 of Ninilchik on the Kasilof River despite
48 the fact that their customary and
49 traditional use of the Kasilof River had
50 been recognized in a regulation published

1 in March of 2006.
2
3 That is true but it is hardly something
4 that was not foreseen when the regulation
5 was published. Rather, it is something
6 that will have to be addressed by the
7 Board in its annual regulator cycle.
8
9 Similarly, nothing has changed warranting
10 acceptance of the second part of that request.
11
12 The failure of the Southcentral Regional
13 Advisory Council to form a Kenai stakeholder group does
14 not constitute significant new information justifying
15 consideration of a special action request for immediate
16 action.
17
18 And finally with the Federal Board
19 considering the creation of a new Kenai Peninsula
20 Regional Advisory Council, it is at this time premature
21 for the Board to address these issues prior to addressing
22 the question of whether or not to create the Regional
23 Advisory Council.
24
25 Thank you, very much.
26
27 CHAIRMAN FLEAGLE: Thank you, Deputy
28 Commissioner Bedford. Questions, Board members.
29
30 MS. GOTTLIEB: Mr. Chair.
31
32 CHAIRMAN FLEAGLE: Judy.
33
34 MS. GOTTLIEB: Well, I wonder if we could
35 ask one of our attorneys to discuss extenuating
36 circumstances and clarify for us, please.
37
38 CHAIRMAN FLEAGLE: Ken.
39
40 (Laughter)
41
42 CHAIRMAN FLEAGLE: Don't go far, Keith.
43
44 (Laughter)
45
46 CHAIRMAN FLEAGLE: Ken Lord.
47
48 MR. LORD: Ken Lord with the Solicitor's
49 Office.
50

1 I guess the best way to start is to talk
2 about the regulatory requirements for a temporary special
3 action under 19(e), which is what this is. And there are
4 certain requirements that are clear and one that is a
5 little less clear.

6
7 The clear requirements are that if you
8 decide to adopt this proposal, the Board is obligated to
9 make requisite findings first and those findings are that
10 the temporary change will not interfere with the
11 conservation of healthy fish and wildlife populations,
12 will not be detrimental to the long-term subsistence use
13 of fish or wildlife resources, and it is not an
14 unnecessary restriction on subsistence uses. So those
15 three findings are necessary before you -- or if you
16 choose to take this action.

17
18 On to the question of extenuating
19 circumstances. The extenuating circumstances requirement
20 is set forth in subsection C of that same part 19. Now
21 it's clear that that requirement applies to emergency
22 special action but it's less clear as to whether or not
23 it applies to temporary special actions. In fact, in
24 Judge Sedwick's slip opinion on September 20th, which is
25 the only legal advice we have on this issue, he expressed
26 some frustration about the lack of clarity in our
27 regulations on that particular issue. So he didn't
28 determine whether the Board is required to make a finding
29 of extenuating circumstances or not with regard to a
30 temporary special action.

31
32 So we are left with a situation where the
33 Board has some discretion to interpret its own
34 regulations.

35
36 I'm sure you're all aware that courts
37 give strong deference to an agency's interpretations of
38 their own regulations as long as that interpretation is
39 reasonable.

40
41 One permissible interpretation and the
42 one that the lawyers prefer is that the extenuating
43 circumstances requirement of Subsection C does apply to
44 both emergency special actions and temporary special
45 actions. However, it's important to keep in mind that
46 the extenuating circumstances requirement of C really was
47 intended, when it was adopted, to be a screening tool.
48 Something to sort of educate our constituents about what
49 constitutes a special action as opposed to something that
50 would come in under the regulatory cycle, less, it sets

1 out some examples of things that the Board would be
2 looking for to consider something to be a special action
3 and it was really intended to be a tool for the Board to
4 prevent abuse of the special action process.

5
6 So even though Subsection C sets out
7 these examples of extenuating circumstances, we don't
8 believe it was intended to be a limit on the Board's
9 discretion so in this case, I believe the Board has the
10 discretion to find extenuating circumstances here and to
11 act on this action today.

12
13 CHAIRMAN FLEAGLE: Questions for Ken.

14
15 (No comments)

16
17 CHAIRMAN FLEAGLE: All right, thank you.

18
19 MR. LORD: You're welcome.

20
21 CHAIRMAN FLEAGLE: Up next we'll here
22 from the Staff Committee for their report,
23 recommendation, Steve Klein.

24
25 MR. KLEIN: Thank you, Mr. Chair. The
26 Staff Committee recommends that you support the special
27 action request with modification, and this is consistent
28 with the Southcentral Council's recommendation.

29
30 The modifications that the Staff
31 Committee recommends, there were six of them and those
32 are in your handout, I'd like to briefly go over those.

33
34 The first modification is to clarify that
35 gillnets would not be allowed after a
36 harvest quota for any species has been
37 met. So this meets the Council concerns
38 and the concerns of Ricky Gease there.

39
40 Secondly, we clarify that it's one
41 gillnet per permit.

42
43 Thirdly, the regulatory language
44 explicitly states that the Kasilof River
45 is open to fishing with rod and reel.

46
47 Fourthly, we revised the description
48 regarding the mouth and tributaries and
49 the outlet of Tustumena Lake to provide a
50 quarter mile closure around both the

1 outlet of Tustumena Lake in addition to
2 the tributaries.

3
4 Fifthly, a modification to allow
5 unattended gear to have the name and
6 address of the fisher at either end of
7 the net in a draft language that was at
8 the outside end of the net.

9
10 The sixth recommendation was to remove
11 language regarding use of the Kenai
12 National Wildlife Refuge and that was
13 item A7 in the draft language, that's
14 removed. In the Staff Committee's
15 modification, those will be put on the
16 permit themselves that's issued to any
17 fishers for a gillnet and it's really not
18 necessary to be in the regulatory
19 language.

20
21 So with those six changes, the Staff
22 Committee recommends that this special action request be
23 supported. The conditions, we think, do not --
24 effectively manage the fishery and there's no
25 conservation concerns, so we're recommending supporting
26 the special action request with those six changes.

27
28 Thank you, Mr. Chair.

29
30 CHAIRMAN FLEAGLE: Okay, thank you,
31 Steve. Questions, Board members.

32
33 (No comments)

34
35 CHAIRMAN FLEAGLE: Hearing none, I guess
36 we're at the point of deliberations. Does anybody want
37 to start out.

38
39 MR. EDWARDS: Mr. Chairman. As I stated
40 during my vote on the recent coho fishery special action,
41 I would prefer for us not to address this as a special
42 action but really wait and have it go through the normal
43 process that we would have in April. I say this because
44 a vote for this would certainly appear inconsistent with
45 how I had previously voted and certainly would beg the
46 question, well, why did you vote for this one and why
47 didn't you vote for the coho.

48
49 With that said, I do think there are some
50 differences here. I do think one of my personal concerns

1 with the coho proposal was that I did think it came very
2 quickly, that we didn't have ample opportunity for the
3 public to be involved at all and I do think that we have
4 a much -- we had a much larger opportunity for folks to
5 vet this one, to discuss it, to look at the merits of it,
6 and I don't feel that -- I think it's a very modest
7 proposal. I don't feel and I think we've been told that,
8 we shouldn't expect any conservation concerns added, and
9 although I don't disagree with the Mayor, that I would
10 also prefer if we were going to ultimately end up with a
11 new RAC that it come before the RAC, but I think given
12 where -- our decisions that we made in January, I think
13 it would be appropriate for us to go forward and approve
14 this, and I'm prepared to make a motion to that effect.

15

16 CHAIRMAN FLEAGLE: Go ahead.

17

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

28

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

37

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

41

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

44

45 MR. CESAR: Yes, Mr. Chairman, I second
46 what I think was the motion, which was at the beginning,
47 before we got into the dialogue. So the motion to
48 support the InterAgency Staff Committee recommendation.
49 The RAC -- would you propose the motion again so I can
50 understand it.

1 MR. EDWARDS: Well, my understanding is
2 that there is some modification to what the Regional
3 Advisory Council recommended, which was a modification
4 from what the proponent originally submitted; is that
5 correct?

6
7 MR. KLEIN: That's correct.

8
9 MR. CESAR: So it would be characterized
10 as the InterAgency Staff Committee recommendation.

11
12 CHAIRMAN FLEAGLE: Pete.

13
14 MR. EDWARDS: I would like to
15 characterize it as the Southcentral Regional Advisory
16 Council's recommendation with modification, consistent
17 with what the Staff Committee recommended.

18
19 MR. CESAR: I still second it.

20
21 CHAIRMAN FLEAGLE: All right. It sounds
22 like we know what we're moving and seconded on here. Any
23 further discussion.

24
25 MS. KESSLER: Mr. Chair. Just so I
26 understand clearly. The proponents and the Council agree
27 with those modifications; is that correct?

28
29 MR. KLEIN: When the Staff Committee was
30 deliberating, yes, we had consensus of both the proponent
31 and the Council. And in your handouts there is the Staff
32 Committee recommendation, there's a two page handout and
33 that includes both the Council recommendations and these
34 basically housekeeping issues by the Staff Committee.

35
36 MS. KESSLER: Okay.

37
38 CHAIRMAN FLEAGLE: Thank you. Steve --
39 George, I'm sorry.

40
41 MR. OVIATT: That's all right. I agree
42 with Gary's reasoning. Before I did not support the
43 first proposal, but I believe that we have given this
44 proposal an opportunity to go through, at least, a piece
45 of a normal schedule and that is it -- it was heard
46 before the Southcentral RAC, which was a scheduled --
47 normal scheduled opportunity and it's a modest proposal.
48 Although I prefer things like this going through the
49 normal process, I, ,too, support this proposal and feel
50 like we have given it due diligence.

1 CHAIRMAN FLEAGLE: Niles.

2

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

12

13 MS. GOTTLIEB: Mr. Chair.

14

15 CHAIRMAN FLEAGLE: Judy.

16

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

25

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

34

35 Thank you.

36

37 MS. KESSLER: Mr. Chair.

38

39 CHAIRMAN FLEAGLE: Yes.

40

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

1 So I believe that test is met and I will
2 support this motion.

3
4 CHAIRMAN FLEAGLE: Other comments.

5
6 (No comments)

7
8 CHAIRMAN FLEAGLE: All right, I'll add
9 mine. I appreciate everybody's discussion and it sounds
10 like the proposal has no problem with passing.

11
12 I will be casting a dissenting vote. And
13 my reasoning is not -- again, is similar to the argument
14 on the first half of this request, and that was the coho
15 fishery on the Kasilof, is not with the conservation or
16 the intent of the proposal but with the process that it's
17 being brought before the Board. And I'd like to be
18 consistent in requiring a definable predictable process
19 as much as possible, and would really personally prefer
20 not addressing issues through a special action request.
21 And, again, it's not pertinent to the intent of the
22 proposal, but to the process itself.

23
24 I understand the legal counsel's
25 consideration on what the definition of extenuating
26 circumstances and how that applies here, does tend to
27 give the Board latitude to make its decision; I still
28 feel that we're in the same boat as we were when we
29 didn't pass the other half of the proposal. I don't see
30 that anything has changed, although a little more time
31 has gone by, I would prefer to see all of the fisheries
32 issues before the Board in its normal cycle.

33
34 So with that said I'm confident that the
35 proposal's going to pass.

36
37 Any other discussion.

38
39 MR. CESAR: Call for the question,
40 please.

41
42 CHAIRMAN FLEAGLE: Question's called.
43 Pete.

44
45 MR. PROBASCO: Thank you, Mr. Chair.
46 Final action on Special Action 06-01b as the motion was
47 made by Mr. Edwards and seconded by Mr. Cesar to support
48 the Southcentral RAC's recommendation with modifications
49 as proposed by the Staff Committee -- in addition to.

50

1 Mr. Edwards.
2
3 MR. EDWARDS: Aye.
4
5 MR. PROBASCO: Ms. Kessler.
6
7 MS. KESSLER: Aye.
8
9 MR. PROBASCO: Mr. Oviatt.
10
11 MR. OVIATT: Aye.
12
13 MR. PROBASCO: Ms. Gottlieb.
14
15 MS. GOTTLIEB: Aye.
16
17 MR. PROBASCO: Mr. Cesar.
18
19 MR. CESAR: Aye.
20
21 MR. PROBASCO: Mr. Chairman.
22
23 CHAIRMAN FLEAGLE: Nay.
24
25 MR. PROBASCO: Mr. Chairman, motion
26 carries, five, one.
27
28 CHAIRMAN FLEAGLE: Thank you, Pete.
29 Motion passes with five affirmative and one nay.
30
31 MR. LORD: Mr. Chairman.
32
33 CHAIRMAN FLEAGLE: Go ahead, Ken.
34
35 MR. LORD: Excuse me. I'd like to ask
36 for a clarification from the Board and to ensure that we
37 have a complete record I'd like to ask the Board to
38 describe what the extenuating circumstances were in this
39 case.
40
41 Now, when I said that I thought that the
42 Board could find in this case, my thinking was that this
43 was close enough to a failure to provide a harvest
44 opportunity, or the circumstances were close enough that
45 the Board could make that decision, but I'm not the
46 decision-maker, you are, and I need for you to put that
47 on the record, please, or put some -- your reasoning on
48 the record, if you could.
49
50 CHAIRMAN FLEAGLE: All right. Gary.

1 MR. EDWARDS: Well, I may have tried to
2 allude to it as part of my motion and I may not have done
3 it properly so I'll try.

4
5 I think I said based upon our decisions
6 that we made back in January when we did provide the
7 opportunity for -- or provided C&T for Ninilchik,
8 certainly there implies with that is at some point the
9 opportunity of getting to go out and exercise that C&T
10 and I realize that you can look at time different ways
11 and one could argue that the time has only been 11
12 months, my guess is the folks from Ninilchik would say
13 that it's been many, many -- the time could be measured
14 in years, not in days, so, again, I certainly, like you,
15 Mr. Chair, would have preferred during the process, but I
16 do think that providing the opportunity for harvest is
17 important, I think that's what's explicit with C&T, and
18 that there's an opportunity to provide this harvest, it's
19 gone through, I feel, comfortable sufficient vetting,
20 public input and that was my -- why I think that we
21 should address it as a special action, and I was willing
22 to support it as a special action.

23
24 CHAIRMAN FLEAGLE: Niles.

25
26 MR. CESAR: To me, a failure to provide
27 an opportunity is a failure and it is a time sensitive
28 thing, where we got to have five years to provide -- we
29 failed to provide -- I think that an affirmative vote on
30 this is allowing the necessary ability to subsistence
31 harvest and that's why I voted for it.

32
33 CHAIRMAN FLEAGLE: Okay, are you happy,
34 it doesn't seem to.....

35
36 MR. LORD: Thank you, yes.

37
38 CHAIRMAN FLEAGLE:apply to what the
39 extenuating circumstances are that are listed, but if
40 you're happy then we'll go ahead and move on.

41
42 All right, this is a good point for a
43 break, how about a 10 minute break and we'll resume at 20
44 after.

45
46 (Off record)

47
48 (On record)

49
50 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.

50

1 MS. WILKINSON: Good morning, Mr. Chair.
2 Members of the Board. Today I'm going to present a
3 summary of the written public comments, comments from the
4 two public hearings and Regional Advisory Council
5 comments. In the interest of time I combined the written
6 public comments and the oral testimony received at the
7 two public meetings.

8
9 Since the summary of comments was
10 distributed we received two more and a clarification of
11 one I had received previously and then there was one that
12 was just passed out, so this will be a little different
13 than what you have before you.

14
15 Five people provided verbal comments at
16 the November 1st meeting in Homer, nine provided comments
17 at the November 2nd meeting in Soldotna. Verbal comments
18 were made on behalf of the Anchorage, Central Peninsula,
19 Cooper Landing, and Homer Fish and Game Advisory
20 Committees, the Kenai Peninsula Borough, the Kenai River
21 Sportfishing Association and the Ninilchik Traditional
22 Council. Additional comments were provided by people
23 speaking on their own behalf.

24
25 The Board received 76 written public
26 comments. Of these seven were from tribal governments,
27 two from the Kenai Peninsula Borough, one from the Alaska
28 Federation of Natives, one from the Native American
29 Rights Fund on behalf of clients, two from commercial
30 fishermen's organizations, two from State Fish and Game
31 Advisory Committees, one from the Wrangell-St. Elias
32 Subsistence Resource Commission, and four were from --
33 well, five, from sportfishing or hunting organizations.
34 The remaining comments were primarily from individuals
35 who sportfish on the Kenai Peninsula, about half of those
36 individuals identified themselves as either sportfishing
37 guides or owners of sportfishing dependent businesses.

38
39 Commenters who oppose a Kenai Peninsula
40 Subsistence Resource Region and Council include the six
41 tribal governments, the Alaska Federation of Natives, the
42 Wrangell-St. Elias Subsistence Resource Commission, the
43 Cook Inlet Fishermen's Fund, the Native American Rights
44 Fund, the Anchorage, Central Peninsula, Homer and
45 Matanuska Valley Fish and Game Advisory Committees, the
46 Kenai Peninsula chapter of Safari Club International, the
47 Alaska Outdoor Council and four individuals.

48
49 They expressed the following concerns.
50

1 The Board's use of executive sessions,
2 and the haste to establish the proposed
3 Council has averted the public process
4 and caused mistrust of the Federal
5 program. People have not been allowed
6 sufficient time to consider potential
7 consequences of the Proposed Rule. The
8 same level of care should be given to
9 creating this Council as was given when
10 creating the original 10 Councils. The
11 Board should start over with an open
12 process that works toward consensus.

13
14 The Proposed Rule promotes the interest
15 of non-subsistence special interest
16 groups and does not have support of
17 subsistence users. AFN adopted a
18 resolution in October 2006 opposing the
19 Proposed Rule and the Ninilchik
20 Traditional Council requested a court
21 injunction to halt creating a new region
22 and Council until the process is done
23 properly.

24
25 The proposed region and Council are
26 unnecessary. The current 10 region
27 structure is sufficient to manage Federal
28 subsistence resources. The system works
29 well and the Southcentral Council has
30 proven able to address subsistence
31 proposals for the entire region. Since
32 there are only six communities designated
33 as rural on the Kenai Peninsula the
34 Southcentral Council can effectively
35 address subsistence regulatory issues for
36 these rural users.

37
38 There are adequate ways in place for the
39 public to address the Board.

40
41 The Council would be dominated by
42 nonrural commercial and sport users,
43 Federally-qualified subsistence users
44 would be a minority on the proposed
45 Council and would not be heard.

46
47 The Council composition question should
48 be settled before forming a new Council.

49
50 A new environmental impact study should

1 be conducted before any action is taken.
2 Southcentral Alaska has experience many
3 changes since the creation of the program
4 and any decision about a new region or
5 Council needs to be based on up to date
6 information.

7
8 This action may set a precedent for
9 establishing Councils focused on one
10 particular issue in one area of a region.

11
12 The additional expense of an 11th Council
13 is unnecessary and unjustified.

14
15 Some commenters oppose subsistence
16 management on the Kenai Peninsula stating
17 it causes division between rural and
18 nonrural residents.

19
20 Comments in support of a Kenai -- excuse
21 me. The remaining commenters, including the Kenai
22 Peninsula Borough, three sportfishing organizations, the
23 Kenai Peninsula Fishermen's Association, the Cooper
24 Landing Fish and Game Advisory Committee and many
25 individuals express support for establishing a Kenai
26 Peninsula Subsistence Resource Region and Council.

27
28 The stated that:

29
30 The new region would reduce the time,
31 distance and expense required to attend
32 Council meetings, which would increase
33 public participation in the Federal
34 process.

35
36 A Council of 10 members would provide
37 more accurate knowledge of fish and
38 wildlife issues on the Kenai Peninsula
39 than can the three members currently
40 seated on the Southcentral Council.

41
42 Splitting the Southcentral region into
43 two smaller regions would allow the
44 Southcentral Council to focus on other
45 areas such as the Copper River and
46 Susitna River drainages.

47
48 The change would double the efficiency of
49 the system by increasing the number of
50 people with important local knowledge to

1 contribute through the Council process.
2
3 The proposed Council would provide equal
4 representation of all users.
5
6 The timing of this process in summer and
7 fall was inappropriate for Alaskans and
8 provided insufficient opportunity for
9 discussion of the issue.
10
11 And the new subsistence fisheries will
12 impact existing fisheries, therefore, OSM
13 should conduct an economic impact study
14 before creating a new region.
15
16 None of the commenters who addressed the
17 proposed boundaries support including Anchorage in the
18 proposed region.
19
20 Those who commented on the boundary were
21 concerned that such a large urban area
22 may overwhelm the Council membership.
23
24 Recommendations were to either follow the
25 Peninsula Borough boundary or to include
26 Unit 7 and 15 only.
27
28 And that's the summary of public
29 comments.
30
31 The summary of Regional Advisory Council
32 comments is as follows:
33
34 The Southeast Alaska Regional Advisory
35 Council unanimously voted against formation of the
36 proposed Council. At its fall 2006 meeting, the Council
37 received a Staff update regarding the possible formation
38 of a Kenai Peninsula Council. The Council also reviewed
39 the Federal Register notice and received a report from
40 the Wrangell-St. Elias Subsistence Resource Commission.
41
42 In a letter addressed to the Board the
43 Council brought forward the following concerns. The
44 Southeast Alaska Council believes that the formation of a
45 new Regional Advisory Council is unnecessary and would be
46 detrimental to the Federal Subsistence Management
47 Program. The Southcentral Council has done an exemplary
48 job of representing the subsistence users of its region
49 and fulfilling its ANILCA responsibilities. The
50 Southeast Alaska Council is concerned that the small

1 rural subsistence communities on the Kenai Peninsula
2 would be submerged in the sea of nonrural communities on
3 the Peninsula if a Peninsula only Council were formed.
4 The expense and program effort that would be involved in
5 the proposed additional Council at a time when funding is
6 limited is highly questionable. The Council wonders
7 whether the plan for a new Council for the Kenai is
8 politically motivated and aimed at getting a Regional
9 Advisory Council in place that would be more compliant
10 with non-subsistence interests.

