

1 SOUTHCENTRAL FEDERAL SUBSISTENCE  
2 REGIONAL ADVISORY COUNCIL MEETING

3  
4 PUBLIC MEETING

5  
6 VOLUME I

7  
8 Tazlina, Alaska  
9 October 7, 2008  
10 8:30 o'clock a.m.

11  
12  
13 COUNCIL MEMBERS PRESENT:

14  
15 Ralph Lohse, Chairman  
16 Doug Blossom  
17 Greg Encelewski  
18 Robert Henrichs  
19 Chuck Lamb  
20 James Showalter  
21 Gloria Stickwan  
22 Willard Stockwell  
23 Dean Wilson  
24  
25  
26 Regional Council Coordinator, Maureen Clark (Acting)

27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42

43 Recorded and transcribed by:  
44  
45 Computer Matrix Court Reporters, LLC  
46 700 W. 2nd Avenue  
47 Anchorage, AK 99501  
48 907-243-0668  
49 jpk@gci.net/sahile@gci.net

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50

P R O C E E D I N G S

(Tazlina, Alaska - 10/7/2008)

(On record)

CHAIRMAN LOHSE: Hello everybody. I'd like to call this fall 2008 Fisheries meeting for the Southcentral Alaska Federal Subsistence Regional Advisory Council into session. And I'd like to welcome all of you, thank you all for being here. We'll do our best to be done by Saturday evening so you can go home for Sunday.

(Laughter)

CHAIRMAN LOHSE: And we'll try to get down to business, and I'm sorry that we didn't get started right on time but everybody seemed to be having a good time visiting and enjoying the nice summer weather outside.

(Laughter)

CHAIRMAN LOHSE: So with that we'd like to have a roll call and establish a quorum if we could.

MS. CLARK: Thank you, Mr. Chair.

Mr. Henrichs.

(No comments)

MS. CLARK: Mr. Stockwell.

MR. STOCKWELL: Here.

MS. CLARK: Mr. Blossom.

MR. BLOSSOM: Here.

MS. CLARK: Mr. Encelewski.

MR. ENCELEWSKI: Here.

MS. CLARK: Ms. Waggoner.

(No comments)

MS. CLARK: Mr. Gease.

1 (No comments)  
2  
3 MS. CLARK: Mr. Lamb.  
4  
5 MR. LAMB: Here.  
6  
7 MS. CLARK: Ms. Stickwan.  
8  
9 MS. STICKWAN: Here.  
10  
11 MS. CLARK: Mr. Wilson.  
12  
13 MR. WILSON: Here.  
14  
15 MS. CLARK: Mr. Showalter.  
16  
17 MR. SHOWALTER: Here.  
18  
19 MS. CLARK: Mr. Lohse.  
20  
21 CHAIRMAN LOHSE: Here.  
22  
23 MS. CLARK: Mr. Carpenter.  
24  
25 (No comments)  
26  
27 MS. CLARK: And Mr. Elvsaas.  
28  
29 (No comments)  
30  
31 MS. CLARK: Mr. Chairman. We received  
32 an email from Ricky Gease stating that he had to be out  
33 of state for a legal proceedings and could not make it.  
34 Mr. Elvsaas is away for medical reasons. And Tricia  
35 Waggoner will be late. And Tom Carpenter, his wife  
36 just had a baby so he could not be here.  
37  
38 CHAIRMAN LOHSE: Okay. Do we have a  
39 quorum?  
40  
41 MS. CLARK: We do.  
42  
43 CHAIRMAN LOHSE: Okay. Thank you. We  
44 have a quorum so we can proceed with the meeting.  
45 Again, like I said, I'd like to welcome all of you for  
46 being here. I'd like to welcome all the rest of the  
47 Council members for making the effort to be here right  
48 now.  
49  
50 And, with that, I'd like to go around

1 the room and just have everybody introduce themselves  
2 to each other. And we'll start with Council and, Bill,  
3 do you want to start and we'll just come around the  
4 table this way.