11
12 The Southcentral Alaska Regional Advisory
13 Council met on August 24th, 2006 and heard public
14 testimony before deliberating on this issue. The Council
15 voted unanimously to oppose the formation of the Kenai
16 RAC in light of significant adverse comments that it
17 heard during the meeting and to urge the Secretaries to
18 withdraw both the direct and Proposed Rules, and further
19 that before the Secretary pursues formation of any other
20 Regional Advisory Councils, that he engage in the same
21 level of rulemaking with public process that created the
22 existing Regional Advisory Councils. At it's fall 2006
23 meeting in Homer, the Council confirmed its August
24 recommendation.

25
26 The Yukon-Kuskokwim Delta Regional
27 Council heard a briefing about the 11th Council and
28 discussed it during its fall meeting. The Council took
29 no formal action but decided to remain neutral and
30 include a note that some members do not support formation
31 of an 11th Council.

32
33 Western Interior Regional Advisory
34 Council members expressed concern that this proposal was
35 not generated by the Southcentral Alaska Council or the
36 public. The meeting Chair stated that the Regional
37 Council concept revolves around a regional interpretation
38 of subsistence. If you go into a finite group it doesn't
39 lend to a larger perspective. He suggested that rather
40 than break the cohesiveness of the whole region, it would
41 be better to bolster the number of Council members from
42 that part of the Southcentral Region.

43
44 That concludes the Council comments.

45
46 CHAIRMAN FLEAGLE: Thank you, Ann.
47 Questions for Ann Wilkinson.

48
49 (No comments)

50

1 CHAIRMAN FLEAGLE: All right, we'll move
2 into public testimony then and we have eight people that
3 want to speak to this issue and maybe more by telephone
4 which we'll check when we run through the cards.

5
6 First up we'd like to call.....

7
8 MR. PROBASCO: We've got eight so.....

9
10 CHAIRMAN FLEAGLE: Yeah, we got eight,
11 we'll go ahead and put the five minute time limit on
12 this, good point. First we'll call David Case.

13
14 (Pause)

15
16 CHAIRMAN FLEAGLE: He declines, okay.

17
18 MR. CASE: Nope.

19
20 (Laughter)

21
22 CHAIRMAN FLEAGLE: Welcome, David.

23
24 MR. CASE: Thank you, Mr. Chairman. My
25 name is David Case and I am one of the attorneys for the
26 Ninilchik Traditional Council, and I suppose you already
27 know that we've addressed this as was mentioned, in a
28 pending lawsuit, but I won't talk about that.

29
30 And I think the comments that were
31 summarized by the Staff adequately represent a broad
32 range of opposition to this proposal. Even the people
33 that support it don't like parts of it, including
34 Anchorage, for example, as a part of being represented on
35 the proposed RAC.

36
37 But the point I want to emphasize is that
38 this process that you've gone through to develop the RAC
39 has been a top down process. And in my view ANILCA is
40 set up to be a bottom up process. And if it's going to
41 function as a bottom up process -- and that's what sets
42 it apart, really, from the State regime is that it
43 genuinely is designed and could function to afford
44 people, the users, the subsistence users out in the
45 state, at the bottom of this whole system, a real
46 effective voice through their committees and the Regional
47 Advisory Councils. But if the Board and the Secretaries
48 impose top down regimes on this system, it squelches that
49 whole structure. And one of the fundamental purposes of
50 ANILCA was to provide a meaningful role for subsistence

1 users in this regulatory process. And to the extent that
2 you rule it from the top it defeats that purpose.

3

4 That's my comment, thank you.

5

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

8

9 (No comments)

10

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

13

14 Sorry, you may begin.

15

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

18

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

26

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

40

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

1 the users of its subsistence commodities.

2

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

18

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

21

22 CHAIRMAN FLEAGLE: Thank you, Mr. Mayor.
23 Questions for John.

24

25 (No comments)

26

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

29

30 MAYOR WILLIAMS: Thank you.

31

32 CHAIRMAN FLEAGLE: Rod Arno. Welcome
33 Rod.

34

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

38

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

44

45 It's not -- you know, I think the
46 important thing that people need to understand for the
47 Kenai Peninsula is that the majority of the population in
48 the area proposed for GMU -- State GMU's 14(C) and 7 and
49 15, that 95 percent of the population in that area
50 wouldn't qualify for Federal rural subsistence. So the

1 idea that you're going to have representation on a
2 Regional Advisory Council, it's still a very small
3 minority of the people in that area, and regardless of
4 whether or not the 70/30 split, you know, goes through
5 and the courts allow that, that ANILCA makes it pretty
6 clear in Section .805(2) that what they're looking for is
7 rural representation, rural residents to have
8 representation on these RACs.

9
10 So the concept in a number of the pieces
11 of testimony that were sent in by people is that they
12 looked at this as an opportunity of increased opportunity
13 for representation of residents of the area, you know, is
14 to the contrary.

15
16 The other thing is, is our concern, you
17 know, would be the proliferation of the Federal oversight
18 by splitting up the Regional Council, Southcentral. And
19 it was suggested at the Southcentral RAC meeting when
20 they took this issue up, that if the Kenai was able to be
21 separated out then why shouldn't the Copper River Basin
22 have that same opportunity and separate it out so they
23 could deal specifically with their issues, so here we go
24 again, more Federal oversight, more subdividing of the
25 Regional Councils that are out there now, more cost, and
26 more time for organizations such as the Outdoor Council
27 to have to participate in these proceedings.

28
29 Thank you for your time.

30
31 CHAIRMAN FLEAGLE: All right, thank you,
32 Rod. Questions.

33
34 MR. EDWARDS: Yeah, I have one question.

35
36 CHAIRMAN FLEAGLE: Gary.

37
38 MR. EDWARDS: In reading your letter and
39 both listening to your testimony, I'm still -- I'm a
40 little unclear, were you suggesting that Councils should
41 only be made up of rural residents?

42
43 You know you make the -- you know, the
44 statement here is about that it's supposed to -- for
45 rural residents -- a meaningful role in the management of
46 fish and wildlife, and then you say that would exclude
47 all Alaska residents from Federal nonrural areas from
48 membership in the Kenai Peninsula RAC. I'm not quite
49 sure what that means.

50

1 I mean because the proposal, using the
2 boundaries that are currently being looked at, includes
3 both rural and nonrural, so are you -- I'm a little
4 unclear what you're suggesting.

5
6 CHAIRMAN FLEAGLE: Rod.

7
8 MR. ARNO: Through the Chair. Mr.
9 Edwards. Well, I think that, you know, this idea that
10 there would be representation from nonrural areas has yet
11 to be challenged even more in court than it is now. You
12 know, clearly as you read what Section .085(2) says, it
13 says representation, you know, should be by rural
14 residents, and whether or not through the -- you know, if
15 the Department of Interior and through the Federal
16 Register says, well, okay we're going to go with the
17 30/70 split, giving 30 percent of that to sport and
18 commercial, you know, I would contend that based on what
19 ANILCA says and I think that Judge Holland would agree
20 with me, that those would be representation of rural
21 residents, and, you know, that as this goes out and as we
22 followed this, you know, since the passage of ANILCA,
23 that I think that that could yet be challenged in court,
24 whether or not you could have representation on these
25 RACs by Federally-non-qualified rural residents.

26
27 MR. EDWARDS: So I guess I kind of get
28 back to the start of my question, so by extension then,
29 if you would follow that through then that would mean
30 that that Regional Advisory Councils would only --
31 membership would only be rural residents. And, of
32 course, the majority of our Councils right now, that is
33 the case, but certainly those -- you know, originally
34 when this was put together everybody had to be somewhere
35 and those Councils included boundaries that included
36 nonrural as well as rural areas.

37
38 But what I hear you're suggesting is that
39 maybe when they drew the boundaries they should only be
40 drawn in such a way that it would have addressed rural
41 residents, I mean nonrural residents?

42
43 MR. ARNO: Mr. Chair. Mr. Edwards.
44 Well, that's, I think, clearly the intent of ANILCA and
45 if there's a question and the Outdoor Council has
46 provided comments on that then it's a matter of the
47 rural/nonrural determinations. And if the Federal
48 managers would match what the State has for non-
49 subsistence areas, you wouldn't be in the quagmire that
50 you are on the Kenai right now anyway.

1 CHAIRMAN FLEAGLE: Other questions. We
2 have Keith.

3
4 MR. GOLTZ: Let me just clear up one
5 thing. ANILCA does suggest that our RACs should not be
6 dominated by large urban areas. But we have not taken
7 that to mean that urban residents couldn't be represented
8 on Councils. They can be a part of it, not the bulk of
9 it, is the way we've interpreted that.

10
11 So we, in fact, on our present Councils
12 have representatives from Anchorage, Fairbanks and
13 Ketchikan, at least, who are serving on our Councils
14 right now.

15
16 CHAIRMAN FLEAGLE: Rod.

17
18 MR. ARNO: Mr. Chairman, I'd like to
19 comment to that. Yeah, I'm perfectly aware of that and
20 I'm perfectly aware of what Judge Holland has said in his
21 decision there on the SCI suit challenging, you know, the
22 Federal Subsistence Board and I believe that if that was
23 further challenged it would be real interesting to see if
24 they'd remain on there, nonrural representation.

25
26 CHAIRMAN FLEAGLE: Other questions.

27
28 (No comments)

29
30 CHAIRMAN FLEAGLE: All right, appreciate
31 your testimony, Rod.

32
33 Up next we have Ricky Gease.

34
35 MR. GEASE: Hi, my name is Ricky Gease,
36 again, I'm the executive director of the Kenai River
37 Sportfishing Association.

38
39 We recommend -- we support the minority
40 recommendation which supports the formation of a new
41 Kenai Peninsula Subsistence Resource Region and Advisory
42 Council. We think it would provide more local
43 participation and input onto the issues specific to the
44 Kenai Peninsula. I think this would allow for more
45 robust discussions on complex issues in the Kenai
46 Peninsula region and that would lead to well thought out
47 and sound recommendations to the Board.

48
49 We think it would increase the number of
50 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 ailed 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 CHAIRMAN FLEAGLE: Okay, thank you.
32 Questions.

33
34 (No comments)

35
36 CHAIRMAN FLEAGLE: I notice that the next
37 testimony is from the same organization, is there any
38 objection to allowing -- you don't have a limitation on
39 that.....

40
41 MR. PROBASCO: (Shakes head negatively)

42
43 CHAIRMAN FLEAGLE:okay, let's go
44 ahead and call them up, Ron Rainey.

45
46 MR. RAINEY: Mr. Chairman. Members of
47 the RAC -- the Regional Advisory Council, I'm sorry, I
48 didn't know Ricky was going to talk about the formation
49 of the new RAC this morning, so it's going to be hard for
50 me to find things that Mayor Williams and Ricky have not

1 already covered but I will try to do so.

2

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

23

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

34

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

41

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

44

45 CHAIRMAN FLEAGLE: Thank you, Ron.
46 Questions.

47

48 MR. EDWARDS: Yeah, I have one question.

49

50 CHAIRMAN FLEAGLE: Gary.

1 MR. EDWARDS: Ron, the process, the
2 application process for memberships on the RACs is a very
3 wide open process and, in fact, I think our Staff would
4 say that they often have to beat the bushes to get good
5 people to apply to those. Do you have any reason why
6 there seems to have been a lack of interest on the
7 sportfishing community to apply?
8

9 MR. RAINEY: I have to plead ignorance.
10 I do not know why we haven't applied in the past. I'm
11 fairly new to the process. I've only been coming to your
12 meetings for approximately two years now. And we didn't
13 realize the impact that it could have on our entire area.
14 We're awake to that fact now and I think there's going to
15 be many sportfishing people that would be happy to serve
16 in an advisory capacity or on the Regional Advisory
17 Council.
18

19 CHAIRMAN FLEAGLE: Other questions.
20

21 (No comments)
22

23 CHAIRMAN FLEAGLE: All right, thanks for
24 your testimony.
25

26 MR. RAINEY: Thank you very much.
27

28 CHAIRMAN FLEAGLE: Up next we're going to
29 call Connie Wirz or -- you pass, okay, thank you.
30

31 Mary Ann Mills. Welcome.
32

33 MS. MILLS: Thank you. I'm a council
34 member for the Kenaitze Indian Tribe and also the chief
35 tribal judge.
36

37 I am opposed, as well as our tribe is
38 opposed to the new proposed Kenai Peninsula RAC. I think
39 with the amount of fish that goes to the subsistence
40 users on the Kenai Peninsula, it might be a half a
41 percent or maybe even less, and so I feel that having an
42 RAC on the Kenai Peninsula that would include the
43 commercial and, of course, the sportsfishermen or -- also
44 commercial user group would be detrimental to those who
45 still fish for our sustenance.
46

47 And another concern I have is with the
48 Southcentral RAC, I feel they've done an excellent job, a
49 very good job representing us. And if the Kenai
50 Peninsula has an individual or a special new RAC that it

1 would also divide the tribal peoples.
2
3 Thank you.
4
5 CHAIRMAN FLEAGLE: Hang on, let me check
6 and see if there's questions.
7
8 MS. MILLS: I'm sorry.
9
10 CHAIRMAN FLEAGLE: Questions.
11
12 (No comments)
13
14 CHAIRMAN FLEAGLE: It looks like you're
15 free to go.
16
17 (Laughter)
18
19 CHAIRMAN FLEAGLE: Thank you. Up next we
20 have Nelson Angapok. I don't know if I said that right
21 -- Nelson's not here. Okay, that concludes everybody
22 that we had cards for.
23
24 Is there anybody, Steve, can you check on
25 line there.
26
27 MR. KLEIN: Do we have anybody on line
28 that wishes to testify?
29
30 MR. BLOSSOM: I guess I might say a few
31 words, Doug Blossom from Clam Gulch.
32
33 MR. KLEIN: Doug Blossom from Clam Gulch.
34
35 CHAIRMAN FLEAGLE: Okay, we'll go ahead
36 and hear from Doug, go ahead Doug.
37
38 MR. BLOSSOM: I'm Doug Blossom from Clam
39 Gulch, I sit on the Southcentral RAC.
40
41 I guess I just want to say that we think
42 we can handle the problems on the Kenai without forming a
43 new group and I'll let it go at that.
44
45 I live on the Kenai and I've been here
46 for 60 years and I think we can handle it, I don't think
47 we need a new RAC. So I'm going to let it stop there.
48
49 CHAIRMAN FLEAGLE: All right, thank you,
50 appreciate the comments. Board members, questions.

1 (No comments)

2

3 CHAIRMAN FLEAGLE: Thank you. Hearing
4 none, we'll go ahead and conclude testimony on this
5 issue.

6

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

11

12 MR. PROBASCO: Bert Adams from Southeast
13 Alaska.

14

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

17

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

24

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

34

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

43

44 I think just to talk a little bit about
45 the Southcentral RAC make up. We do have good
46 representation from both the Kenai, Copper River and
47 northern Copper River, Susitna areas. This Council has
48 been together, you know, for several years now. I think
49 we've grown as a Council. I think we've obviously
50 learned from mistakes that we've made. I think that

1 we've turned our meetings into a more meaningful and
2 quicker than we used to be. I think that we represent
3 the subsistence users in the entire region as it stands
4 now, as well as the commercial and sport users
5 adequately. And I truly believe that if we felt as a
6 Council that we were not able to move this process
7 forward in a timely manner, that we would have let the
8 Federal Board know that.

9
10 So I think that, you know, the biggest
11 concern that we've heard, especially from the people that
12 are on the Kenai Peninsula that serve on the RAC is that
13 if the Kenai RAC was formed, that the subsistence users
14 in the Kenai region, they feel that if the 70/30 split
15 were to be followed that the special interest groups
16 would weigh too significantly into the process and that
17 subsistence users would ultimately be affected in a
18 negative way, and we do not feel that ANILCA has -- wants
19 the process to move in that direction.

20
21 So those are our comments, and I'll
22 answer any questions if you have any. Thanks.

23
24 CHAIRMAN FLEAGLE: Thank you, Tom.
25 Questions.

26
27 (No comments)

28
29 CHAIRMAN FLEAGLE: All right, we
30 appreciate your comments.

31
32 And we have another RAC Chairman on line,
33 Bert Adams, would you like to comment on this issue.

34
35 MR. ADAMS: Yes, thank you, Mr. Chairman.
36 Bert Adams, Sr., the Chairman of the Southeast Regional
37 Advisory Council.

38
39 Ann Wilkinson, you know, did a good job
40 in representing our views, but I'd just like to add
41 another thought or two here.

42
43 SERAC is really concerned about the
44 fragmentation of existing Councils. And we don't think
45 that another Council to represent only Kenai Peninsula
46 is, you know, in order here. With the Federal budget
47 program, you know, facing reductions, we think also that
48 a new Council will cost a lot and it will begin to
49 stretch the overall program. And it also could mean, you
50 know, less Staff, Staff support, you know, for our

1 Councils.

2

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

6

7 Thank you, Mr. Chairman.

8

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

11

12 (No comments)

13

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

16

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

19

20 CHAIRMAN FLEAGLE: Okay, thank you.
21 InterAgency Staff Committee recommendations, Steve.

22

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

25

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

47

48 As you've heard from the Southcentral
49 Council, the majority believes the Southcentral is
50 exercising due diligence in dealing with Kenai Peninsula

1 proposals, and would continue to do so. For the
2 Southcentral RAC, it has concerns -- if they do have
3 concerns about meeting their responsibilities for the
4 Kenai they are -- they've indicated that they would bring
5 that back to the Board propose to develop alternative
6 strategies.

7
8 So finally, the majority believes that
9 the process used in proposing a new Kenai Peninsula
10 region is perceived as expedited and non-inclusive by the
11 Councils and the public, and while the creation of a new
12 Kenai Peninsula region may appear to be a solution, there
13 were strong concerns that there could be long-term
14 negative consequences including diminished credibility
15 with rural residents and increased costs to the program.

16
17 That was the majority recommendation and
18 their justification.

19
20 There was a minority that did support
21 formation of a new Kenai Peninsula Council.

22
23 And the minority view was that this would
24 provide more local participation and input on issues
25 specific to the Kenai Peninsula allowing for more robust
26 discussions as well as well thought out and sound
27 recommendations to the Board. The minority believe that
28 establishing a new Council would increase the number of
29 Council members who have knowledge of fish and wildlife
30 on the Kenai Peninsula from the current three seats on
31 the Southcentral to 10 seats on the new Kenai Peninsula
32 Council and that would lead to increased community
33 involvement as well. And by forming a Kenai Peninsula
34 Council, that would allow what's left of the Southcentral
35 Alaska Council to deal with the Copper River and Susitna
36 drainages.

37
38 Finally, the minority believe that
39 establishing a new region for the Kenai Peninsula would
40 reduce the time, distance and expense required for the
41 public to attend Council meetings and that would lead to
42 public involvement in the process.

43
44 And that concludes the minority and
45 majority Staff Committee recommendations.

46
47 CHAIRMAN FLEAGLE: Thank you, Steve.
48 Board members questions.

49
50 MR. EDWARDS: Mr. Chairman. Mr. Klein.

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

23

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

31

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

37

38 One example that was used is the Unit 2
39 deer hunt as an example of how one of our Regional
40 Advisory Councils has been able to address. But the
41 reality is, is that because of the complexity of that
42 issue, we did ask that Council to put together a
43 stakeholders group involving both rural and nonrural
44 participants so the people who are most affected by the
45 decisions could get involved with that. So in my mind
46 I'm not sure that that's really a good example.

47

48 CHAIRMAN FLEAGLE: Okay, I heard about
49 three questions in there, if you can remember -- well,
50 there was a comment -- but if you can remember the

1 questions and answer them in the order or feel free to
2 ask for repetition.

3

4 Steve.

5

6 MR. KLEIN: Thank you, Mr. Chair and Mr.
7 Edwards. In terms of the percentage going from four
8 percent to two percent, I mean you could view that as a
9 50 percent decrease, and that's the way the majority took
10 that. On the flip side you could say, well, we're
11 comparing 96 percent versus 98 percent, that doesn't look
12 like a big change. To the majority it was going from
13 four percent to two percent was a 50 percent reduction.
14 So that addresses the percentage question.

15

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

25

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

28

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

39

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

43

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

46

47 MR. CARPENTER: Mr. Chairman. Yeah, I
48 think I spoke to that in my comments. The Council, it
49 does feel that it adequately represents all users in this
50 region and that at this time we don't feel that there's a

1 need for a new Council because we do not feel that we
2 have not been able to adequately move proposals forward
3 to the Board with recommendations for actions. So we
4 feel very comfortable at this time.

5

6 CHAIRMAN FLEAGLE: Thank you, Tom.
7 Steve.

8

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

14

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

32

33 CHAIRMAN FLEAGLE: Do you have a
34 response, Steve.

35

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

40

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

43

44 MR. CESAR: Thank you, Mr. Chairman. I
45 did not look at the qualifications of the 10 applicants
46 and, again, I don't think that is really the relevant
47 question. The relevant question is can the existing RAC
48 provide for all of the concerns of the Kenai Peninsula as
49 well as their other duties. And I haven't heard the RAC
50 suggest that they were opposed to the formation of a

1 committee to deal with a specific issue that they felt
2 they needed more local involvement in. So, you know, I
3 think for us to take the perception that, number 1, these
4 10 applicants, whoever they were, are somehow so much
5 more qualified than the RAC is not a good suggestion, nor
6 do I think for us to predispose that the RAC isn't
7 capable of identifying issues that they need some support
8 on is reasonable either.

9
10 So we can go round and round this issue,
11 it really comes down to, does the Board feel that the
12 current RAC can deal with all of the issues for the
13 region, you know, and we start getting off into these
14 other issues and I think we lose sight of what we're here
15 for.

16
17
18 CHAIRMAN FLEAGLE: Okay, thank you,
19 Niles. With that it sounds like we're ready to get into
20 deliberations but first I'm going to call a lunch break.
21 Return at 1:30.

22
23 (Off record)

24
25 (On record)

26
27 CHAIRMAN FLEAGLE: All right, we're going
28 to call back to session, I appreciate everybody being
29 back and ready to work. And we're ready to begin
30 deliberations on the proposed formation of a Kenai
31 Peninsula subsistence region.

32
33 Niles, you had the last comment before we
34 broke for lunch, do you want to start us off.

35
36 MR. CESAR: Thank you, Mr. Chairman. I
37 don't have additional new comment. But are you
38 suggesting then that it's ready for Board deliberation?

39
40 CHAIRMAN FLEAGLE: Yes, sir.

41
42 MR. CESAR: Okay. I'm not prepared to
43 make a motion at this point but I would like to signal
44 that from what I've heard and what I understand the
45 rationale behind the proposal, that I find it difficult
46 for myself to vote for the formation of a new RAC. I
47 think I've been convinced that the present RAC is able to
48 handle both the amount and the diversity of the proposals
49 that come forward to it, but like the tide, it goes in
50 and out of every 12 hours, I can be convinced. So I'm

1 sitting back and listening to Gary.

2

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

5

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

17

18 CHAIRMAN FLEAGLE: Any objections.

19

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

29

30 CHAIRMAN FLEAGLE: Thank you, Gary.
31 Bill.

32

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

37

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

1 tried to do was delineate regions based on a number of,
2 just informally discussed criteria.

3

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

7

8 Secondly, are there similar cultures in
9 the area.

10

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

20

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

31

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

47

48 So that's the historical breakdown.

49

50 CHAIRMAN FLEAGLE: Thank you, Bill.

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

14
15 MR, KNAUER: Mr. Chairman. Mr. Edwards.
16 I think it might have entered in. There might have been
17 discussion as to whether or not there would have needed
18 to have been separate Councils dealing with wildlife
19 versus separate Councils dealing with fishery issues, but
20 at that time we didn't have that situation to complicate
21 the establishment of those.

22
23 So, you know, it would be speculation and
24 I don't know if it would be -- I couldn't really say.

25
26 MR. EDWARDS: And just one other follow
27 up. Then the fact that trying to stick with the hunting
28 units that were already established, that played a pretty
29 significant role in the decision-making or was that
30 secondary to these other criteria?

31
32 MR. KNAUER: That was secondary to the
33 other criteria.

34
35 The main thing was looking at the
36 resource base first and then the people that depended on
37 it. And using those as, okay, where do we draw the line
38 and that's always the case, there's going to be people on
39 one side of the line and on the other side of the line,
40 whether they're rural residents or whether they're
41 nonrural residents, and the nonrural areas, you know, had
42 to go in a particular region and I will have to say that
43 the representatives that we've had over the years that
44 have come from those nonrural areas have been extremely
45 supportive and have been excellent members and have
46 frequently Chaired our Councils.

47
48 CHAIRMAN FLEAGLE: Other questions for
49 Bill.
50

1 (No comments)

2

3 CHAIRMAN FLEAGLE: Ready for
4 deliberations. Anybody. Gary.

5

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

38

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

43

44 I know that there's been some concerns
45 expressed, you know, about Anchorage and whether it
46 should be in or should be out, I guess personally I'm not
47 sure I even have an opinion. I mean it appears that
48 everybody has to be somewhere. Now, some argue that
49 maybe Anchorage should be nowhere and not part of this
50 process, but our current process puts everybody somewhere

1 so you have to be somewhere. If there are concerns about
2 the representation from Anchorage or the lack of
3 representation from rural communities, certainly I think
4 this Board has the flexibility, like we have done with
5 the Kodiak/Aleutian Regional Advisory Council, where we
6 have designated X amount of positions have to be from
7 Kodiak, I don't think, unless I'm advised otherwise that
8 there is nothing that prevents us to say, of this
9 Council, and if Anchorage is included, there could be no
10 more than one representative from Anchorage or zero
11 representatives or by the same token there is nothing
12 that would prohibit us from saying out of the 10 members
13 or whatever the number is we come up with, you know, X
14 amount of those have to be from rural communities. I
15 mean I think there are those options out there that we
16 have an opportunity to apply in this situation, that
17 those are some of the reasons that folks are opposing
18 this.

19
20 As I said earlier, the difference between
21 two percent and four percent, in my mind, is pretty
22 insignificant. I mean Steve pointed out it is 50
23 percent, but my point is if four percent's okay and if we
24 eliminate Anchorage then we got six percent, so six
25 percent is better than four percent.

26
27 So, I don't know, I just think there are
28 ways that we could address this to address some of the
29 concerns that we have heard.

30
31 You know, and we haven't talked about
32 those and we haven't kind of put those on the table as a
33 proposal, but certainly I think we have a lot of options
34 out there, it's my understanding, is that once the RAC is
35 formed how we sort of charter that RAC.

36
37 CHAIRMAN FLEAGLE: Yeah, thank you.
38 George.

39
40 MR. OVIATT: Mr. Chairman. You know, I
41 look at the Southcentral RAC and it covers a very large
42 area with the majority of the population of the state in
43 that area. And it just appears to me that with the
44 complex issues that we have in the Kenai and the complex
45 issues we have in the Susitna drainage and the Copper
46 River Valley, and those issues are, I think, very
47 complex, but I think the issues are quite different, too.
48 And it just appears to me that if we had local people
49 dealing with those local issues that we would have a
50 better grassroots resolution to, I think, what is going

1 to be a very difficult situation of introducing
2 subsistence into the Kenai area.

3

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

13

14 Thank you.

15

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

20

21 MR. GOLTZ: I think the basic answer to
22 your question is yes. There are some constraints.

23

24 Right now we have a 70/30 mix. So we are
25 committed at this point to a 70 percent subsistence
26 representation, 30 percent sport and commercial.

27

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

31

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

35

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

40

41 CHAIRMAN FLEAGLE: Is that good, George?

42

43 MR. OVIATT: (Nods affirmatively)

44

45 CHAIRMAN FLEAGLE: Okay. Other
46 discussion.

47

48 MR. CESAR: Mr. Chairman.

49

50 CHAIRMAN FLEAGLE: Niles.

1 MR. CESAR: Yes, thank you, Mr. Chairman.
2 I hear what you're saying Keith and I agree with it and I
3 agree with George.

4
5 But I think if we spent this time looking
6 at the existing RAC and how we could work within that
7 framework, I think we'd basically come to the same
8 conclusion, that there are avenues within the existing
9 RAC to deal with these specific issues, and the formation
10 of another RAC to give legitimacy to the notion that the
11 Kenai is so complicated that the RAC can't deal with it,
12 I don't think really is giving enough deference to the
13 RAC's opinion.

14
15 MS. GOTTLIEB: Mr. Chair.

16
17 CHAIRMAN FLEAGLE: Judy.

18
19 MS. GOTTLIEB: Thank you. You know, I
20 agree because I trust our current process.

21
22 I think the Southcentral RAC has done a
23 good job, has pledged that they can do the job or ask for
24 help, and the kinds of help that they could ask for are
25 the kinds of things that maybe Gary and others are
26 outlining, we could assure a full membership on the RAC,
27 which I don't think we have right now, we could adjust
28 the number of members from the Kenai Peninsula on the RAC
29 to further assure that local representation -- the
30 Southcentral RAC has an excellent track record they have
31 built over the years with a tremendous amount of
32 controversy on the Kenai Peninsula, including a C&T
33 proposal from the Ninilchik on the Kenai National
34 Wildlife Refuge. So for those people who worked through
35 that, and for the many other complicated issues they
36 worked on, I think we do acknowledge that they've done an
37 excellent job.

38
39 CHAIRMAN FLEAGLE: Gary.

40
41 MR. EDWARDS: Mr. Chairman. I don't want
42 any of my remarks to imply that, you know, the
43 Southcentral RAC isn't a strong RAC. I mean I think it's
44 -- and I don't want to offend the other RACs, but I think
45 they have done an excellent job, they have an excellent
46 Chair, who often brings wisdom and sorts through some of
47 our tough issues and really has done a good job, so
48 that's not my issue.

49
50 I just think in this situation, given the

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

19

20 CHAIRMAN FLEAGLE: George.

21

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

32

33 Thank you, Mr. Chairman.

34

35 MS. KESSLER: Mr. Chair.

36

37 CHAIRMAN FLEAGLE: Yes, Wini.

38

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

43

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

48

49 One is, this program has certainly faced
50 other thorny and lingering issues and these have been

1 resolved through means much less drastic than a change in
2 our basic structure of regions and Councils. And as
3 well, I don't see a logical pathway of how taking this
4 action would lead us to a successful resolution. Now,
5 it's presumed by many to be helpful and beneficial but as
6 has been pointed out by others, it could go the other
7 way.

8

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

13

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

16

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

22

23 CHAIRMAN FLEAGLE: Judy.

24

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

27

28 I guess I wanted to comment too that
29 recognizing that the Southcentral does cover such a large
30 area we increased the number of members on it several
31 years ago. Also the number of the proposals that they'll
32 be facing, at least with respect to the Kenai Peninsula
33 this next cycle, if we don't approve a new RAC, would not
34 be overwhelming, it's eight. Certainly the Council has
35 faced that many on the Copper River many times and
36 elsewhere. I think there may be an advantage to people
37 being on a Council who don't exactly live in the heart of
38 where the controversy or where the proposal is taking
39 place. It gives them a little bit different objectivity,
40 yet they also bring a knowledge of what they're -- the
41 view that they're representing, whether it be commercial,
42 sport or subsistence use, they bring that general
43 knowledge, but may also provide some objectivity to the
44 RAC. I think we've seen that again through the
45 Southcentral.

46

47 We have a lot of veterans on that RAC who
48 have seen many types of fish and wildlife proposals.
49 Having a RAC that's called Southcentral, and covering a
50 large area, doesn't preclude decisions and

1 recommendations regarding subsistence take of fish and
2 wildlife resources being made with as much public input
3 as the public wishes to provide. And I think this
4 meeting today and several of the recent meetings that the
5 RAC has had on the Kenai Peninsula have demonstrated
6 that, that we do want to have as much public input as
7 possible and involvement and that kind of goes back to
8 some of the applications for the RAC membership as well.
9

10 I think this Board and program has been
11 proud to be a bottom up program, and meaning we start at
12 the local level. And I feel, unfortunately, while the
13 idea of the Kenai RAC has been discussed on and off over
14 the years and may be a good idea, the way we've gone
15 about it has not been through this bottom up process.
16 If the Southcentral RAC had proposed this, I think it
17 would have been pretty smooth sailing, but it hasn't
18 happened that way, unfortunately, and that's created a
19 lot of the suspicion, the suspicion about the motives or
20 the reasons behind it, even though perhaps, you know,
21 that may not be correct, maybe it's all well intentioned
22 but we haven't been able to cut through those suspicions
23 and perceptions.
24

25 I think what speaks most -- a great deal
26 to me is the diversity of the comments. Many different
27 groups who maybe hardly ever line up together, many
28 different groups are opposing this. And I think it would
29 be a mistake for this Board to do something that creates
30 such a controversy in hopes of solving some controversy.
31 When the idea is perhaps more ripe and when it's more
32 acceptable to this diversity of user groups, we could be
33 then more successful.
34

35 Thank you.

36
37 CHAIRMAN FLEAGLE: Thank you. Keith.

38
39 MR. GOLTZ: I just want to announce that
40 Niles isn't the only fossil on this Board, I was here at
41 the very beginning also.
42

43 (Laughter)

44
45 MR. GOLTZ: And before this comes to a
46 vote, I just want to point out that we seem to be
47 addressing this issue as if it were merely a matter of
48 dispute resolution. But ANILCA is constructed in such a
49 way that our decision-making process is from the bottom
50 up and we generally, over the years, have taken this to

1 mean that to the maximum extent possible we will initiate
2 our decision-making process in a pool of people who have
3 their hands on the resource. This is not always
4 possible. And in the case of Southcentral, we sometimes
5 end up discussing the Kenai Peninsula issues in
6 Glennallen, and that's a problem for ANILCA and I think
7 it's also a problem for the Secretaries. I can't speak
8 for the Secretary of Agriculture but I think I can for
9 the Secretary of Interior, they're committed to a bottom
10 up process.

11
12 Now, I know that to some people this
13 whole thing looks suspicious, we got this wrapped around
14 our silver issue on Ninilchik, and that's unfortunate.
15 But this has been in the process of discussion for years
16 and I wouldn't want anybody to be misled about the
17 legality of the Board's decision here today. The Board
18 is operating under delegated authority and if the
19 Secretaries of Agriculture and Interior should decide
20 that in this case a bottom up process is best built on
21 the Kenai Peninsula then they can make that decision. So
22 whatever the Board decides here today may not be final.

23
24 CHAIRMAN FLEAGLE: Thank you, Keith. I'd
25 like to make a couple of comments.

26
27 First of all this is one issue that
28 obviously just doesn't fall on one side of the fence or
29 other for me.

30
31 I've heard some really good arguments for
32 the creation of it, which I tend to agree with, the
33 majority of them, but I've also heard some really good
34 arguments against creating the new RAC. And I see the
35 merits on both sides. So until, I think the deliberative
36 process is complete here, I probably won't know how to
37 vote until I get to my name being called. I asked Pete
38 to mix my name up in there a little bit so I'm not the
39 doggone deciding vote on everything here.

40
41 (Laughter)

42
43 CHAIRMAN FLEAGLE: That's kind of not
44 fair. And the other unfair is having, not only the
45 coincidence, I guess that everything is coming up now,
46 and just being the new guy, wow, all these difficult
47 decisions are coming up, however, I'm up to the task.

48
49 Now, I've got a couple of concerns or
50 questions that I'd like to pose on the proposed new RAC,

1 and I think the first one that was raised out of the
2 majority recommendation from the InterAgency Staff
3 Committee recommendation, and that concerns the OSM
4 budget for the RAC system. Gary, you're probably the one
5 that would answer that, how would that impact the OSM
6 budget for operations and would you be able to swing an
7 11th RAC with the current budgeting levels.

8
9 MR. EDWARDS: Well, currently Pete's the
10 one we're holding accountable for managing that budget
11 and as the person closest to the bank account and
12 checkbook, maybe he ought to describe, and I do think
13 that would be helpful. You know, what is the -- you
14 know, maybe he could cover, you know, what does it cost
15 us to operate our RACs, what would this new RAC cost,
16 would it be the same amount, would it be less, where
17 would the funding come for that; and I'm not trying to
18 put you on the spot, but you can probably do it better
19 than I can.

20
21 CHAIRMAN FLEAGLE: No, you're probably
22 right. Pete, you're probably more appropriate. I just
23 called on him because his agency funds you.

24
25 MR. PROBASCO: He is my boss. Thank you,
26 Mr. Chair. Mr. Edwards.

27
28 As far as the Office of Subsistence
29 Management, if the Board were to make a decision to form
30 an 11th Council, where would the funding come from?

31
32 Well, first I think the approach that I
33 would take would be to work with Gary and contact the
34 Secretary's office to see if additional appropriations
35 could be secured to operate that Council, that's an
36 unknown. However, if I had to work within my existing
37 budget, the cost, just off the cuff, in talking with
38 Staff, we spend for the Southcentral, probably in the
39 neighborhood of \$8,000 per meeting. I would not bring
40 additional Staff on. The Staff that I have within my
41 office would be sufficient to deal with the issues that
42 this 11th Council may take up, with the exception of the
43 unknown how many proposals would be generated. Right now
44 my office handles on a -- in the wildlife cycle close to
45 70 proposals. We have been able to deal with that but
46 it's been very difficult to make those ends meet.

47
48 To come up with, if you're looking at two
49 meetings per year, you're looking in the neighborhood of
50 -- somewhere in the neighborhood of 16 to \$20,000

1 depending on the location of the meeting, where our
2 Council members reside, this would be funding for OSM
3 Staff and Council members only. It would not include the
4 other agencies. Those funds, because of the regulatory
5 process within OSM is the priority, I would look towards
6 my research or monitoring side to look at those funds if
7 I could not secure funds from the -- additional funds
8 through Gary through the Secretary's office.

9

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

13

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

16

17 The other issue that I see right away is
18 we've already applied for -- I mean we've already
19 solicited for applications for the membership of this
20 committee. A 10 member committee, we have 12 applicants,
21 10 of which are from nonrural communities, which already
22 seems to be, if we were to go along with these
23 applicants, we would already be setting up this new RAC
24 in matters that would be in opposition to some of the
25 testimonies that we've had, of people that are concerned
26 with having the new RAC. So I think that if we were to
27 move forward with this -- I like Gary's idea of trying to
28 establish some guidelines on membership, but I think that
29 also you would have to redo your application process.
30 And this would obviously put the whole process down the
31 road, somewhere, and we may be done with all of these
32 real controversial issues by that time. So that might be
33 a moot argument. I don't know, I just want to throw it
34 out, though, that with the 10 of 12 applicants coming
35 from nonrural communities seems to go against the intent
36 of the creation of the RAC in my mind.

37

38 Anyway, I'm still struggling with this.

39

40 Other comments. Judy.

41

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

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

44

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

47

48 Secondly, we haven't had this discussion
49 yet on budget. You know, previously we were told a much
50 higher number as to the cost of this, but we have not

1 discussed in detail what does the program give up. You
2 know, might those be some pretty valuable monitoring
3 studies that we need for other key decisions we're
4 making. We haven't had a full discussion.

5
6 And I would just add to that we have not
7 had a full discussion on the comments reflecting the
8 boundaries and we don't have an analysis of that here
9 either.

10
11 CHAIRMAN FLEAGLE: Niles.

12
13 MR. CESAR: Yes, Mr. Chairman. I think
14 there have been good points on both sides of the issue
15 and it seems like every comment that's made brings up
16 another fresh question and one that isn't easily
17 resolvable.

18
19 So given that and uncertainly at least on
20 the part of several of us, I would like to move that we
21 table this until our fall meeting of 2007.

22
23 CHAIRMAN FLEAGLE: I'm waiting to hear
24 for a second, Pete, before you ask questions. If we
25 don't have a second the motion dies, if we do have a
26 second the motion is non-debatable.

27
28 MR. EDWARDS: Well, I'm not going to do
29 either. Can you -- I guess if you would elaborate on
30 what you feel that that would accomplish.

31
32 CHAIRMAN FLEAGLE: Okay, without a second
33 then if you would just go ahead and explain what you hope
34 to.....

35
36 MR. CESAR: Well, I'm not going to get a
37 second, is that what you're saying?

38
39 CHAIRMAN FLEAGLE: Well, you may. You
40 may if you explain what the intent of tabling would be.

41
42 MR. CESAR: Okay, let me be a little
43 clearer in terms of timeframes. Okay, and I struggled
44 when I was thinking about this, do you put a timeframe.

45
46 I think there are enough questions out
47 there, concerns, that people would like more information
48 on those concerns to be able to understand them better.
49 In terms of a timeframe, generally you make a tabling
50 motion, you do with some timeframe out there. And that's

1 what I was struggling with, what timeframe would suffice.

2

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

6

7 CHAIRMAN FLEAGLE: Pete.

8

9 MR. PROBASCO: Mr. Chair. That's why I
10 raised my hand, is what you meant, Mr. Cesar, by fall of
11 2007. Normally our Board meets for fall issues in
12 January to discuss those.

13

14 Mr. Chair.

15

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

23

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

26

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

32

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

37

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

42

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

47

48 The C&T policy goal is to have that draft
49 completed by early January and then your review would
50 occur during the month of January with the goal of

1 getting that out to the Regional Advisory Councils and
2 then final action sometime in spring, hopefully the May
3 meeting.

4
5 Bill, I believe, we have 72 proposals,
6 somewhere in that neighborhood.

7
8 MR. KNAUER: We have 64 wildlife
9 proposals and we have.....

10
11 MR. PROBASCO: Eight.

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

15
16 MR. PROBASCO: Okay. 70 plus proposals
17 that we're currently doing analysis on, Mr. Chair, and no
18 telling what other issues will come out of this meeting.
19 So we do have a full plate and my Staff is -- plus we
20 also have the monitoring process that Mr. McBride and Mr.
21 Klein are working on. So if you were to add this to our
22 issues along with that we're probably looking at sometime
23 after the Board deals with the May issues as far as us
24 having a reasonable amount of time to deal with that.

25
26 Mr. Chair.

27
28 MR. CESAR: Mr. Chairman. Would it be
29 fair to say that regardless of what we do today, either
30 we vote it up or down, and especially if we voted it up,
31 you'd still have all those issues that arise out of that
32 decision that you'd have to deal with at some point,
33 regardless.

34
35 MR. PROBASCO: Mr. Chair. Mr. Cesar. If
36 the decision was to form the 11th Council, then there's a
37 process to get that in place which has been, as the Board
38 directed, underway. We've solicited nominations, you
39 have not acted on those nominations, haven't even
40 reviewed them.

41
42 MR. CESAR: Right.

43
44 MR. PROBASCO: We would have to do that.
45 And that packet would have to go down to Washington and
46 get approval, and that will take some time.

47
48 CHAIRMAN FLEAGLE: Right.

49
50 MR. PROBASCO: So that's what remains if

1 you were to make a decision to form the 11th Council.

2

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

8

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

15

16 CHAIRMAN FLEAGLE: Okay, so after May
17 2007 and sometime further meeting in autumn of.....

18

19 MR. CESAR: September, October.

20

21 CHAIRMAN FLEAGLE:okay, of 2007.

22 Do we get a second.

23

24 MR. EDWARDS: Does that mean no more
25 discussion.

26

27 CHAIRMAN FLEAGLE: It hasn't been
28 seconded yet.

29

30 MR. EDWARDS: All right.

31

32 CHAIRMAN FLEAGLE: Go ahead, Gary.

33

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

40

41 And the other thing, I do think there is
42 some misunderstanding about the applicants and all of
43 that, and maybe you can help us, but my understanding
44 was, was that the three folks on the Kenai -- or on the
45 Southcentral RAC would move over so I don't -- we
46 shouldn't be leaving the impression that -- it's more
47 like out of 16, right, applicants, and it's not like this
48 will end up with, if it's a 10 person RAC, that it's
49 going to be somewhere eight from, you know, nonrural
50 areas and only two from rural areas -- well, can you

1 explain kind of how you would see the process working,
2 particularly moving people off of the Southcentral onto
3 this new RAC.