5  
6 MR. STOCKWELL: Sure. My name's Bill  
7 Stockwell and I'm from Cooper Landing.

8  
9 MR. LAMB: I'm Chuck Lamb. I'm from  
10 Hiline Lake, the Skwentna area.

11  
12 MR. SHOWALTER: James Showalter,  
13 Sterling.

14  
15 MR. WILSON: Dean Wilson, Jr., from  
16 Kenny Lake.

17  
18 MS. STICKWAN: Gloria Stickwan,  
19 Tazlina.

20  
21 CHAIRMAN LOHSE: Ralph Lohse, Long Lake  
22 and Cordova.

23  
24 MR. BLOSSOM: Doug Blossom, Clam Gulch.

25  
26 MR. ENCELEWSKI: I'm Greg Encelewski  
27 and I'm from Ninilchik.

28  
29 MS. CLARK: Maureen Clark with the  
30 Office of Subsistence Management.

31  
32 (Pause)

33  
34 CHAIRMAN LOHSE: Tina.

35  
36 REPORTER: My name is Tina and I'm the  
37 court reporter for the Council.

38  
39 CHAIRMAN LOHSE: Okay. Now, let's just  
40 start -- let's go along the wall first and then we'll  
41 just start in the front row and go on back.

42  
43 MR. NELSON: Dave Nelson with the  
44 National Park Service out of Anchorage.

45  
46 MR. PAWLUK: Jason Pawluk, Fish and  
47 Game, Soldotna.

48  
49 MR. KESSLER: Good morning. Steve  
50 Kessler with the Forest Service, Anchorage.

1 MR. JOYCE: Good morning. Tim Joyce  
2 with the Forest Service in Cordova.  
3  
4 MR. I. ENCELEWSKI: Ivan Encelewski  
5 from Ninilchik.  
6  
7 MR. WILLIAMS: Darrel Williams from  
8 Ninilchik.  
9  
10 MS. H. ARMSTRONG: Helen Armstrong,  
11 anthropologist from the Fish and Wildlife Service  
12 Subsistence Office.  
13  
14 MR. BRYDEN: Jeff Bryden, US Forest  
15 Service law enforcement subsistence.  
16  
17 MR. BARTO: Rob Barto, Kenai Refuge.  
18  
19 MR. MCCORMICK: Scott McCormick, law  
20 enforcement.  
21  
22 MS. LOHSE: Lonita Lohse, Chitina  
23 Native Corporation.  
24  
25 MR. LOHSE: Robert Lohse, Lower  
26 Tonsina.  
27  
28 MR. BERG: Good morning. Jerry Berg  
29 with Fish and Wildlife Service out of Anchorage.  
30  
31 MR. STALLER: Doug Staller, Deputy  
32 Manager, Kenai Refuge.  
33  
34 MR. PALMER: Doug Palmer, Fish and  
35 Wildlife Service in Kenai.  
36  
37 MR. VEACH: Eric Veach, National Park  
38 Service here at Copper Center.  
39  
40 MR. WEST: Robin West, Kenai National  
41 Wildlife Refuge.  
42  
43 MR. CRAWFORD: Mike Crawford,  
44 Kenai/Soldotna AC.  
45  
46 MS. HENDRICKSON: Nancy Hendrickson,  
47 Chair for the Federal Subsistence Liaison Team for the  
48 State.  
49  
50 MR. PAPPAS: George Pappas, Fish and

1 Game, Anchorage.

2

3 MR. van den BROEK: Keith van den  
4 Broek, Native Village of Eyak.

5

6 MS. PETRIVELLI: Pat Petrivelli, Bureau  
7 of Indian Affairs, Subsistence Branch.

8

9 MR. FRIED: Steve Fried, Office of  
10 Subsistence Management in Anchorage.

11

12 MS. JENSEN: Meg Jensen, Wrangell-St.  
13 Elias National Park and Preserve.

14

15 MS. CELLARIUS: Barbara Cellarius, St.  
16 Elias National Park and Preserve subsistence  
17 coordinator here in Copper Center.