4

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

9

10 MR. CESAR: Sure. So moved.

11

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

15

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

25

26 CHAIRMAN FLEAGLE: Judy.

27

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

31

32 CHAIRMAN FLEAGLE: Keith.

33

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

42

43 CHAIRMAN FLEAGLE: Further discussion.
44 Deliberations.

45

46 MS. KESSLER: Mr. Chair, I have a
47 question for Mr. Cesar to help me understand his concept
48 of delay.

49

50 CHAIRMAN FLEAGLE: Okay.

1 MS. KESSLER: We've heard kind of two
2 ideas or two themes prominent in favor of having the new
3 -- looking at, you know, possibility of having a new
4 Council. One of them seems to be specific issue driven,
5 the other seems to be more -- Gary brought it up, invited
6 Bill Knauer to talk about this, Keith talked a little bit
7 about it, a bigger picture that these -- that the
8 original 10 was not necessarily meant to be carved in
9 stone but rather that's the way the chips fell and maybe
10 this idea -- maybe from time to time it's good to look at
11 more broadly, whether that structure should be changed.

12
13 So is your intention in delaying, to take
14 that broader approach, is that what you're asking Staff
15 to do, I wasn't clear about that?

16
17 MR. CESAR: I'm not sure I was clear at
18 that moment when I made it, but, yeah, I believe that's
19 true. You know, and as I recall in '91 and '92 when we
20 were going through this process, there was a big push for
21 12, that 12 was a number that almost everybody was
22 settling on. But we knew we couldn't get 12, we knew the
23 Secretary wasn't going to go for that. And so we took 10
24 and we tried, as Bill has suggested, to match that, and
25 it turned out fairly well, but there was no real magic to
26 the number 10, it was just a number, the number that was
27 supported by the Secretary. The other numbers were all
28 over the place, and almost all of us, I think, was Fish
29 and Wildlife then, I forget who was all here, you know,
30 but as it -- I am in favor of having the Staff Committee
31 take a whole look at the whole ball of wax and coming
32 back to us and giving us, at least their review of this
33 thing and I'm not necessarily asking for their
34 recommendation but a review certainly. And what I'm
35 doing is essentially that, a delay.

36
37 I'm not trying to influence it one way or
38 another, because quite frankly I think with some thought
39 we may have the votes to defeat it on its merit right
40 now. But I'm willing, rather than -- to get this thing
41 started in what I would consider a tenuous difficult
42 position, to delay it and to give it some more thought
43 and I don't think that that, keeping it in play, would
44 hurt the RAC at this point. The RAC would still function
45 as the RAC and we would continue on into the year.

46
47 MS. GOTTLIEB: Mr. Chair. I guess,
48 another point of clarification then, if we were to table
49 this discussion and focus on at least the three points
50 that have come up here, the funding, the applications and

1 the boundaries, I would only support that if we have a
2 commitment to address the proposals that are currently in
3 the que regarding the Kenai Peninsula. We haven't talked
4 about that part, but my assumption is we would stay
5 status quo while we looked at those particular factors.

6

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

10

11 Other comments.

12

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

18

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

21

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

24

25 (Laughter)

26

27 CHAIRMAN FLEAGLE: Tom Carpenter.

28

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

41

42 The one other thing I'd just like to
43 bring up is, you know, this region is very large and
44 something that Keith brought up, is, that it is very
45 possible that you could take up a fisheries proposal in
46 Glennallen, for example, when you're dealing with
47 something on the Kasilof River. But I would like to
48 bring to the Board's attention, that it has been the
49 choice of the Southcentral Council as to where we have
50 held our meetings, and the last five meetings we have

1 choice to have either in Anchorage or on the Kenai
2 Peninsula because the concerns on the Peninsula were so
3 much greater at the time than they were in the Copper
4 River region. So I think the Southcentral Council has
5 been responsible in making sure that people that are
6 going to be affected the most, depending on what the
7 current proposals are, have had the most ability to
8 participate.

9

10 So, thank you.

11

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

17

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

27

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

30

31 Keith.

32

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

38

39 CHAIRMAN FLEAGLE: I knew that. Judy.

40

41 MS. GOTTLIEB: Thank you. Good point.
42 Tom, I guess I just wanted to confirm, I mean here today,
43 we have people on line for our meeting who weren't able
44 to come here, do you have that same capability when you
45 hold meetings?

46

47 MR. CARPENTER: Yes, we do. Through the
48 Chair. We generally -- sometimes we have people that
49 want to testify telephonically. The last meeting in
50 Homer we had a couple, we actually had a couple Council

1 members that were out of town that participated in some
2 of the discussion. So we do have basically the same
3 capabilities that the Board has right here.

4
5 CHAIRMAN FLEAGLE: Niles.

6
7 MR. CESAR: Thank you, Mr. Chairman. I
8 guess I'm kind of torn between two motions here.

9
10 Because, you know, by moving to table,
11 which I haven't done yet will go to an immediate vote and
12 it will either go or not go. On the other hand, you
13 know, I still maintain from my personal opinion that not
14 enough evidence to justify my vote in favor of this. And
15 I'm not very good at most things except maybe counting,
16 and it may appear that I may not make a motion to table.

17
18 CHAIRMAN FLEAGLE: Other Board members.

19
20 (No comments)

21
22 CHAIRMAN FLEAGLE: I understood him loud
23 and clear.

24
25 (Laughter)

26
27 CHAIRMAN FLEAGLE: Do we need to step
28 down.

29
30 (Laughter)

31
32 CHAIRMAN FLEAGLE: 10 minutes.

33
34 (Board nods affirmatively)

35
36 CHAIRMAN FLEAGLE: Let's take a break, a
37 10 minute break.

38
39 (Off record)

40
41 (On record)

42
43 CHAIRMAN FLEAGLE: Okay, we're back on
44 record. Gary.

45
46 MR. EDWARDS: Well, Mr. Chairman, we've
47 discussed this a lot and I think we need to move forward
48 and I guess see where we stand on the issue.

49
50 So I'm going to move that we support the

1 formation of a new Kenai Peninsula Regional Advisory
2 Council. As I've said throughout this discussion, I
3 think it's the right thing to do. I think it's a vehicle
4 that would provide more local participation and input
5 into the issues. I think it would allow us to have a
6 Council with people who are intimately familiar and
7 knowledgeable of the resource and the issues surrounding
8 it. I think it would also help the Southcentral RAC to
9 also focus on other issues and not get totally tied up
10 with Kenai River and the drainage and Peninsula issues.
11 I personally think it sends a very strong signal that
12 demonstrates this Board's commitment to providing a
13 meaningful subsistence priority and preference on the
14 Peninsula by doing that. I think it's a very positive
15 signal. And I think it's the right thing to do.

16

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

19

20 MR. CESAR: I'll second that.

21

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

25

26 Niles.

27

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

30

31 CHAIRMAN FLEAGLE: Question's called.
32 Pete.

33

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

37

38 Mr. Cesar.

39

40 MR. CESAR: No.

41

42 MR. PROBASCO: Ms. Gottlieb.

43

44 MS. GOTTLIEB: No.

45

46 MR. PROBASCO: Mr. Fleagle.

47

48 CHAIRMAN FLEAGLE: No.

49

50 MR. PROBASCO: Mr. Oviatt.

1 MR. OVIATT: Yes.
2
3 MR. PROBASCO: Ms. Kessler.
4
5 MS. KESSLER: No.
6
7 MR. PROBASCO: Mr. Edwards.
8
9 MR. EDWARDS: Yes.
10
11 MR. PROBASCO: Motion fails, Mr.
12 Chairman, two/four.
13
14 CHAIRMAN FLEAGLE: Okay, thank you.
15 We'll dispense with that item on the agenda. Appreciate
16 all the good discussion.
17
18 Next up we have, which is labeled No. 4
19 on the original agenda, which is FRFR06-02/03/08, which
20 is commonly known as the Ninilchik Kenai River customary
21 and traditional use determination reconsideration, and
22 we'll start out with Staff analysis. Pete.
23
24 MR. PROBASCO: Mr. Chair. Just give us a
25 minute and we'll get Ms. Armstrong up here and then I'd
26 like to make a few opening remarks.
27
28 CHAIRMAN FLEAGLE: You bet.
29
30 (Pause)
31
32 CHAIRMAN FLEAGLE: Pete.
33
34 MR. PROBASCO: Mr. Chair. As we move
35 into FRFR06-02/03/08, I think it's important that we just
36 briefly go over our process that we have undertaken to
37 deal with this request for reconsideration.
38
39 I think it's important to state that the
40 RFR has followed according to our subsistence management
41 regulations. We have had appropriate public involvement
42 throughout the process. If you go back to when the
43 original proposal was submitted FP06-09, throughout that
44 process and deliberating on that proposal we had
45 extensive public involvement. OSM Staff sought public
46 comments, both written and orally to the Board. This
47 proposal was presented to the Southcentral Council in
48 October 2005 and then the proposal with the
49 recommendations from the Council and others was presented
50 to the Board in January of 2006. Public testimony was

1 given at both the Council and Board meetings. And then
2 after the Board's decision in January '06, the issue we
3 have before us, both the State and the Ninilchik
4 Traditional Council submitted requests for
5 reconsideration of Proposal FP06-09. And in accordance
6 with Federal subsistence regulations, we conducted a
7 threshold analysis and that was presented to you, as a
8 Board, on August 31st of 2006. At that time the Board
9 determined that there were some claims that warranted the
10 Board's reconsideration of their determination made in
11 January of 2006. OSM Staff, on behalf of the Board sent
12 letters to the State and Ninilchik Traditional Council
13 noting which claims would be addressed and those are
14 going to be before you today. A new analysis was written
15 and posted on the OSM web site on October 3rd of 2006, as
16 well as mailed to 105 individuals and agencies on the OSM
17 mailing list for the Council, the Southcentral Regional
18 Advisory Council. Analysis was presented to the Council
19 at their fall October 18th, 2006 meeting in Homer, and
20 public at that meeting testified on this issue. In
21 addition written comments were accepted on the RFR and
22 analysis throughout this process up to today. Staff has
23 reviewed the State comments in their letter that they
24 submitted to us on October 26th, 2006 on the RFR
25 analysis. As a result of these comments and others, a
26 revised analysis dated October 31st which addresses the
27 State's comments, which we felt were appropriate were
28 included. This revised analysis was mailed to all
29 agencies and the specific individuals as noted above on
30 November 1st, 2006, as well as the Council members on
31 November 2nd, 2006. And, again, we posted it on the web
32 site on November 3rd.

33
34 Before you in your packet, the State has
35 provided 14 pages of comments on the October 26th
36 analysis. I want to state that the majority of these
37 comments were incorporated into the revised analysis.
38 These comments did improve the document by adding clarity
39 and removing subjectivity. We do appreciate the State's
40 dedicating significant staff time to review this draft
41 RFR and providing these constructive comments back to us
42 as we go through this issue. Of the 34 specific comments
43 provided by the State we incorporated 21 of these into
44 the revised analysis.

45
46 And, to conclude, Mr. Chair, I believe
47 the OSM Staff has provided an excellent and thorough
48 analysis that's going to be before you for your review
49 and deliberations and this analysis provides more
50 detailed information than what we normally see when the

1 Board conducts C&T analysis, and Mr. Board -- or Mr.
2 Chair, we look forward to answering your questions as we
3 go through this issue and Ms. Armstrong will take us
4 through the Staff analysis.

5
6 CHAIRMAN FLEAGLE: Thank you, Peter.
7 Helen, welcome.

8
9 MS. H. ARMSTRONG: Thank you, Mr. Chair.
10 My name is Helen Armstrong, I'm a cultural anthropologist
11 with the Office of Subsistence Management. I'm
12 presenting the analysis for FRFR06-02/03/08, and this is
13 a request for reconsideration analysis of the Federal
14 Subsistence Board's action on Proposal FP06-09 that they
15 made in January of 2006. The original proposal was
16 submitted by Ninilchik Traditional Council, which I'm
17 going to refer to as NTC, Stephen Vanik, Fred H. Bahr and
18 Henry Kroll.

19
20 The original proposal requested a
21 positive customary and traditional use determination for
22 all residents of the Cook Inlet area for salmon, Dolly
23 Varden, trout, char, grayling and burbot in the Cook
24 Inlet area and a positive C&T for all residents west of a
25 line due southeast of the Crescent River mouth and
26 intersecting another line drawn northeast of the south
27 side of Tuxedni Bay for herring, smelt, whitefish and
28 salmon in Tuxedni Bay. None of the RFRs addressed the
29 Tuxedni Bay portion of the Board's decision, therefore
30 Tuxedni Bay will not be included in the analysis.

31
32 The Board's decision that they made in
33 January of 2006 that is being requested for review was
34 that for the Kenai Peninsula district which is defined as
35 the waters north of and including the Kenai River
36 drainage within the Kenai National Wildlife Refuge and
37 the Chugach National Forest, and this area will from here
38 forward be referred to as the Kenai River area, for all
39 fish, residents of the communities of Hope and Cooper
40 Landing for waters within the Kasilof River drainage
41 within the Kenai National Wildlife Refuge, all fish
42 residents of the community of Ninilchik.

43
44 The request for reconsideration that's
45 numbered 02/03, these were submitted by the State of
46 Alaska and FRFR06-8 was submitted by NTC.

47
48 As Pete said, we did a threshold analysis
49 and the Board accepted four claims. These claims were,
50 briefly, that the State requested review of new

1 information from them regarding the subsistence use of
2 fish by Ninilchik residents in the Kasilof River drainage
3 and the Kenai River area. The State and NTC requested
4 further analysis of studies conducted by NTC regarding
5 Ninilchik's use of fish. And NTC provided new
6 information regarding the methodology and study results
7 of research conducted in 1994 and 1999. NTC claimed that
8 the Board needed to take affirmative action towards
9 establishing a Kenai River subsistence fishery for
10 Ninilchik, and this analysis that we're doing today, this
11 RFR addresses the accepted claims for the regulatory
12 aspects of a fishery on the Kenai Peninsula that were
13 before the Board in January of '06 and other proposals
14 not addressed at that time are to be addressed prior to
15 the 2007 fishing season. They're being taken out of
16 cycle.

17
18 NTC also claimed there is no statistical
19 threshold that a community must reach in order to have a
20 customary and traditional use determination. To date the
21 Board has not relied upon an absolute standard to define
22 use but, rather, has examined use in the context of the
23 eight factors.

24
25 Thus, the new information that was
26 provided to us, I'll just briefly go over this, I'm sure
27 there will be lots of discussion about it. ADF&G
28 provided new information from Dr. Fall and his staff
29 regarding the estimated percentage of Ninilchik
30 households fishing in the Kasilof and Kenai River
31 drainages and the Swanson River. Lifetime uses of the
32 Kasilof River drainage/the Tustumena Lake area indicated
33 that 30 percent of Ninilchik households had fished some
34 portion of the Kasilof River drainage in their lifetime,
35 however, they noted in this paper that there were
36 limitations to these data and that the data couldn't be
37 used to infer lifetime uses of Federal waters. Thus the
38 new information provided by ADF&G does not provide
39 anything new that would change the Board's decision in
40 January 2006 on Ninilchik's uses of the Kasilof River
41 drainage. Therefore, we do not have any further analysis
42 of the Board's decision on Ninilchik's use of Kasilof and
43 none is required since the new information does not
44 provide contradictory information.

45
46 The Board determined in January 2006 that
47 Hope and Cooper Landing had a positive C&T for all fish
48 in the Kenai River area. There was also no new
49 information provided by the ADF&G or by NTC about Hope
50 and Cooper Landing, thus no further analysis on the

1 Board's decision regarding C&T for Hope and Cooper
2 Landing is required.

3
4 NTC provided supplementary new
5 information regarding their research conducted in 1994
6 and 1999 that validated the methodology used by NTC in
7 conducting their research as well as provided copies of
8 the original individual use area maps and survey
9 responses from their research. NTC's new information
10 also did not add anything that would change the Board's
11 decision in the Kasilof River drainage, nor any new
12 information on Hope and Cooper Landing. Therefore, this
13 analysis only addresses Ninilchik's use of the Kenai
14 River area. Hope and Cooper Landing are not included,
15 nor is the Kasilof River.

16
17 So in the interest of time, because I
18 have, I think, it's 28 pages of analysis, and I know that
19 everybody has read and reread this more than probably any
20 other analysis ever before, perhaps, I'm not going to go
21 through everything in here. I'm just going to make a
22 couple of comments. I want to emphasize that the eight
23 factors do not have to be fulfilled by drainage. We do
24 not do C&T that way. It is not the way the research is
25 done, we don't have that kind of data on each factor by
26 drainage. It also is not the way we do C&T's generally,
27 we don't have to fulfill every factor for C&T as well,
28 although we do have information in this case, on all of
29 the eight factors, but we don't do it by drainage.

30
31 What we do, when we make C&T
32 determinations, when we do an analysis, is that we take
33 the eight factors together to describe a pattern of use.

34
35 I also wanted to emphasize that there are
36 not unimportant uses in subsistence, as described on Page
37 17 in the analysis. Our program was designed to
38 accommodate all uses and was not meant to restrict
39 subsistence uses. When there's a shortage then we go to
40 an .804 analysis determination. When we do C&Ts it's
41 really meant to be more inclusive than exclusive, and we
42 look at all uses.

43
44 The majority of the information in this
45 analysis was drawn from the analysis presented to the
46 Board in January of '06 with the exception, of course, of
47 the new information, so I'm not going to repeat it.
48 Probably the information people have focused the most on
49 is Table 1 on Page 12, which is a summary of the lifetime
50 use information as adapted from Fall's new report done in

1 2006. So in the interest of time, rather than going
2 through everything, I'm going to leave it up for
3 questions.

4

5 Thank you, Mr. Chair.

6

7 CHAIRMAN FLEAGLE: Great, thank you.
8 Questions for Helen Armstrong, her report.

9

10 (No comments)

11

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

14

15 (Laughter)

16

17 CHAIRMAN FLEAGLE: Go ahead, Gary.

18

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

22

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

35

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

42

43 MR. EDWARDS: We can wait for him to come
44 up. But I guess I wanted to follow up on one other
45 question, again, referring to Dr. Fall's study and also
46 what we have heard throughout the various meetings that
47 we've had and where we have discussed this, you know,
48 there is information available showing how people
49 historically used fish with nets for coho, for sockeye,
50 and trout in the upper Kenai River and some of it was in

1 conjunction when trappers were coming, even from Seward
2 and other places to do that and I think obviously that's
3 something that you would expect, I mean there weren't any
4 grocery stores so you obviously -- if you were in that
5 area you were going to be living off of the land, but
6 most of that, at least the way I read it, focused on that
7 these were Kenaitze people who were using that and
8 certainly there are historical sites up there, but are
9 you aware of any information or did you find as you were
10 going through your studies regarding people from
11 Ninilchik specifically using the upper Kenai for
12 subsistence prior to the road being built, other than
13 through a -- and I do acknowledge, we certainly heard
14 public testimony to that fact, but in any of the
15 referenced materials or the literature you looked at,
16 were there some very good -- some good specific
17 references?

18

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

30

31 MR. KLEIN: Yes.

32

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

40

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

43

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

46

47 MR. EDWARDS:historical data -- I
48 was trying to get at if we looked back into the early
49 1900s and even before, were there historical trails that
50 people used to move, let's say, from Ninilchik, over the

1 mountains or up the river or around the river to go up
2 there, I mean did the literature show any of that?

3
4 MS. H. ARMSTRONG: No, not that I know
5 of. Although Dr. Fall and Dr. Wolfe know this area
6 better than I do so if they have information they can --
7 you know, they certainly can provide that. I would like
8 to note that we don't -- the Board, in the past has not
9 depended on traditional use areas as a way to determine
10 whether or not to give people a customary and traditional
11 use determination. A good example of that is Slana, who
12 has been given C&T for a number of resources and they're
13 a new community, they moved in in the '60s and they do
14 not have traditional use areas. And I can give other
15 examples. I've been thinking about this since this issue
16 has come up, I mean I've been in many Council meetings
17 where there's been discussion about, you know, one
18 particular community having C&T, one that came to mind to
19 me was Unalakleet going up and taking caribou in --
20 they're in 22(A) and going up into 22(B) and people in
21 22(B) not wanting them to come in there because that's
22 outside their traditional territory, but because there
23 had been intermarriage between those two communities
24 ultimately the people in 22(B) said, well, we really
25 don't want to keep them out, and so they went ahead and
26 they gave them C&T. I think there are numerous examples
27 of that kind of discussion that's gone around all over
28 the state where there are crossovers between traditional
29 territories.

30
31 So it's not something that we, as
32 anthropologists have used to say that one group should be
33 excluded from another area or not because subsistence is
34 -- I mean ANILCA says it's for all rural users and we
35 can't exclude one group from another based on whether or
36 not they have traditional use areas. Then it would
37 become a Native program and that's not what it is.

38
39 MR. EDWARDS: But I guess in the case of
40 the Kenai, I mean a lot of the data shows that a lot of
41 the early use by trappers and all were anglo-saxons
42 coming out of Seward and other places.

43
44 But getting back to your comment, I'm
45 trying to -- regardless of what decisions the Board has
46 made or hasn't made, how does that reconcile under the
47 eight factors about, you know, a long-term consistent
48 pattern of use, I mean is that -- I mean if you have
49 long-term consistent patterns of use in Southeast, does
50 that mean that you would have C&T for the North Slope,

1 for example?
2
3 MS. H. ARMSTRONG: I don't -- not if.....
4
5 MR. EDWARDS: I'm trying to understand,
6 you seemed to indicate that it was just a matter of use,
7 not where that use occurred, and I'm trying to understand
8 the difference there.
9
10 MS. H. ARMSTRONG: No, it is where the
11 use occurs.....
12
13 MR. EDWARDS: Right.
14
15 MS. H. ARMSTRONG:of course. Maybe
16 I said something wrong to mislead you, I don't know.
17
18 MR. EDWARDS: All right. So it is the
19 long-term pattern of use in an area?
20
21 MS. H. ARMSTRONG: In an area, that's
22 right.
23
24 MR. EDWARDS: Okay.
25
26 MS. H. ARMSTRONG: But what's not been
27 defined, you know, we have -- we have -- and I think that
28 the Board -- I know the Board's seen this before, but we
29 have a guide that we use, the anthropologists do when we
30 do C&Ts and there is no definition of what long-term
31 means, and that's not been something the Board has
32 defined, and we -- I mean obviously if Slana has been
33 given C&T and they've only been there since the '60s,
34 then there's not a magic number of years that you have to
35 have used an area in order to have C&T.
36
37 I don't know if Keith wants to add
38 anything to any of that.
39
40 CHAIRMAN FLEAGLE: Any more questions.
41
42 MR. GOLTZ: I may have more later.
43
44 But I think what we may be missing here
45 is that C&T refers to uses, not to users. So if we have
46 a resource that has been used for subsistence, new people
47 can come in, this is not a closed system.
48
49 CHAIRMAN FLEAGLE: Other questions.
50

1 (No comments)

2

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

6

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

13

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

16

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

21

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

38

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

47

48 I think maybe you might want to ask Dr.
49 Wolfe some more questions about that, too.

50

1 MR. BEDFORD: Thank you.

2

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

10

11 (Pause)

12

13 CHAIRMAN FLEAGLE: In no certain order.

14

15 (Laughter)

16

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

20

21 (Laughter)

22

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

25

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

28

29 CHAIRMAN FLEAGLE: Yes.

30

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

37

38 I've been involved with the tribe, I
39 worked with the tribe for over 30 years. And I worked
40 very hard on the -- we have the net, we have our --
41 what's called an educational tribal net, it took nine and
42 a half years and it's a good thing. I have to add that I
43 didn't do it all by myself but I did -- although I
44 wondered why I was doing it a lot of times. But right
45 now -- and when I was with the tribe for -- 15 years I
46 was the Chair as well as the CEO and I've been back home
47 30 years -- I know which time before that I worked with
48 Kenai Native Association. So most of my life has been my
49 tribe which I am here today to not talk about,
50 statistics, I just want to talk about what's going on.

1 I might add that I do not support the C&T
2 for Ninilchik.

3
4 Before 1941, before the Kenai Moose Range
5 was the wildlife -- moose range was made, customary and
6 traditional uses -- or customary and traditional in
7 regards to the tribe includes respecting boundaries. And
8 when you wanted as a tribe, when you needed to do
9 something, you asked permission if you could come on
10 someone's use lands. They have -- the Kenaitze did do
11 that, they -- for example the Tyonek people didn't have
12 moose for a long time, until the early '30s so they were
13 allowed -- they had a special place they called the
14 Tyonek Hills to fish -- or to hunt, just to hunt moose,
15 and tribes certainly can give permission for others to
16 use their boundaries and their resources but in doing
17 so,, they have to consider very well what the
18 consequences of that will be -- of that use will be
19 because the tribes -- tribal council, the governing
20 mandates and -- is that they protect their tribe and it's
21 protect and preserve the tribe. Now, because Kenaitze
22 owns -- all the Kenaitze owned land is what they have
23 bought, they own it privately, and they don't have any
24 other land that's out there in the woods, this is what we
25 called our stewardship, we have -- because we believe
26 that the best ownership of land is to be stewards of it.
27 And so that results -- has resulted in part in working
28 with the Forest Service, as well as the Park Service and
29 we have two interpretive sites, one the Kenai River and
30 one at the Russian, and one across from the Russian River
31 campground and one at -- they're called Beginnings and
32 Footprints and we got -- we worked with those in
33 conjunction with the Park Service and Forest Service.

34
35 I just -- you know there's a lot of words
36 going on around here and we just talk and talk and talk
37 and talk and, you know, the tribal members, many, many
38 Kenaitze members throw their hands up in the air and they
39 say, why do we have to prove customary and traditional,
40 that's what we've done, why do we have to prove that?
41 They ask us over and over and over again. And it just
42 seems that -- it seems that that's true and there's all
43 these other labels made, so now what we have and it's a
44 little scary, and I think it's on the bottom of the first
45 page, Claim 3(8), the Ninilchik saying that there is no
46 quote, statistical threshold" or absolute standard to
47 define use. Now, can you just see that, if we do this
48 there's going to be snowdrifts, snowstorm of proposals
49 from everybody. So what are we going to have to do
50 first, decide whether use is going to be a noun or a

1 verb, and you can see where I'm getting at with this, is
2 that, I believe that if we do this, that history doesn't
3 bear this out, the written history doesn't bear out C&T
4 for Ninilchik. And this doesn't have anything to do with
5 -- and I -- you know, I'm a tribal person, I care what
6 they do, I don't want them to starve or anything, this
7 has nothing to do with that, but if we revise history by
8 making rules, I mean what happened, happened. And
9 Kenaitze have used -- Dena'ina people, that was
10 originally our homeland. Lots of things went on there.
11 There's a village up there. There's an old -- all the
12 way across from Russian River and it's Dena'ina, there's
13 a Dena'ina burial ground there, there's a Dena'ina
14 cremation place. And so if we -- what bothers me is that
15 we -- if we begin to do this, we will lose -- we'll have
16 nothing, anybody can come and just say, if you have the
17 right wordage, if you want to sit long enough and listen,
18 we can change this.

19

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

25

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

45

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

49

50 Thank you very much, Mr. Chairman.

1 CHAIRMAN FLEAGLE: Thank you, Clare.
2 Hang on, we might have questions. Judy.
3
4 MS. GOTTLIEB: Thank you, Mr. Chair.
5
6 CHAIRMAN FLEAGLE: Thank you.
7
8 MS. GOTTLIEB: Thank you, Clare for
9 coming forward. I know you have served many years and
10 assisted the Board in the past so we appreciate seeing
11 you.
12
13 MS. SWAN: Uh-huh.
14
15 MS. GOTTLIEB: You mentioned, but I don't
16 think I quite heard you that you have an educational
17 tribal net and then you said something about nine and a
18 half years but I don't think I got what you.....
19
20 MS. SWAN: Well, it took us that long to
21 get it because we had to go the scenic route so to speak.
22
23 MS. GOTTLIEB: Okay.
24
25 MS. SWAN: First we had to prove that we
26 were rural and then the court said we were rural and we
27 were rural for five minutes and then we had to figure out
28 another way to keep the net. So.....
29
30 MS. GOTTLIEB: Okay, thank you.
31
32 CHAIRMAN FLEAGLE: Other questions.
33 Gary.
34
35 MR. EDWARDS: Clare, if I may. I'm
36 assuming from what you said that you were raised in the
37 Kenai area and your parents were and your grandparents
38 before them. And at the start of your testimony you
39 talked about use patterns and, you know, who used the
40 area.
41
42 MS. SWAN: Uh-huh.
43
44 MR. EDWARDS: And I guess what I thought
45 you said is that from your perspective and from what you
46 were told, that was primarily used by the Kenaitzes and
47 the Dena'ina people and other folks did not use that
48 unless they were given permission and I don't know if
49 whether.....
50

1 MS. SWAN: That's right.

2

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

5

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

25

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

28

29 David Case.

30

31 He declines, okay.

32

33 (Laughter)

34

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

38

39 This is not a proceeding that is in your
40 normal regulatory cycle as I view it. This is not an
41 annual regulatory cycle proceeding or need it be,
42 although the State has suggested that it should be
43 treated that way. This is a request for reconsideration
44 and we view it as a quasi -- what I'd call it, an
45 adjudicative process. It's an administrative proceeding,
46 or an administrative hearing. We're a little confused by
47 the process because it seems like it was set up to have
48 the public process at the RAC, where there would be
49 public testimony that would then form the record for your
50 decision. But now this -- and I gather you have some

1 flexibility in how you arrange this process, you are now
2 taking testimony and having a hearing essentially with
3 two parties who are opposed to each other, the State and
4 Ninilchik, we both submitted opposing requests for
5 reconsideration and to deny the others and so forth, but,
6 yet the State is at the table, is able to ask questions
7 of the witnesses or the people who give testimony here
8 and we are confined to a very narrow five minutes of
9 speaking, testimony, and no ability to ask questions of
10 the people that come before you. And that seems to me to
11 be inconsistent with what I would consider to be due
12 process. I don't use that term very often but I do think
13 that if you're having a hearing in which you're hearing
14 between opposing parties, who are opposing highly
15 contended issues and you only allow one side to have the
16 opportunity to address the testimony, the witnesses
17 before you, ask questions of them, then that doesn't seem
18 to me to be a very fair process.

19
20 And I'd like to mention that for sure,
21 and to suggest that we either need to afford -- well, I
22 think the preferable way would be to afford both parties
23 a seat at the table to be able to participate equally.
24 And so I'd like you to consider that. And if that is not
25 possible, and I'm not sure it's a substitute, frankly, so
26 I don't want to suggest that we are waiving, if that's
27 the term I have to use, anything, but we would at the
28 very least be allowed to speak at the last and to respond
29 to testimony that's been raised. Again, I'm not sure
30 that I believe that's a substitute for a real, what I
31 would consider to be a fair proceeding.

32
33 Thank you.

34
35 CHAIRMAN FLEAGLE: Thank you, David.
36 Appreciate those comments and we'll make a determination
37 on your request prior to entering into deliberations. I
38 think you raised some good points, but I don't want to
39 raise them up right now and interrupt public testimony.

40
41 MR. CASE: Okay.

42
43 CHAIRMAN FLEAGLE: But we will raise it
44 up.

45
46 Thank you.

47
48 MR. CASE: Thank you, Mr. Chairman.

49
50 CHAIRMAN FLEAGLE: Next up is Ricky

1 Gease.

2

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

6

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

21

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

24

25 I would say that four out of the five
26 agencies that are sitting at the table have legal
27 agreements between a Federal government and a tribal
28 government arrangement that recognizes the Kenaitze
29 Indian Tribe as the tribe that historically had customary
30 and traditional use of the Kenai River watershed and had
31 customary and traditional use of the Kasilof area.
32 Tribal boundaries define the areas of tribal jurisdiction
33 and are based in a large part upon customary and
34 traditional use areas. Tribal boundaries are legally
35 defined in the tribal documents such as tribal
36 constitutions and in Federal law and form the legal basis
37 of government to government relations and service areas
38 between the Alaska Native tribes and the Federal
39 government. Within the Kenai Peninsula Borough tribal
40 boundaries of the Ninilchik Tribe and the Kenaitze Indian
41 Tribe are based on customary and traditional subsistence
42 use areas, as are other tribal entities in the Borough.
43 For the Ninilchik tribal boundaries these generally
44 extend from the Kasilof River south to Kachemak Bay and
45 over to Mount Redoubt and to the Harding ice fields of the
46 Kenai Mountains to the east. The Kenaitze tribal
47 boundaries in general extend from the Kasilof River north
48 to Point Possession and from Mount Redoubt to the
49 headwaters of the Kenai River in the Kenai Mountain
50 areas.

1 The Kenai River watershed is within the
2 tribal boundaries and jurisdiction area of the Kenaitze
3 Indian Tribe. There are no lands and waters within the
4 Kenai River watershed that lie within the tribal
5 boundaries or jurisdiction of the Ninilchik Tribe.
6 Tribal membership is exclusive, dual memberships are not
7 allowed. For example, the constitution of the Kenaitze
8 Indian Tribe states no person shall enroll as a member of
9 the Kenaitze Indian Tribe who is a member of another
10 indian tribe [sic]. I reference that because there's
11 some in the historical -- in the Staff analysis, there's
12 some mention that because there's some intermarriages
13 between groups, somehow that becomes a surrogate for
14 consistent and long-term use.

15
16 The Federal government, if we look at the
17 Forest Service, the Forest Service has a cooperative
18 agreement with the Kenaitze Indian Tribe for the
19 interpretation of customary and traditional subsistence
20 resources at the Kabeck (ph) and Footprint site, which is
21 right at the Russian River area. The Kenaitze Indian
22 Tribe is the recognized legal entity for consultation and
23 planning and development with Cook Inlet Region for the
24 visitor's center that's going in there that talks about
25 subsistence use areas in the region there.

26
27 When it comes to looking at archeological
28 remains, when our organization looks at Pacific cultural
29 salmon recovery funds, we look to the Fish and Wildlife
30 Service for archeological work and with the State but we
31 consult the Kenaitze Indian Tribe as the recognized group
32 that has the authority to -- over tribal remains in the
33 region.

34
35 They're also the recognized tribal entity
36 responsible for the preservation and caretaking
37 responsibilities of K-Beach Village site, which is
38 located on the north bank of the Kasilof River, which is
39 one of the last purely traditional subsistence Native
40 villages that disbanded around 1920.

41
42 Repatriation recognizes through the Park
43 Service the Kenaitze Indian Tribe within the Kenai River
44 watershed and at the K-Beach Village traditional site.

45
46 So in many ways the agencies represented
47 here -- and BIA recognizes the Kenaitze Indian Tribe
48 through health and human services within the tribal
49 service boundaries -- so in many ways this would be the
50 first time that the Federal government would recognize

1 the tribal jurisdiction of -- I mean basically you're
2 looking at reports from the -- the Wolfe report and the
3 Wolfe study [sic] that's looking at tribal use of an area
4 and this would be the first time that the Federal
5 government would recognize a customary and traditional
6 long-term use pattern of the Ninilchik Tribe on the upper
7 Kenai River. And I don't think the facts support that.

8
9 And there was also entered into the
10 record, tribal territories on the Kenai Peninsula by Dr.
11 Alan Boris of Kenai Peninsula College. He looked through
12 14 different historical resources documenting customary
13 and traditional use areas on the Kenai Peninsula,
14 references for it, none of them show a consistent pattern
15 of use on the upper Kenai River by Ninilchik.

16
17 CHAIRMAN FLEAGLE: Thank you, Ricky.

18
19 MS. GOTTLIEB: Mr. Chair.

20
21 CHAIRMAN FLEAGLE: Judy.

22
23 MS. GOTTLIEB: Well, I wondered if Keith
24 maybe would want to make a statement about -- I mean some
25 of the other examples you cited, Rick, are kind of not
26 applicable to what we're doing here. The agreements that
27 we may have or the agencies may have with the tribes is
28 different than looking at a community's customary and
29 traditional use.

30
31 CHAIRMAN FLEAGLE: I think it would be
32 more appropriate to do that under deliberations when
33 we're working with ourselves.....

34
35 MS. GOTTLIEB: Okay.

36
37 CHAIRMAN FLEAGLE:and not actually
38 -- okay.

39
40 MS. GOTTLIEB: Okay.

41
42 CHAIRMAN FLEAGLE: All right, thank you
43 Ricky, appreciate your comments. All right our next
44 testifier is Greg Encelewski who is on by telephone.
45 Steve.

46
47 MR. KLEIN: Greg, are you on line and
48 ready to testify.

49
50 MR. ENCELEWSKI: Yes.

1 MR. KLEIN: Okay, go ahead.
2
3 MR. ENCELEWSKI: Can you hear me?
4
5 CHAIRMAN FLEAGLE: Yes, we can, go ahead.
6
7 MR. ENCELEWSKI: Okay. I hope I don't
8 get no background from the radio here. Mr. Chairman.
9 Federal Subsistence Board. And other members.
10 Greetings.
11
12 Thank you for the opportunity to say a
13 few words here. Of course first of all I want to ask
14 that you do take consideration of the Southcentral RAC's
15 recommendations on this issue, as I know it's been
16 debated publicly with a lot of public testimony, et
17 cetera and I just hope that you give it consideration.
18
19 With that said I'd like to just talk on a
20 couple items. You know, I find it puzzling that we got a
21 sportfisherman telling us how the tribe's run, but,
22 anyway I'm out here to get into that argument. But I
23 would like to tell you a little bit about use on the
24 Kenai and myself, personally, I could testify to. You
25 know, our tribal members are intermarried and myself,
26 personally, you know, I was born actually raised in
27 Anchorage and born in -- born in -- raised in Ninilchik
28 -- I was born in Anchorage, raised in Ninilchik until
29 third grade and grew up in Kenai. About '67 I was a
30 member of the Kenaitze Tribe until just about six years
31 ago when I transferred back to Ninilchik. And the reason
32 I point that out is it just shows some of the ties
33 between the tribes.
34
35 You know, my grandmother was a Darian
36 (ph) from the Kenaitze Tribe. My aunt is a member of the
37 Kenaitze Tribe. I got uncles that are members of the
38 Kenaitze Tribe. The Kenaitze Tribe comes and fishes in
39 the spring sometimes with us for early kings, we fish
40 traditionally with them, side to side and we respect
41 their areas, but we definitely have traditional use on
42 those rivers.
43
44 And so I just wanted to point those few
45 things out, you know, it's not always brought up that,
46 you know, there is -- there is definitely a closeness
47 there and there definitely is a respect. But there still
48 is a joint usage there.
49
50 Let's see I had a couple other little

1 things here. I also wanted to just mention, you know,
2 one of the reasons we moved around from river system to
3 river system was basically because the timing of the
4 runs, you know. Spring kings, early kings are in
5 Ninilchik, later further up, of course, all the way from
6 the rainbow trout later on, upper river, et cetera. But
7 basically, you know, that was the history of you travel
8 where the fish was and most of that traveling, of course,
9 in the early days was by boat.

10

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

15

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

18

19 MR. EDWARDS: Yeah.

20

21 CHAIRMAN FLEAGLE: Gary.

22

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

30

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

34

35 (Laughter)

36

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

39

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

46

47 MR. EDWARDS: And just one other
48 question, you know, before the roads were completed and
49 all, what was the means and sort of methods for getting
50 up into, particularly, those upper waters?

1 MR. ENCELEWSKI: One way or the other,
2 but, yeah, we used nets.

3
4 MR. EDWARDS: No, I meant modes of
5 transportation, you know, getting up there.

6
7 MR. ENCELEWSKI: Well, basically by
8 either hiking or over land or boats, whatever, to the
9 river.

10
11 MR. EDWARDS: Okay, thank you very much.

12
13 CHAIRMAN FLEAGLE: All right, thank you
14 for your testimony.

15
16 Up next is Connie Wirz.

17
18 MS. WIRZ: Hi, I'm Connie Wirz. I'm the
19 executive director of Kenaitze Indian Tribe.

20
21 This is really difficult because earlier
22 I heard someone speak about, you know, well, this is
23 going to divide folks, and I don't know, he said, you
24 know, this is going to divide us and I don't really know
25 who us is anymore in a lot of ways.

26
27 I'm not a member of Kenaitze Indian
28 Tribe, I'm actually a member of Salamantof, which is, I
29 guess, perhaps one of the ways you could think of it is a
30 community within a community, we're small. And Kenaitze
31 has definitely taken the lead in so many things for our
32 people, and I've been blessed to have this opportunity.

33
34 But when I say -- it really chagrins me
35 because this is dividing us and I truly don't know who us
36 is, this has been very difficult. We've had meetings and
37 we've looked at this. If we support, you know, the
38 Sportsfishery Association -- and by the way this was very
39 eloquently written by the sportsfishermen and it looks
40 like they've done a very admirable job of speaking for us
41 but we were not consulted in any of this by those
42 sportsfisheries [sic], and please don't assume that they
43 are speaking for us even though they cite us about 20
44 times in there. Thank you.

45
46 If we support the sportsfishermen, what
47 we're doing is turning our backs on folks who are family
48 members. Maybe they're not brothers and sisters, maybe
49 they're cousins. But the bottom line is is they're the
50 same, you know, whether they originated in a Russian

1 village -- they more than likely originated with Native
2 women and they are our brothers and sisters in some sort
3 of way.

4
5 There's one thing in here that's written
6 by Alan Boris, and Alan actually did that for us at the
7 tribe when we were looking at, you know, how do we work
8 with Ninilchik and what are our responsibilities. And
9 when we talk about, you know, forming these boundaries or
10 Ninilchik shouldn't be part of us or something, when
11 Ninilchik folks have a toothache they come to the
12 Dena'ina Clinic, they come to Kenaitze. When there's a
13 need for social services, they come to us. There are two
14 places where I -- and I am new as the executive director,
15 but it's my understanding there are two places where we
16 don't treat them just like they're one of us. One is in
17 education and the other is enrollment. And so otherwise
18 we see them as us. And to come to the point where we
19 say, well, you've been us, you know, I don't know how
20 much they've fought our fight, you know, I don't have the
21 history. There's some folks that say they haven't really
22 been there for us but then I don't know, the bottom line
23 is is that doesn't mean even if that were the case that
24 we should do the same.

25
26 And if we support Ninilchik, then the
27 painful thing is, is as Clare has said, she is a tribal
28 elder and if we support Ninilchik, then are we turning
29 our backs on a tribal elder. Her son-in-law is Ricky
30 Gease, you know, we go to the same functions, you know,
31 it is -- it's very dividing. It's going to divide us one
32 way or the other.

33
34 With all that said, we support Ninilchik
35 in this and hope that you would give them consideration.
36 I think that whenever anybody's rights are eroded so are
37 ours.

38
39 And, you know, the thing is, is my whole
40 life, one of the really fun things that I remember about
41 growing up in Kenai was going down to Ninilchik and clam
42 digging, and I don't ever remember anybody stopping and
43 telling us since we weren't Ninilchiks, we could not
44 clam, you know, folks go where the resources are. And
45 Ninilchik folks, whether they've wanted to our not, have
46 shared with Native and non-Native folks their resources
47 and then to turnaround and say, well, you know, we're
48 going to change things this way and sharing has been, is
49 cultural and I think that it's a very important thing to
50 remember sharing is not just with your neighbors, but

1 with everybody.

2

3 And I am just praying for your decision,
4 I know it's not going to be easy and I know it's going to
5 be very difficult for all of us because, you know, this
6 right here today is dividing us and it is painful. And
7 so I just hope that the best will happen.

8

9 Thank you.

10

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

13

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

16

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

20

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

36

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

40

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

45

46 Thank you.

47

48 CHAIRMAN FLEAGLE: Thank you. Mary Ann
49 Mills.

50

1 MS. MILLS: Yes, I'd like to make a
2 comment regarding the Kenai River Sportsfishing
3 Association.

4
5 I think they're pretty bold if they think
6 they can speak on behalf of the Kenaitze Indian Tribe or
7 the Ninilchik Tribe or our land or our relations.

8
9 We had a meeting yesterday with our
10 tribal council, the Kenaitze Indian Tribal Council
11 regarding Ninilchik's customary and traditional use and
12 we decided that we are going to support them. And we're
13 supporting them for a lot of reasons.

14
15 The first one being is they are our
16 relations, they're our relatives. And I don't think
17 anything shows it more plain than a book called the
18 Agrafina Children (ph), and even Clare Swan, her mother
19 was a Darian from Ninilchik, so we are all related. And
20 we always did and we still do respect boundaries. The
21 problem isn't with the indigenous people. Our boundaries
22 were violated by the non-indigenous people, even when
23 there was a scared trust to protect our lands for the
24 Indian, Eskimo and Aleut peoples. Even when the State
25 and its people forever disclaimed all rights and titles,
26 which subsistence was one of them, was violated.

27
28 So I do believe that ownership means
29 stewardship, and when I look at what's happening in the
30 Cook Inlet to the Beluga whale, it's really sad because
31 we're not able to protect these beluga or the sea otters,
32 and they're at a 90 percent decrease and that's our food.

33
34 I thought it was interesting when it was
35 brought out that customary and traditional use didn't
36 really mean customary and traditional use by the Federal
37 Subsistence Board. And that was pointed out when Slana
38 got their customary and traditional use. And I know the
39 indigenous people have been, in this land we believe for,
40 in our history, over 30,000 years.

41
42 I'd also like to mention about Cooper
43 Landing, a fact that I know, is the name Cooper Landing
44 came from a family from Ninilchik. And when it comes to
45 subsistence, what subsistence means to our people is
46 sometimes often very different as what it means to other
47 people. Subsistence means sharing. You share. You
48 share with those who need. Our people were so good at
49 sharing, today we have nothing. Those that have the fish
50 are not the subsistence people or the indigenous people,

1 it's the commercial industry, the commercial fishermen
2 and the sportsfishermen. And I noticed the Fishermen's
3 Association, in part of their testimony said, when's
4 enough enough, that's what we're wondering, when is 99.5
5 percent still not enough.

6
7 So in closing, you know, I would just
8 like to say that we were able to get a resolution passed
9 with AFN, and I think it has come to the point where
10 there's no resolving the issue of where do we fit in in
11 this scenario. The one educational fishery is not enough
12 to feed our tribe of over 1,000 tribal members. And AFN
13 is backing by resolution the preference for Indian,
14 Eskimo and Aleut peoples. And we know that we'll
15 probably have to go into court but we are prepared to do
16 that through AITC and it's a sad time when the
17 communications are such and the coveting of resources are
18 so that those with almost all of it still do not want to
19 share.

20
21 Thank you.

22
23 CHAIRMAN FLEAGLE: Thank you, Mary Ann.
24 Hang on, let me check and see if there's questions.
25 Board members.

26
27 (No comments)

28
29 CHAIRMAN FLEAGLE: Okay, thank you very
30 much. Next up is Dr. Robert Wolfe who's attending --
31 going to testify by telephone. Steve.

32
33 DR. WOLFE: Yes, thank you. Can you hear
34 me?

35
36 MR. KLEIN: Yes, loud and clear.

37
38 DR. WOLFE: All right. My name is Robert
39 Wolfe. I'm a self-employed anthropologist now living in
40 San Marcos, California, just north of San Diego. But for
41 about 20 years I was the research director of the
42 Division of Subsistence in the State Departm -- Alaska --
43 of the Alaska Department of Fish and Game, so I had
44 oversight responsibility for the State's subsistence
45 resource program.

46
47 I'd like to thank the Board for the
48 opportunity to comment on the Ninilchik Kenai River RFR.
49 I've been asked by the Ninilchik Tribe's counsel to
50 comment on the proposal. I'm happy to do this, but these

1 are my own observations as a subsistence researcher and
2 not necessarily those of the tribe or any other group.

3
4 If one accepts that the Ninilchik area is
5 rural then it's clear, I think, from information
6 collected by the State and the tribe and some testimony
7 at RAC meetings, that salmon has been consistently
8 harvested for subsistence uses by its residents since the
9 community's founding, which was about 1857 by Russian and
10 Alutiqq families. History shows that there has been
11 hardship getting salmon and other wild foods because of
12 competition by outsiders and because of changing and
13 restrictive rules, and these hardships were documented by
14 the State in Georgette in her 1983 report. But no one
15 doubts that there has been a continuous harvest through
16 the present day of salmon using a variety of gear types
17 by Ninilchik residents.

18
19 Just looking at the 1998 data collected
20 by the State, and this is in Fall's report, Fall, et al.,
21 2000, we see these numbers that 90 percent of Ninilchik
22 households use salmon in 1998; 64 percent harvested, 79
23 percent received it and 60 percent gave it away. Now
24 these numbers on salmon are germane to the eight C&T
25 factors that the Board uses. They are indicative of
26 patterns of harvesting, caring and use within the
27 community of Ninilchik.

28
29 Looking at that same study in 1998,
30 residents harvested 59 resource categories, they used 67
31 resource categories, and Ninilchik residents harvested
32 164 pounds of wild foods per person, 164 pounds per
33 person of wild foods in 1998. So that harvest level
34 contains 106 percent of the protein requirements of the
35 population, and 15 percent of the caloric requirements of
36 the population. Harvest that year included 42 pounds per
37 person of salmon, 48 pounds per person of moose, 32
38 pounds per person of halibut; those were three of the 59
39 resource categories used. So, you know, this small
40 population, I think there are about 1,262 people living
41 in the Ninilchik area, they participate in a local
42 economy where fishing and hunting for food figure
43 prominently and has figured prominently historically.

44
45 So the question, I think, before the
46 Board today is whether fish harvested from the Kenai
47 drainage are part of the community's pattern of customary
48 and traditional uses. Is the upper Kenai one of the
49 areas historically and currently fished by rural
50 residents of the Ninilchik area for food. The tribe

1 asserts that it is.

2

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

7

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

16

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

34

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

41

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

43

44 DR. WOLFE: Yeah.

45

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

1 available for questions. Gary.

2

3 DR. WOLFE: Okay.

4

5 CHAIRMAN FLEAGLE: Gary has questions.

6

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

25

26 DR. WOLFE: Well, we've had testimony,
27 and I've seen testimony from tribal members saying that
28 they went up there historically by boat before the roads.

29

30 But I think the numbers that are
31 typically used, at least by the State in C&T findings are
32 the ones that you have in front of you. The numbers that
33 -- the State said 28 percent of households in their
34 lifetime have gone up there, and the tribal survey, which
35 I didn't get to, confirms that, that 32 percent of tribal
36 member households over their lifetime have gone up there.
37 That indicates a substantial level of use. And, you
38 know, the State found that 60 percent reported this to be
39 a frequent use. So I think that's what's required by the
40 C&T findings, is that, you've got a -- you can't -- it
41 can't just be a handful of households, you know, just one
42 or two people or a handful of households then I think a
43 negative finding is warranted. But when you get to be 28
44 to 32 percent of households of a group, that's not a
45 handful anymore.

46

47 And as for the historic, how long this
48 has been going on, I mean there's no doubt that Ninilchik
49 has been using salmon historically. And we've just heard
50 some testimony today that people intermarry between the

1 two groups and have used resources in what are joint use
2 areas. So one can, I think, presume that people have
3 been using these fisheries for -- I mean it's not just a
4 recent use if that's the question.

5
6 MR. EDWARDS: And just if I can follow
7 up. And I certainly recognize that, you know, people
8 have discussed it and I'm not questioning, you know, the
9 accuracy of that, I guess my question was more --
10 fundamentally, as you go through the literature and you
11 look at some of the historical writings and things, are in
12 there other things that would point out, you know, use in
13 that area, or substantiate, I guess is maybe the word I'm
14 looking for.

15
16 DR. WOLFE: Yeah, the literature that
17 I've seen has never attempted to ask these questions of
18 people who know the answers, and I think that's why you
19 have -- at least the Board's have this RAC process and
20 public testimony process so that the Board isn't limited
21 just by what is published. You can hear what people who
22 come before you tell you what they did historically and
23 they can fill in those gaps. But I don't have any
24 additional published sources that you haven't probably
25 already seen.

26
27 MR. EDWARDS: Thank you.

28
29 CHAIRMAN FLEAGLE: Niles.

30
31 MR. CESAR: Yes, Dr. Wolfe, Niles Cesar.
32 I know we didn't have sufficient time for you to go
33 through everything that might have been useful in this
34 case. But I wondered about the survey that the Ninilchik
35 Tribal Council did, did you find that it supported, at
36 least, to your level of concern, about a consistent use
37 up on the upper Kenai when you look at the Fall survey
38 versus the NTC survey, do you see any real disparity
39 between the two?

40
41 DR. WOLFE: Yeah, thanks for that
42 question. No, I don't see any disparity between the two
43 survey findings. In fact, I see that they tend to
44 support one another. But there's a little bit more
45 detail -- well, maybe not. The Ninilchik Tribe asked
46 about salmon and they also asked about non-salmon
47 species, they found that 28 percent of their tribal
48 households had harvested non-salmon fish in the upper
49 Kenai River, Kenai Lake area. But that's very similar to
50 what the State found with their survey of all residents

1 of Ninilchik, very -- they found that -- like I said, 28
2 percent of the households, 162 households had fished
3 Federal waters in the Kenai district.

4
5 So I mean my -- looking at the two
6 studies that they -- the tribal study tends to support
7 the findings of the State studies in this case.

8
9 MR. CESAR: Thank you.

10
11 CHAIRMAN FLEAGLE: Other questions.

12
13 (No comments)

14
15 CHAIRMAN FLEAGLE: All right, thank you
16 Dr. Wolfe.

17
18 Nelson Angapok (ph). He is here.
19 Welcome Nelson. Yeah, just either one, just push the
20 microphone on/off button to turn your mic on, there you
21 go.

22
23 MR. ANGAPOK: Good afternoon, Mr.
24 Chairman. Members of the Federal Subsistence Board. In
25 the interest of time I'm going to focus on one aspect of
26 these proceedings. And that is the issue of Regional
27 Advisory Councils.

28
29 When we were lobbying for the passage of
30 HR-39 which eventually became ANILCA, one of the tools
31 that we were looking at was the concept of Regional
32 Advisory Councils, and I think it has worked well within
33 the management -- subsistence management scheme.

34
35 Having said that, Mr. Chairman, you
36 attended the subsistence workshop that AFN had, and we
37 appreciated your comments and your strong support on the
38 Regional Advisory Councils. Having stated that, the
39 Southcentral RAC has unanimously endorsed recognition of
40 Ninilchik's C&T petition. AFN supports that. And we
41 trust that you and the other members of the Board will
42 follow the recommendation of the RAC.

43
44 Thank you very much.

45
46 CHAIRMAN FLEAGLE: Thank you, Nelson.
47 Questions.

48
49 (No comments)

50

1 CHAIRMAN FLEAGLE: Appreciate the
2 testimony. Next we have John Sky Starkey.

3
4 MR. SKY STARKEY: Thank you, Mr.
5 Chairman. I'm going to give the Board a little handout
6 here and then I'm going to talk a little bit -- Board
7 members.

8
9 CHAIRMAN FLEAGLE: It looks like stuff
10 we've already seen before.

11
12 MR. SKY STARKEY: Probably. Hopefully.
13 Thank you, Mr. Chairman, for the opportunity to testify.

14
15 The reason that I'm handing that out is
16 because I was told by Federal Staff the other day that
17 it's not necessarily true that the Board members would
18 have seen the transcripts of the RAC proceedings, which
19 we think are so important to this process.

20
21 So John Sky Starkey representing the
22 Ninilchik Tribal Council. Thank you for the opportunity
23 to testify today.

24
25 I just wanted to point out a few things
26 in this brief five minutes. I think the point that your
27 Council made and that we would agree with is that
28 customary and traditional use determinations may be on an
29 area basis but they're not on a traditional tribal
30 territory business basis. There are many tribes that
31 wish it was this way. If it was a Native priority,
32 perhaps it would have been. I think many of us would
33 have pushed for that, hoped for that, if it was, then
34 tribes would have the jurisdiction to and talk across
35 lines. Unfortunately we didn't get that. It's a bit
36 disingenuous for the Kenai Peninsula Sportsfishermen to
37 bring that forward. It's, as you've seen, quite a
38 divisive and emotional issue.

39
40 But I would challenge any person to point
41 to one place where either the State or the Federal
42 government has made a C&T determination based on tribal
43 territory, and, in fact, people from Akiachuk wouldn't be
44 hunting in Sleetmute, you know, I could go on and on and
45 on. If that was the case and, in fact, it wouldn't
46 reflect reality or Native customs and traditions or their
47 patterns of sharing.

48
49 Ninilchik is extremely grateful to the
50 members of the Kenaitze Tribe for passing an official

1 tribal resolution which hopefully clarifies their support
2 for Ninilchik, and washes away some of the last minute
3 stuff that's been going on here.

4
5 I think it's very important also to note
6 that in the request for reconsideration that we
7 submitted, we submitted an affidavit by David Cooper of
8 Cooper Landing and his family, his grandparents
9 established Cooper Landing. I understand some Board
10 members desire to have some anthropologist, some non-
11 Native person who would have written about Native people
12 and would have -- out of some -- whatever reason decided
13 that he knew the future and there was going to be
14 somebody that wanted to know about Ninilchik fishing on
15 the Kenai and would have written about it, wouldn't that
16 be great, we wouldn't be here, and it wouldn't have taken
17 21 years but, you know, the fact that a person from
18 Ninilchik's grandparents settled Cooper Landing, I assume
19 that, as most of us, that that means that was their
20 family. They came from Ninilchik, they settled Cooper
21 Landing, the grandchildren went up there, there was
22 people moving back and forth. That demonstrates use of
23 the upper Kenai River quite firmly.

24
25 The handout that I've given you I would
26 like to point out that this is the testimony of the RAC.
27 Now, you choose the RAC members. The reason that we have
28 a RAC is because people with personal knowledge of the
29 resources are on those RACs and they're there to fill in
30 these kind of gaps and knowledge, and you choose them and
31 they're your people. We don't expect Tom Carpenter to be
32 an advocate for Ninilchik, all we expect is for them to
33 listen to us and provide recommendations. But of your
34 RAC members, there's not one person on that RAC that
35 disagreed that there was customary and traditional use
36 and in fact the old people on that RAC, the elders, and I
37 hope they won't be offended by me calling them that if
38 they're on the telephone, said the following on Page 225,
39 Doug Blossom is asking how important it is to document
40 uses pre-1952 and he says:

41
42 Well, it's a real blank spot and prior to
43 1950 Ninilchik's river of choice was the
44 Kenai River because there was no road.
45 They got in the boat in the Kenai and it
46 was much easier to traverse than the
47 Kasilof, I mean that's the history lesson
48 for you. I lived there then. And that
49 isn't in any of the data, so if we go
50 back to then they were allowed to

1 subsistence fish the Kenai River was the
2 river of choice, not the Kasilof, it
3 flows much slower, they could go up it,
4 they pulled up to Skilak Lake and they
5 spent sometimes a month and a half up
6 there.

7
8 So that's just a little history for you
9 by a person there.

10
11 I wish he would have written a book.

12
13 Gloria Stickwan, I'm not going to read
14 hers but she's from the AHTNA region and she verifies the
15 idea that subsistence is opportunistic. Why did people
16 go to the Kenai, they went there because that's when the
17 fish were there when they needed them.

18
19 But I think another, on Page 228, if you
20 go to the very bottom paragraph, and this is Mr.
21 Showalter. Now, there are people from the Kenaitze Tribe
22 here who can verify this, but it's my understanding that
23 James Showalter is a tribal council member, he's an elder
24 and he's been a tribal court judge for the Kenaitzes.
25 And James Showalter at the bottom of 228 says:

26
27 No, I've got a comment going back to
28 subsistence which is this, and the use of
29 the Kenai River and from Ninilchik. As
30 you said in the past history of it, prior
31 to the restrictions and regulations, the
32 Kenai River used to be subsistence
33 outside, inside the river, up the river
34 and into the lakes because I've done it
35 myself until we were regulated out of
36 this fishery so there has been consistent
37 use of the area by Ninilchik and the rest
38 of the Peninsula until we were regulated
39 out of usage of the area, until now,
40 which we have rural and nonrural areas,
41 only able to fish on Federal lands and
42 waters.

43
44 That's James Showalter, Kenaitze tribal
45 member, an elder saying that he knows there was customary
46 and traditional use of those lands and waters by
47 Ninilchik.

48
49 If the RAC process and your regulations
50 are what they say they are, and if your commitment is to

1 the RACs what they say they are, this is evidence of that
2 customary and traditional use.

3
4 I just -- I've looked at all the
5 information in front of you and you've got two studies
6 that document significant use, 28 and 32 percent long-
7 time, long-term pattern of use. You've got Mr. Blossom,
8 Mr. Showalter and the entire RAC going along with it.
9 You've got Greg Encelewski who just testified, who's also
10 an older man and testified to his personal uses. You've
11 got the Cooper Landing affidavit demonstrating that it's
12 people from Ninilchik that settled Cooper Landing.
13 You've got the studies. I don't think there's anything
14 on the other side that begins to shift that way.

15
16 This is a customary and traditional use
17 determination not a rural determination. And the point
18 of the significance and having other people use the
19 resource, that's a problem, but this is a customary and
20 traditional use determination.

21
22 I guess the only other thing I wanted to
23 point out, going back to this exhibit that I handed out,
24 the RAC transcript. I just wanted to point out that on
25 Page 253 -- 252 actually. We have testimony from Marvin
26 Peters, he's the Chairman of the Homer Fish and Game
27 Advisory Committee, he's very much opposed to subsistence
28 and the C&T determination, but it's because of the effect
29 of the determination, and the use of the resources, but
30 on Page 252 right in the middle, the page on the first
31 full paragraph, last sentence, he says, basically:

32
33 It's just not beneficial to the fisheries
34 or wildlife resources to do that and I
35 don't doubt that Ninilchik, the Ninilchik
36 Tribe especially would have unquestioned
37 C&T use of these resources; that's not
38 where we're opposed to it.

39
40 That's even people who are on the
41 Advisory Committee who agree that it's not an issue of
42 their customary and traditional use. Even they agree
43 that it's unquestioned.

44
45 Thank you, Mr. Chairman.

46
47 CHAIRMAN FLEAGLE: Thank you, Sky.
48 questions.

49
50 (No comments)

1 CHAIRMAN FLEAGLE: All right, thank you
2 for your testimony.
3
4 MR. SKY STARKEY: Thank you.
5
6 CHAIRMAN FLEAGLE: We got one more but we
7 need a break, should we do the one more.
8
9 MR. CESAR: Let's do the one more.
10
11 CHAIRMAN FLEAGLE: Let's do the one more.
12 Mac Minard.
13
14 MR. PROBASCO: And there may be somebody
15 on line.
16
17 CHAIRMAN FLEAGLE: Oh, that's true. Go
18 ahead.
19
20 MR. MINARD: Mr. Chairman. Board
21 members. Thanks for the opportunity to address you
22 today. For the record my name is Mac Minard. I'm
23 employed as a fisheries staff member for the Kenai River
24 Sportfish Association. I worked some 25 years for the
25 Department of Fish and Game as a fisheries biologist and
26 manager regional supervisor out of Fairbanks. I
27 currently live in Helena and would like to comment today
28 on the C&T findings for the Ninilchik in the upper Kenai.
29
30 I don't envy the position you're in.
31 I've been to dozens of these kinds of meetings and I was
32 moved, very much so, by the testimony of the traditional
33 folks that have come forward. I don't think I have ever
34 witnessed in a forum like this the trouble that people
35 have with trying to separate fact from personal
36 commitment, family lineage and just the camaraderie
37 necessary. As a watcher of the proceedings I'm getting
38 the sense that there's an awful lot of sort of rallying
39 around the issue based predominately on my allegiance to
40 my friend, my family, my culture. Unfortunately you guys
41 are having to be faced with a decision that is colored by
42 emotion but also has to be measured in the empirical side
43 of it.
44
45 We've listened to the sociological
46 experts. I was trained in a different forum. You know,
47 my statistics and my approach to science, because of my
48 training is decidedly different. There are things called
49 significant differences and consequential differences.
50 And I'm learning, I mean I'm listening. But when I

1 looked at the information, as I was asked to do for the
2 Kenai River Sportfish Association, which a comment there,
3 seems to be a lightning rod, because they want to be
4 engaged, they want to work within this forum, it's all of
5 a sudden viewed as a bad thing, it isn't. I mean their
6 participation will bring balance to a proceeding like
7 this, it's important. I mean the area we're talking
8 about sustains the world's largest recreational fishery,
9 period. They have an interest. They have a stake.

10

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

23

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

34

35 So when you take a look at the technical
36 numbers, the stuff you get, you're really charged with
37 trying to figure out, is that sufficient to warrant
38 significant use. And you don't have policies and
39 procedures in place. You've been asked by the Secretaries
40 to do that, it sounds like we're making some progress on
41 that but you don't have it. So really the public's left
42 in a quandary, they're left to bring emotion and lay that
43 on the table, they're left to bring technical people and
44 put the numbers on the table, and when the day is over
45 it's dumped on you to make the decision. And you have to
46 make that decision -- it's subjective, it's going to be a
47 subjective call, a judgment call. Subjective. You color
48 it with everything you can. So we were criticized in
49 trying to bring in and not speak for other people but to
50 address the history, the relationships that other State

1 and Federal agencies have had. It wasn't intended to
2 slam anybody, it was simply intended to open the door and
3 say, this is kind of how it is.

4
5 We looked at the four percent use level
6 that the Fall study reports and I don't find that to be
7 particularly compelling. Let's do a little math. 20
8 percent of the people in the state of Alaska sportfish.
9 Of those 20 percent, 20 percent of them participate in
10 the Kenai River -- upper Kenai River. That calculates
11 out to about four percent of the state population.
12 Ninilchik demonstrates no different use of the upper
13 Kenai River in sportfishing activity than any other
14 sportfisherman would. Context is lacking in virtually
15 every case of the analytical data that's provided to you.
16 That number is no different than some community outside
17 of Fairbanks. And actually you'd sort of think it would
18 be more.

19
20 The 28 percent number, I don't mean to be
21 flip but a little levity wouldn't work. I think you
22 could stand outside a Wal-Mart and ask that question of
23 people in Anchorage and get a higher number. Have you
24 ever in your life fished the upper Kenai River. I'm
25 surprised that it's that low for a community that depends
26 on it. I think the data's pretty clear, nobody's arguing
27 that these guys have participated heavily and depended
28 upon heavily resource use but I don't think it's
29 predominate here, in fact, I think it's been very small,
30 the record is replete with hard information to point us
31 in that direction.

32
33 This isn't the Interior. This isn't a
34 place where we can make this decision on little or no
35 good information, there are literally tens of thousands
36 of people involved. A decision to not provide C&T for
37 Ninilchik on the upper Kenai doesn't mean they don't
38 participate there. Of course not. They can still
39 participate. What it means is that you don't give a
40 prescriptive priority that could otherwise exclude other
41 Alaskans, other non-Alaskans from participating, that is
42 the C&T. It is the opportunity to exclude others in
43 times of shortage.

44
45 So when you choose to set the bar, you
46 need to consider other factors as well.

47
48 Mr. Chairman, thanks very much. I
49 appreciate the effort you guys are going to put into this
50 and I certainly mean no offense to anyone else. I

1 realize there's differences of opinions.
2
3 Thank you very much for your time.
4
5 CHAIRMAN FLEAGLE: Thank you. Questions.
6
7 (No comments)
8
9 CHAIRMAN FLEAGLE: All right, let's step
10 down for a 10 minute.....
11
12 MR. EDWARDS: Mr. Chairman, before.....
13
14 CHAIRMAN FLEAGLE:before -- Gary,
15 go ahead.
16
17 MR. EDWARDS:you -- Sky you
18 referred to this affidavit, I mean I personally have not
19 seen that and I don't know if other Board members have
20 either on Cooper Landing. Could you -- if you have
21 copies of that, would you please provide it because I
22 don't have a copy and I've been trying to search Google
23 and everything else to sort of verify it because I keep
24 hearing it but I can't -- so I'd like to see it if you
25 have it.
26
27 MR. SKY STARKEY: I will do that Mr.
28 Edwards with all due diligence. It was attached to our
29 request for reconsideration so I was just thinking that
30 you'd seen it but we will definitely make it available.
31
32 Thank you.
33
34 MR. EDWARDS: Maybe other Board members
35 have, I have not.
36
37 (Off record)
38
39 (On record)
40
41 CHAIRMAN FLEAGLE: Okay. The Federal
42 Subsistence Board is back in session. And we just
43 concluded the list of people that had signed up through
44 Staff here but we want to exhaust any possibilities that
45 somebody who might be on line that wants to talk. Steve,
46 would you check please.
47
48 MR. KLEIN: Was there anyone on line that
49 wished to testify.
50

1 (No comments)

2

3 MR. KLEIN: No.

4

5 CHAIRMAN FLEAGLE: Okay, sounds good,
6 thank you. Now, the next question I need to run past
7 just a brief discussion with Board members before we
8 resume this issue, we kind of anticipated we wouldn't be
9 able to finish in a day so the Staff has indicated that
10 the room is available either tonight -- I shouldn't say
11 either, it is available tonight and tomorrow morning from
12 8:00 to noon, only to noon. So I just want to get the
13 wish of the Board as to how you want to proceed. Should
14 we work awhile, take a dinner break, come back this
15 evening. Should we work awhile, take a dinner break,
16 come back tomorrow. I just want to get some ideas of
17 where this Board wants to go.

18

19 Gary.

20

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

39

40 CHAIRMAN FLEAGLE: Okay, sounds good.

41 Others. Niles.

42

43 MS. KESSLER: Mr. Chair.

44

45 CHAIRMAN FLEAGLE: Wini.

46

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

49

50 CHAIRMAN FLEAGLE: All right.

1 MR. CESAR: That would be my preference.
2 Wini and I traveled a long way to put this to rest so
3 let's put it to rest.
4
5 CHAIRMAN FLEAGLE: I don't have a problem
6 with that. You know in my past life I've been known to
7 be a task driver, we've worked to 10:00 or 11:00 at
8 night, oops, I wasn't going to mention that past life
9 anymore, was I.
10
11 (Laughter)
12
13 MR. CESAR: Well, you know, it doesn't
14 make any difference to me because I'm a Fed I don't work
15 past 5:00 anyway.
16
17 (Laughter)
18
19 MR. CESAR: And I have got dinner
20 reservations so I won't be here after 6:00 anyway and I'm
21 going back to Juneau in the morning so.....
22
23 CHAIRMAN FLEAGLE: So you just.....
24
25 MR. CESAR:if we could finish in
26 the next hour and a half, which I think we can, let's do
27 it.
28
29 CHAIRMAN FLEAGLE: All right, just keep
30 pushing on and then.....
31
32 MR. EDWARDS: Mr. Chairman.
33
34 CHAIRMAN FLEAGLE:we'll have an
35 appropriate break then.....
36
37 MR. EDWARDS: One thing, at least it's
38 been told to me that we may have an issue after 6:00 from
39 a security standpoint of the building, not arranging for
40 additional security. So I don't know what the answer to
41 that is but, that might be problematic.
42
43 CHAIRMAN FLEAGLE: Okay, well, we can get
44 that, right, while we're working. So let's go ahead and
45 continue on then. It sounds like, at least, we want to
46 just move forward from this point.
47
48 Keith.
49
50 MR. GOLTZ: A process question was raised

1 by Mr. Case and I think this should be factored into your
2 decision.

3

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

11

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

16

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

21

22 CHAIRMAN FLEAGLE: Okay.

23

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

26

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

36

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

41

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

46

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

1 the State's presentation.
2
3 CHAIRMAN FLEAGLE: Okay, thank you,
4 Keith. I agree. I'll support that as Chair. I think my
5 approach was simpler but.....
6
7 (Laughter)
8
9 CHAIRMAN FLEAGLE:all right we'll
10 continue.
11
12 Mr. Bedford.
13
14 MR. BEDFORD: Mr. Chairman. There is a
15 little bit of a chicken and egg question in my mind and
16 that is that the Ninilchik Traditional Council and the
17 representatives of the Ninilchik Traditional Council have
18 had an opportunity to address the Board and present
19 whatever kinds of information they felt was important and
20 relevant to the question you have in front of you. I
21 similarly will have an opportunity to do so. Will they
22 then question me and then I in return question them in
23 order to maintain a sort of parody on that?
24
25 CHAIRMAN FLEAGLE: Well, if you just gave
26 your position and it was silent from then on out I think
27 it would be the best but.....
28
29 (Laughter)
30
31 CHAIRMAN FLEAGLE:that doesn't
32 sound like it's going to work.
33
34 Keith, can you answer the question.
35
36 MR. GOLTZ: Well, I don't know how this
37 is going to develop. I haven't received word from Mr.
38 Case if he even wants this opportunity. I just want to
39 make the opportunity and make this proceeding just as
40 fair as we can make, that's it.
41
42 CHAIRMAN FLEAGLE: All right. So if we
43 get to that question we'll make a ruling.
44
45 Thank you.
46
47 All right, hearing all the testimony that
48 we've had on the issue we now go to the Council
49 recommendation. Tom.
50

1 MR. CARPENTER: Thank you, Mr. Chair.
2 I'll be brief. The Southcentral Council, at our meeting
3 in Homer, found that we did not hear any substantially
4 new or differing information to change our recommendation
5 from 06-09 which was the original recommendation for
6 finding for a positive C&T.
7

8 I think just from what I've heard at this
9 meeting that the RAC would reaffirm, hearing some of the
10 same testimony that it heard in Homer and in Kenai, that
11 the Board just heard, that demonstrates that there was
12 definitely Kenaitze Tribe, Ninilchik Tribe interaction on
13 the Kenai River and that there is a justification for the
14 C&T.
15

16 We do have the privilege of having two
17 Council members, one being from the Kenaitze Tribe and
18 one being from the Ninilchik Tribe on the Council. We
19 also had testimony from a Council member that was born
20 and raised on the Kenai Peninsula that this interaction
21 and this area of use did take place. So we thought that
22 that was substantial information and I believe that the
23 Council would reaffirm what the Board has heard today.
24

25 CHAIRMAN FLEAGLE: Questions.
26

27 (No comments)
28

29 CHAIRMAN FLEAGLE: Okay, thanks. We now
30 hear from the Alaska Department of Fish and Games, their
31 comments.
32

33 MR. BEDFORD: Thank you, Mr. Chairman.
34 First I'd like to enter ADF&G's written comments into the
35 record. They consist of three documents, which you
36 should have received a few weeks. An October 26th, 2006
37 letter from Commissioner Campbell to Chairman Mike
38 Fleagle. Secondly, a document entitled Attachment 1
39 ADF&G page by page detailed comments to Staff analysis
40 FRFR06-02/03/08 dated October 31, 2006. And finally a
41 document titled Attachment to ADF&G's specific comments
42 on Dr. Wolfe's papers.
43

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

1 Board might have about the Department's works.

2

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

8

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

33

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

42

43 No evidence has been provided to
44 demonstrate a long-term consistent pattern of use by the
45 community of Ninilchik for the Federal lands and waters
46 within the Kenai River drainage. The Federal Staff
47 analysis misinterprets and misuses Department findings to
48 incorrectly support a positive customary and traditional
49 determination. The Board should delay making any
50 additional customary and traditional determinations until

1 it has developed written policies and procedures for
2 making such determinations as directed by the Secretary.

3

4

As to the first contention.

5

6 To the support a positive customary and
7 traditional use determination, the Board's regulations at
8 50 CFR 116(b) and 36 CFR 242 16(b) require a community or
9 area to generally exhibit eight factors. Six of those
10 eight factors speak to a pattern of use. Although the
11 Federal Staff analysis attempts to address those eight
12 factors, it fails to incorporate all of the information
13 previously presented with regard to FP06-09 and continues
14 to fail to demonstrate based upon fact that the community
15 of Ninilchik's uses of the Kenai River drainage generally
16 exhibit the eight regulatory factors or that the
17 community's use generally satisfy any of the eight
18 factors with regard to fish stocks in the Kenai River
19 drainage. And, again, speaking to Federal public lands
20 within the Kenai River drainage. The analysis
21 demonstrates that there is some level of use of the
22 fishery resources under Federal jurisdiction in the Kenai
23 River drainage by some members of the community of
24 Ninilchik. However, there is nothing to indicate that
25 this use represents anything other than occasional
26 sportfishing. Unlike the net fisheries that occur in
27 the lower river or in areas closer to Ninilchik, the
28 fisheries in Federal waters of the Kenai River are not
29 and for the community of Ninilchik have not been
30 characterized by efficiency and economy of effort and
31 cost. The eight factors listed in regulation have to
32 count. The use demonstrated in the Federal Staff
33 analysis for reasons I'm about to articulate is not
34 characteristic of long-term consistent pattern of
35 community use.

36

37

By way of background, the Department has
38 conducted two studies, one published in 2000 and the most
39 recent published in 2004 regarding Ninilchik's use
40 patterns of fishery resources including, but not limited
41 to use of the fishery drainage. Both studies were
42 conducted at the request of the Office of Subsistence
43 Management and both studies sought to characterize
44 community uses using scientific methods and random
45 samples. In conducting these studies the Department did
46 significant public outreach during all stages of the
47 study, study design, conducting the study, reviewing the
48 findings prior to finalizing it. The Department
49 subcontracted with the Ninilchik Traditional Council to
50 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

1 somewhat different data here in that what we're looking
2 at is information for a specific year as opposed to
3 someone's recollection of their uses of a particular area
4 over their entire lifetime. What the Federal analysis
5 does not include, however, is the information provided by
6 Table 454, Page 113 of the same study and, again, that is
7 the second of the two pages that I gave you. This table
8 shows that when asked of the location used to harvest
9 fish in the study year, no more than seven percent of
10 those interviewed indicated that they caught fish in
11 Federal lands and waters. This low percentage suggests
12 that the lifetime use figures may be inflated above the
13 annual use levels.

14
15 Then referring to the second table that I
16 provided to you, or the first table that I provided that
17 I'm going to refer to second, which then is locations
18 used to harvest fish by Cooper Landing in 2002/2003.

19
20 The Federal Staff analysis also does not
21 include Table 451, Page 110 of the same study. This
22 table demonstrates that Cooper Landing's annual use
23 levels for the upper Kenai River are at least as high as
24 40 percent or six times higher than the use levels for
25 Ninilchik. While the Department, for all of the reasons
26 addressed in our RFR, does not believe that Cooper
27 Landing's annual use level support a customary and
28 traditional use determination, it's illuminating when you
29 consider that these recent annual use levels are
30 significantly higher than the combined frequent and
31 intermittent lifetime use levels for the community of
32 Ninilchik for the same area.

33
34 It leads me to wonder that if we were
35 going to conduct the same study on some of the avid
36 fishing communities elsewhere around the state, whether
37 or not we might find the same or similar or even greater
38 levels of participation in fisheries on the Kenai River.

39
40 There are some other issues that I'd like
41 to raise as well. I'd like to provide some further
42 context.

43
44 First off, the notation of a regulatory
45 closure and how that plays into a customary and
46 traditional use determination. The Federal Staff
47 analysis argues that the 1952 closure was an interruption
48 beyond the community's control and that it interpreted
49 use patterns. However, the Federal Staff analysis does
50 not provide any evidence of subsistence use in Federal

1 public lands on the Kenai River by the Ninilchik
2 community residents prior to the closure. And without
3 that prior use then there can't be an interruption.

4
5 Secondly, changing demographics. The
6 community of Ninilchik today bears little resemblance to
7 the community in 1952. Today the community is seven
8 times larger and has had an influx of new residents who
9 brought with them an interest in sportfishing, and who
10 can easily access the upper Kenai River by road.

11
12 And then of course the construction of
13 the road itself in 1952, no doubt increased the
14 accessibility of the upper Kenai River to the community
15 of Ninilchik, and doubtless increased the kind of
16 lifetime uses of that particular area that you might
17 expect.

18
19 In conducting these recent studies, the
20 uses of any Ninilchik resident in his 40s or 50s predated
21 -- or postdated the construction of the road and
22 therefore represents in all likelihood sportfishing uses.

23
24 The purposes of the Refuge is another
25 factor that should be taken into consideration. The
26 Kenai National Wildlife Refuge under Section 303 of
27 ANILCA unlike other Refuges, does not include continued
28 subsistence use, but does explicitly include
29 opportunities for fish and wildlife oriented recreation.

30
31 And then finally, we believe that the
32 Board should delay further customary and traditional use
33 determinations until written policies and procedures have
34 been developed. The Department has repeatedly raised
35 concerns in the past regarding the Board's inconsistency
36 and lack of standards in making customary and traditional
37 use determinations. The Secretary of the Interior
38 responded to these concerns and on October 27, 2005
39 directed the Board to develop written procedures and
40 policies for customary and traditional use determinations
41 and to review whether analytical thresholds and
42 benchmarks for certain criteria are needed and
43 appropriate for inclusion in the decision process.

44
45 The Board has yet to develop such written
46 policies and procedures and continues to take action that
47 is not consistent with its own regulations, therefore the
48 Department urges the Board not to make any further
49 customary and traditional use determinations until the
50 Federal Subsistence Management Program establishes policy

1 and procedures for those analysis and findings as
2 directed by the Secretary.

3
4 In closing, I would have to say that I
5 appreciate how difficult this is. This is a very
6 difficult decision that you have to grapple with at this
7 point. And we recognize that this is something of great
8 importance and great concern to many people in the public
9 as well. However, at the end of the day, what we are all
10 charged with administering here is Title VIII of ANILCA.
11 And under Title VIII of ANILCA, the operative factors
12 here are whether the community of Ninilchik exhibits the
13 -- generally exhibits the eight specific factors that are
14 provided for in regulation that demonstrate customary and
15 traditional use.

16
17 Thank you, Mr. Chairman.

18
19 And, again, I would say that if you would
20 we might allow Jim Fall to come forward if you have
21 questions relevant to his expertise.

22
23 CHAIRMAN FLEAGLE: Why don't you want to
24 come on up, Jim, just in case we do. Board members
25 questions of the State's position.

26
27 Gary.

28
29 MR. EDWARDS: Yeah, maybe I'll direct
30 this to Dr. Fall and it's the same kind of question that
31 I asked when Helen was up here and she deferred to your
32 expertise, and that has to do with this lifetime use
33 information and -- versus the intermittent.

34
35 And, you know, when you look at one it
36 shows a larger number and then when you look at the
37 individual years, it's a smaller number and you would at
38 least maybe assume that if there was, you know, a
39 frequency of use at least in one of those three years it
40 would have popped up but it doesn't seem to. So at least
41 on the surface there seems to be a discrepancy, can you
42 elaborate on that?

43
44 DR. FALL: Mr. Chair. Mr. Edwards. This
45 is a really good question. And just as -- again, I just
46 wanted to repeat a couple of things as background before
47 I address the question.

48
49 First of all I will be referring to two
50 studies that the Division of Subsistence did under

1 contract to the Office of Subsistence Management where we
2 were asked to investigate patterns of contemporary and
3 historical hunting and fishing by several communities on
4 the Kenai Peninsula. We weren't focusing specifically on
5 Kenai, we were focusing much more broadly and our goal
6 was to describe community patterns of use because it is
7 communities that establish use patterns. So we really
8 can't talk about use patterns without talking about the
9 communities that have established those and need to be
10 associated with those.

11
12 In the more recent study, because one of
13 our directives was to understand customary and
14 traditional use patterns, we realized that just asking a
15 question about a single year would not get us there. I
16 think everybody recognizes that. Nevertheless we did
17 want to update a single year, snapshot of what people in
18 Ninilchik and the other study communities were doing. So
19 early in the survey when we asked people about where --
20 about what fish they were fishing for and how much they
21 got, we also asked them to point out on a map, which is
22 in the report, where they fished for those fish in the
23 study year, and the answers are in -- for Ninilchik in
24 Table 4-54 that Mr. Bedford handed out to you before.
25 And the first part of that table separates out the waters
26 within the outer bounds of Federal conservation units and
27 you can see from that that four percent of the Ninilchik
28 sample said that they had fished for sockeye salmon in
29 either the -- just in the Russian River, nobody had
30 fished in Kenai Mountain streams, or Kenai Lake and Kenai
31 Lake streams. In addition, one percent had fished for
32 rainbow trout in some of these waters, one percent for --
33 or two percent had, and one percent for lake trout. Now,
34 I can't say that these aren't the same households, I'd
35 have to look further in this. what we basically get from
36 this particular table is that no more than seven percent
37 and perhaps a bit less than seven percent of the sample,
38 which we believe is representative of the Ninilchik
39 community fished in these waters in our study year.

40
41 Now, later in that same study we asked
42 about lifetime use and we wanted to not just ask a
43 general question about where have you ever fished while
44 living in the study community, we wanted to qualify it a
45 little bit more. So, again, household representatives
46 were asked to point to the same map that we'd used before
47 and we asked them have you ever fished here and if they
48 said, yes, well, how -- and then we asked, how would you
49 characterize this, is it frequent, and we had an
50 operational definition of just about every year, is it

1 intermittent, every couple of years, or was it rare, did
2 you do this once or twice. And you have the results of
3 that which we didn't summarize in the technical paper in
4 Table 1 in the Staff analysis.

5
6 Getting back to the question now, 13
7 percent of the respondents said that they had frequent
8 use over their lifetime of the Kenai River, the same area
9 where we really can't say more than four or five percent
10 in the study year had used, so there appears to be a
11 contradiction or some poor fit there.

12
13 We can look further back because we did
14 do an earlier study, which Mr. Bedford mentioned, and
15 which we also cite several times in our more detailed
16 comments that you have and this is Technical Paper 253
17 where we asked basically the same question for the 1998
18 study year. We asked people, after learning what kinds
19 of fish they fished for in that year, where they fished
20 in that year and the areas were a little bit different
21 but we have for Ninilchik, and I'm referring to Table 52,
22 these data are in our comments by the way, but three
23 percent of Ninilchik -- and this was a random sample of
24 101 households, so very similar methodology from the more
25 recent study, three percent of Ninilchik households had
26 fished for salmon within the waters of the Kenai
27 Peninsula Wildlife Refuge, basically south of the Kenai
28 River. And in addition, about two percent had fished in
29 the waters above the Kenai River and maybe another two
30 percent or so in the upper Kenai. So we're getting,
31 four, five, six, seven percent fishing in those waters,
32 almost the same finding as a few years later.

33
34 To use that's a couple snapshots but
35 verifying each other.

36
37 Getting back to why, when people are
38 asked about lifetime use and frequency that percentage
39 goes up, we're talking, for one thing, about a memory
40 issue here, that people are probably generalizing a
41 little bit more when they're thinking back in time and
42 characterizing frequency. Again, the operational
43 definition was somewhat vague, we said just about every
44 year, whether that's -- it's probably not every year, we
45 can see that from the other results, it's probably every
46 couple years, every two or three years. But I would say,
47 as Mr. Bedford pointed out, that we would conclude that
48 the lifetime use information is probably a bit inflated
49 and probably is not the best information to look at for
50 annual levels of use of that portion of that river by the

1 Ninilchik community. The better number to focus on is
2 somewhere around four, five, six percent of the
3 community.

4
5 And I hope that -- that's a long answer
6 to a short question but an important question, Mr.
7 Edwards.

8
9 MR. EDWARDS: I mean are there other
10 studies that would verify your justification that when
11 people were asked about a lifetime, they tend to be
12 inflated, or are we just assuming that for this
13 particular study?

14
15 DR. FALL: Mr. Chair. Mr. Edwards. I
16 don't think I'm assuming it. I think -- what I'm saying
17 is that I think that the data from two studies and
18 several different questions is basically suggesting that
19 this is the case for this particular question that you
20 have before you. Certainly lifetime use areas will be
21 broader and you will get a broader response than for any
22 particular year both in terms of area and probably in
23 terms of frequency.

24
25 Mr. Chair.

26
27 CHAIRMAN FLEAGLE: Other questions.

28
29 MS. GOTTLIEB: Thank you, Mr. Chair.

30
31 CHAIRMAN FLEAGLE: Oh, okay, I'm sorry,
32 go ahead.

33
34 MS. GOTTLIEB: Okay, I thought you were
35 nodding. Okay. Thanks, Jim, we appreciate that.

36
37 I guess maybe sort of a two part
38 question. We also see the weighted number, this 28
39 percent that's been tossed around and then I guess I also
40 wondered whether Dr. Wolfe had a comment on Dr. Fall's
41 statement.

42
43 CHAIRMAN FLEAGLE: Were you looking for a
44 response from Dr. Fall first?

45
46 MS. GOTTLIEB: Please, yes.

47
48 CHAIRMAN FLEAGLE: Jim.

49
50 DR. FALL: Mr. Chair. Ms. Gottlieb. The

1 question is just to comment on the higher numbers that
2 are in Table 1.

3
4 I'll be frank, I think that some of these
5 numbers are being blown out of proportion in terms of
6 what they mean for characterizing a pattern of use. What
7 we have here is in Table 1 that in a random sample 28
8 percent of all Ninilchik households had said that at
9 least once in their lifetime while living in Ninilchik
10 they had fished in some portion of the Federal waters of
11 the Kenai Peninsula. Whether that characterizes a
12 consistent pattern of use is, of course, for this Board
13 to decide. But I do see in the Federal Staff analysis
14 that this number and the 21 percent in the Kenai River
15 are taken as fairly convincing evidence of a consistent
16 pattern of use.

17
18 The Department's comments are suggesting
19 that perhaps that that isn't the case. That this number
20 needs to be, first of all, considered within the data we
21 have, the specific data about annual uses for specific
22 years where people were recalling what they'd done over
23 the past 12 months, very specifically, and secondly this
24 -- these highest numbers in Table 1 don't address how
25 many times a person may have fished within that area,
26 within a given year. It could have been one sportfishing
27 trip, whether they were catch and release fishing or what
28 they were doing. They most likely were sportfishing
29 because that's what's open now.

30
31 In addition, it's very, very important to
32 take these numbers, these percentages in context. And as
33 we also pointed out in the most recent study that we did,
34 if you look at Cooper Landing, for the specific study
35 year, which is Table 451, at least 40 percent of Cooper
36 Landing's households had fished for sockeye salmon in
37 some portion of Federal waters in the study year compared
38 to, what did I say, four or five percent for Ninilchik.
39 We don't have -- I didn't summarize the lifetime
40 questions for Cooper Landing, but the single year
41 estimate for Cooper Landing is higher than the lifetime
42 estimate for Ninilchik. So I'm very, very reluctant to
43 say that the numbers that we came up -- for the community
44 of Ninilchik, as it exists now are convincing evidence of
45 a consistent use pattern of those waters.

46
47 I hope that answered your question.

48
49 MR. EDWARDS: I'm going to continue
50 to.....

1 CHAIRMAN FLEAGLE: Gary.

2

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

15

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

28

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

37

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

47

48 All of our information about -- the
49 documentation of use of that area and the displacement of
50 it pertained to people based out of Kenai and members of

1 the Kenaitze Tribe, those sources had no information that
2 we found regarding Ninilchik residents. I believe there
3 was some reference that we learned through some of our
4 community meetings about fishing and trapping in
5 Tustumena Lake. There was some information about that.
6 But the vast amount of information that we summarized and
7 learned about tie that area to the people of Kenai and
8 the Kenaitze Tribe. And in addition as you prob --
9 you've seen the submission earlier today from Dr. Boris,
10 which I only saw the other day myself, and again that's a
11 pretty good compilation of variety of sources, by the way
12 not just from anthropologist but from Native people,
13 Native writers and others describing use patterns on the
14 Kenai Peninsula and I think Dr. Boris concluded that that
15 upper area was connected historically to communities,
16 tribal communities and others from the upper portion of
17 the Kenai Peninsula but I don't think he had a whole lot,
18 if any evidence of historical connections by the
19 Ninilchik community to that area.

20

21 In our earlier report, our report from --
22 253, we do quote an anthropologist, an ethnohistorian,
23 Katherine Arnt, who has written extensively about the
24 history of Ninilchik, the early history, and it's pretty
25 clear when that community was originally found -- now,
26 I'm diving back 160 years now, but when that community
27 was originally founded, what the Russian authorities --
28 and remember that community was established for a former
29 Russian America company employees and their dependents,
30 most of whom were Alaska Native people, and what they
31 looked for is a place to settle people, was a place that
32 would not conflict with established uses by other Alaska
33 Native communities and other tribes and the Dena'ina
34 population by the 1840s had been substantially reduced
35 because of the smallpox epidemic and what the Russian
36 authorities looked for was an area where they could
37 settle people and establish a community where they could
38 sustain themselves through hunting and fishing and
39 agriculture and not interfere in the activities of other
40 tribal entities. And of course as we've heard over time
41 and not surprisingly relationships develop between that
42 community and the other communities of the Kenai
43 Peninsula. But right from the start there was that
44 distinction that was deliberate, that was made and so all
45 of this is a long way of saying that I'm not surprised
46 that in looking through the literature we don't find very
47 many mentions, or really any mention of a Ninilchik
48 community 50, 60, 70 years ago because they're main
49 activities were oriented to local streams and to marine
50 waters, not to say that some uses didn't occur, but they

1 certainly were not the predominate or visible uses that
2 others documented for the Kenai River.

3

4 Thank you.

5

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

11

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

16

17 CHAIRMAN FLEAGLE: Dr. Wolfe.

18

19 (No comments)

20

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

23

24 (No comments)

25

26 MR. KLEIN: Do we have anybody on line?

27

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

30

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

32

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

35

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

38

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

41

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

44

45 (No comments)

46

47 CHAIRMAN FLEAGLE: All right. That
48 brings us to the InterAgency Staff Committee
49 recommendation.

50

1 MR. KLEIN: Mr. Chair. For the record
2 this is Steve Klein.

3
4 CHAIRMAN FLEAGLE: Steve.

5
6 MR. KLEIN: Acting Chair of the
7 InterAgency Staff Committee.

8
9 The Staff Committee supports a positive
10 determination for Ninilchik. The addition of Ninilchik
11 to the C&T use determination is consistent with the data
12 provided in the RFR analysis and with the testimony
13 provided by the residents of Ninilchik.

14
15 The new information regarding lifetime
16 areas of use by Ninilchik residents provided by ADF&G
17 indicated that 28 percent of Ninilchik households had
18 fished at least once in their lifetimes in the Federal
19 waters of the Kenai River or Swanson Rivers. Similarly
20 with the NTC information provided, we had 32 percent of
21 tribal members using the Kenai. The Staff Committee
22 found that compelling.

23
24 We noted that the Ninilchik residents
25 have been prohibited since 1952 from subsistence fishing
26 in the Federal waters of the Kenai Peninsula and as a
27 result their subsistence use of the areas have been
28 interrupted beyond the control of the community. Despite
29 this prohibition Ninilchik residents continue to use the
30 Kenai River area under consideration throughout the more
31 recent contemporary period under sportfishing regulations
32 as demonstrated by the new information from Fall, et al.,
33 2006.

34
35 So Staff Committee recommends adding
36 Ninilchik as a community eligible for subsistence harvest
37 in Federal waters of the Kenai Peninsula district.

38
39 Mr. Chair.

40
41 CHAIRMAN FLEAGLE: Thank you, Steve.
42 Questions.

43
44 (No comments)

45
46 CHAIRMAN FLEAGLE: Hearing none, that
47 brings us to deliberations. Board members, your
48 pleasure.

49
50 Somebody want to break the ice. George.

1 George.
2
3 (Laughter)
4
5 MR. GOLTZ: Before we get to Board
6 deliberation.
7
8 CHAIRMAN FLEAGLE: Keith.
9
10 MR. GOLTZ: I think we should give Mr.
11 Case a chance, sir.
12
13 CHAIRMAN FLEAGLE: Okay, good point. We
14 did say we would do that.
15
16 Thank you.
17
18 David Case.
19
20 MR. CASE: Thank you, Mr. Chairman. I
21 have a couple of questions for Dr. Fall but I need to see
22 your studies. The 2002/2003 study, do you have it there,
23 maybe we could sit up here together.
24
25 (Pause)
26
27 MR. CASE: In your 2002/2003 study, Dr.
28 Fall, what was the oldest person that responded to it?
29
30 DR. FALL: Mr. Chair. I don't have these
31 things memorized but I can answer the question.
32
33 (Pause)
34
35 CHAIRMAN FLEAGLE: Today Dr. Fall.
36
37 (Pause)
38
39 CHAIRMAN FLEAGLE: I'm not pressuring
40 you.
41
42 (Laughter)
43
44 DR. FALL: Mr. Chair. I'm referring to
45 Page 61 in my report, demographic characteristics of
46 household studies communities, Ninilchik, the maximum age
47 was 83.
48
49 MR. CASE: Okay. And is there a 2006
50 study, no, and the average age of residence of these

1 people.

2

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

5

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

8

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

16

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

23

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

27

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

32

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

37

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

40

41 MR. CASE: Okay.

42

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

47

48 MR. CASE: Right.

49

50 DR. FALL:for the community of

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

10

11 MR. CASE: Okay.

12

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

18

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

22

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

27

28 MR. CASE: Right.

29

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

32

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

36

37 CHAIRMAN FLEAGLE: Please.

38

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

1 households surveyed used the upper Kenai River.

2

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

11

12 There is substantial evidence for all of
13 this that has ben supported by the RAC.

14

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

25

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

34

35 As to the status of the Kenai National
36 Wildlife Refuge, I have never understood what this
37 argument was about so maybe I'm just missing the point.
38 But it doesn't really matter for customary and
39 traditional use determination purposes that the purpose
40 of the Kenai National Wildlife Refuge does not include
41 subsistence. They are public lands and they are clearly
42 within the scope of Title VIII of ANILCA. And so that
43 may be a fishery proposal question when it comes to it
44 but of course a lot of this -- a good part of this land
45 is also in the Chugach National Forest, which doesn't
46 have that particular limitation. But in any event, my
47 point is that the status of the Kenai National Wildlife
48 Refuge is totally irrelevant to a customary and
49 traditional use determination. It is public land, and if
50 there is customary and traditional use of it, that's it.

1 There may be questions as to how you implement a fishery
2 proposal there that may have some bearing on those other
3 concerns.

4

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

13

14 Thank you, very much.

15

16 CHAIRMAN FLEAGLE: Thank you, Mr. Case.

17 Questions.

18

19 MR. CASE: I yield my time to Sky.

20

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

22 to.....

23

24 CHAIRMAN FLEAGLE: John.

25

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

35

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

41

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

47

48 DR. WOLFE: Yes, thank you, can you hear
49 me.

50

1 MR. KLEIN: Yes, loud and clear.

2

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

5

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

13

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

27

28 Now, my understanding is that the four
29 percent, 28 percent comes from the same group of people,
30 so I would presume that if you record the one, the four
31 percent correct, you've got to give equal weight to the
32 28 percent, it's just that they're measuring different
33 timeframes. The timeframe for the 28 percent was the
34 percentage of the Ninilchik residents -- or the
35 households that have used it over their lifetime, the
36 four percent is just the single slice in time of how many
37 people were up there on that particular year.

38

39 And I guess, you know, if you wanted to
40 find out, you know, what the pattern is about why people
41 -- certain people go up there and in the numbers that
42 they do, that'd be the kind of information you'd want to
43 ask people from Ninilchik about because I looked at the
44 State surveys and their reports, I don't see any
45 explanation for those kinds of things. So I mean four
46 percent does not look like a big number but the 28
47 percent over time, the cumulative use by Ninilchik is a
48 substantial number. And like I said, the Board generally
49 uses for their measure of long-term use, those kind of
50 numbers rather than any single lifetime number.

1 Does that clarify. I didn't have a chance
2 to listen to what Jim Fall had to say but that would be
3 my general comment about it.

4
5 CHAIRMAN FLEAGLE: Okay, thank you. Next
6 question's from Niles.

7
8 MR. CESAR: Yes, Dr. Wolfe, Niles Cesar
9 again. It had been suggested that possibly that 28
10 percent number was as a result of inflated numbers, which
11 sometimes happen, and I wonder if you're familiar with
12 any studies relative to the Kenai and to what's going on
13 down there that you found that people were inflating
14 numbers?

15
16 DR. WOLFE: Well, I don't quite
17 understand how that would happen. I mean people who are
18 being surveyed individually, a household is being
19 surveyed one on one, face to face and being asked about
20 that household's use, so it's fairly simple question, you
21 know, have you used that lake up there or that river
22 system and it's part of a survey with a whole bunch of
23 other questions like that, so I mean it's either yes or
24 no. So there'd be no way really to inflate that unless
25 somehow everybody got together before the survey and knew
26 they were going to be asked that and decided they were
27 going to respond incorrectly, so I mean I don't see how
28 inflation would come into this.

29
30 And I think one thing that would lend, I
31 think support, for that 28 percent as being a valid
32 number is the fact that, you know, a second survey done
33 by the tribe, you know, of their own members, again, a
34 subset of the Ninilchik area, but they came out with 32
35 percent and that's very close to the 28 percent, so you
36 have two different surveys on two separate years coming
37 up with the same approximate estimate of the percentage
38 of households who are being surveyed who say they have
39 used this area. So I think that is sort of a test
40 reliability that tends to support that number. And maybe
41 it's -- you know, it's clear to me -- it seems clear that
42 not everybody's up there at the same time on any given
43 year, but over time, you add up everybody who goes up
44 there and brings fish back to the community, that it's
45 these higher numbers, it's a substantial portion of the
46 households at Ninilchik.

47
48 CHAIRMAN FLEAGLE: David Bedford.

49
50 MR. BEDFORD: Yeah, thank you, Mr.

1 Chairman. Dr. Wolfe, the 28 percent figures describes
2 those figures who have responded that they've used the
3 area at least once in their lifetime; is that correct?

4

5 DR. WOLFE: That's correct.

6

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

11

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

16

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

19

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

31

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

49

50 MR. BEDFORD: Yeah, thank you. One other

1 question, now the survey that you did, I'm trying to
2 remember the number, it was 32 percent, I believe that
3 had used the area according to the survey that you did;
4 is that correct?

5
6 DR. WOLFE: Yeah, let me clarify I didn't
7 do that survey, that survey was done by the Ninilchik
8 Tribal Council and it was done by that group. I was
9 asked to look at that information, as well as all the
10 information collected by the State and other sources and
11 to interpret it. So that was -- my understanding is that
12 number comes from a survey that was done of 25 households
13 living in the Ninilchik area who were members of the
14 Ninilchik Tribe and it was done to represent that segment
15 of the Ninilchik community, that is the long-term tribal
16 members, and they did mapping very similar to -- using
17 methodologies similar to what the State uses and they
18 asked where people went and it was based on that, that
19 they found that 32 percent of that group used the upper
20 Kenai area.

21
22 MR. BEDFORD: And did that have anything
23 similar to what Dr. Fall's study had in terms of
24 frequency of use?

25
26 DR. WOLFE: No, they didn't ask about
27 frequency of use to my knowledge.

28
29 MR. BEDFORD: And then did that give
30 insight into what the use patterns were 50 years ago?

31
32 DR. WOLFE: No, they didn't do that. I
33 mean there are ways of doing that. We've done that on
34 some studies in Southeast where, for instance, in Hoonah
35 we did this. We asked people did they use Glacier Bay on
36 what years, so we had a timeline, and I mean it's very
37 interesting data that you can capture that way. What we
38 found, for instance using that is that you can get an
39 estimate of the number of households using a particular
40 area over time, a percentage of households each year.
41 And for instance, for Glacier Bay, just as an example, we
42 found that there was a fairly high percentage of
43 households who went to Glacier Bay for seal hunting out
44 of Hoonah and then when there were regulations passed to
45 prohibit that, that that number, because of the Parks
46 there, that that number began to fall and fall and fall
47 and fall and so you can track that use. It sounds like
48 none of these surveys, either by the State or by the
49 tribe has used that kind of question in order to document
50 the percentage of households over time, use of an area.

1 So we just don't have that information in that form.

2

3 MR. BEDFORD: Thank you.

4

5 CHAIRMAN FLEAGLE: Gary.

6

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

21

22 DR. WOLFE: Yeah, I understand that but I
23 guess what I would want to do is I'd ask the State to see
24 if those four percent using it on one year were the same
25 four percent of households using it on another year and
26 the same four percent using it on a third year. Because
27 somehow you've got to reconcile those numbers with the
28 fairly substantial numbers that are being generated by
29 asking this other question, you know, in your lifetime.
30 I mean the sense that I get and this is just my opinion,
31 is that the upper Kenai waters is just one of the areas
32 that historically has been used by residents from the
33 Ninilchik area. They go up there on certain years -- I
34 mean house -- a particular household will go up there on
35 certain years for whatever reason, maybe they missed the
36 early run so they're going up there to catch the late run
37 or maybe they were working during the times that fish
38 were available in their area so they went up there to get
39 fish, you know, to make up the difference. You know
40 maybe they wanted a certain kind of fish that wasn't
41 available in their area so the households are going up
42 there, it's one of the areas that they fish in. And so
43 over time what you have is that about, you know, 32
44 percent of the tribal households have taken fish from up
45 there over time and if you consider tribal and non-Native
46 households it's something like, you know, 28 percent have
47 been going up there so it's one of the areas that people
48 are using and that's probably the pattern that people are
49 going up there and using it, and that's not an unusual
50 pattern, I think, for other rural villages or communities

1 that I've done research in. I mean there are places where
2 people go and take resources out of particular bays or,
3 you know, stream systems, you know, on particular years
4 but not other years and yet people still consider that to
5 be one of their options -- optional fishing areas and
6 it's part of their pattern of use.

7

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

12

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

22

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

37

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

43

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

46

47 MS. GOTTLIEB: Mr. Chair.

48

49 CHAIRMAN FLEAGLE: Judy.

50

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

5
6 When we opened up this discussion, Pete,
7 you mentioned that Staff and others had prepared kind of
8 responses to some of the comments that had come in, the
9 State comments, I hope that is then part of our written
10 record. I also wanted to remind everybody at our January
11 meeting we also had extensive testimony on historical and
12 contemporary uses of the area so that is also part of our
13 record. Even as far back as our transcripts from 2001 we
14 were talking about this issue, too.

15
16 So I just want to make sure that's on our
17 record before we start our deliberations.

18
19 CHAIRMAN FLEAGLE: Thank you. Niles.

20
21 MR. CESAR: Yes, Mr. Chairman, and it's
22 about the use of this meeting place. Has it been
23 clarified that we can have it for this evening.

24
25 MR. PROBASCO: 7:00.

26
27 CHAIRMAN FLEAGLE: We have it until 7:00
28 and then we'll have to break and resume tomorrow morning.

29
30 MR. CESAR: And tomorrow morning, what
31 time are we looking at starting.

32
33 CHAIRMAN FLEAGLE: It's available at
34 8:00.

35
36 MR. CESAR: And I guess my point is, why
37 beat this dead brain up for another hour if we can come
38 back tomorrow morning at 8:00 and try to deal with this
39 issue. It doesn't seem to me like it's a good use of my
40 dinnertime to sit here for another hour.

41
42 MR. PROBASCO: Mr. Chairman.

43
44 CHAIRMAN FLEAGLE: Pete.

45
46 MR. PROBASCO: Staff just said that
47 because of the security for this building if we do start
48 tomorrow we should do it at 8:15, that will give the
49 opportunity for the guard to open the doors and do all
50 that stuff.

1 Mr. Chair.
2
3 CHAIRMAN FLEAGLE: Well, that's
4 insignificant to the discussion but thank you.
5
6 (Laughter)
7
8 CHAIRMAN FLEAGLE: Anybody want to jump
9 on the.....
10
11 MR. EDWARDS: If that was a motion, I
12 second it.
13
14 (Laughter)
15
16 MS. GOTTLIEB: Can we leave stuff here?
17
18 CHAIRMAN FLEAGLE: Can we leave stuff
19 here?
20
21 MR. PROBASCO: Yes.
22
23 CHAIRMAN FLEAGLE: All right, we're
24 recessed until 8:30.
25
26 (Off record)
27
28 (PROCEEDINGS TO BE CONTINUED)

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C E R T I F I C A T E

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

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

THAT the foregoing pages numbered 2 through 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