18

19 MR. PROBASCO: Good morning, Council.  
20 I'm Pete Probasco. I'm the ARD for the Office of  
21 Subsistence Management.

22

23 CHAIRMAN LOHSE: Thank you. I'd like  
24 to ask Barbara if she could make an announcement for  
25 what they've got planned for us this evening, if  
26 anybody would like to take part in it. So, Barbara,  
27 could you come and give us a little overview so people  
28 can put that in their pocket and digest it for the day.

29

30 MS. CELLARIUS: Thank you, Mr. Chair.  
31 Since this is the first time the Council's had a  
32 regular meeting out here since we've been in our new  
33 visitor center complex just down the road a little bit  
34 in Copper Center, we wanted to invite everyone, Council  
35 members and anybody else who's here for the meeting, to  
36 come over this evening after the meeting. We'll be  
37 ready at 4:30 so whenever, you know, you finish up,  
38 we've got two movies that we can show in our theater;  
39 one is our Park movie and then the other is a film that  
40 the Park Service did as part of a cooperative project  
41 with AHTNA Heritage Foundation, it's about potlatches.  
42 And then our visitor's center will be open so you can  
43 take a look at the facility and we also have some  
44 snacks, cookies, some salmon spread, cheese and  
45 crackers, that kind of thing. And we're just about  
46 five miles south on the main road here, and if anybody  
47 has questions about how to find us, you can ask me, but  
48 there's a brown sign, it's a pretty big sign pointing  
49 towards our visitor center complex.

50

1 CHAIRMAN LOHSE: Thank you, Barbara.  
2 Anybody have any questions for Barbara.  
3  
4 (No comments)  
5  
6 CHAIRMAN LOHSE: You got off easy.  
7 Okay, does anybody else have anything they'd like to  
8 announce or anything they'd like to say at this point  
9 in time.  
10  
11 (No comments)  
12  
13 CHAIRMAN LOHSE: With that we're going  
14 to go on to the review and the adoption of the agenda.  
15 A motion to adopt the agenda is in order from a Council  
16 member.  
17  
18 MR. BLOSSOM: Move to adopt.  
19  
20 MR. ENCELEWSKI: Second.  
21  
22 CHAIRMAN LOHSE: It's been moved and  
23 seconded to adopt the agenda. Has everybody taken a  
24 look at it, anybody have any additions, corrections or  
25 changes they'd like to make.  
26  
27 (No comments)  
28  
29 CHAIRMAN LOHSE: I haven't had any  
30 requests for any change in order or anything like that,  
31 so if the agenda is okay to everybody the question is  
32 in order.  
33  
34 MR. STOCKWELL: Question.  
35  
36 CHAIRMAN LOHSE: Question's been  
37 called. All in favor of adopting the agenda as it's  
38 written, signify by saying aye.  
39  
40 IN UNISON: Aye.  
41  
42 CHAIRMAN LOHSE: All opposed, signify  
43 by saying nay.  
44  
45 (No opposing votes)  
46  
47 CHAIRMAN LOHSE: Motion carries. Okay,  
48 now, let's look at our minutes, it's on Page 5, the  
49 minutes from the last meeting. A motion to adopt the  
50 minutes is in order.

1 MS. STICKWAN: I have a question.  
2  
3 MR. BLOSSOM: Move to approve.  
4  
5 CHAIRMAN LOHSE: Wait a second, Gloria,  
6 is it on the minutes?  
7  
8 MS. STICKWAN: Yes, I think so. I have  
9 a question.....  
10  
11 REPORTER: Gloria. Gloria, your  
12 microphone.  
13  
14 MS. STICKWAN: I'm trying to find it.  
15  
16 CHAIRMAN LOHSE: While you're looking  
17 for it we'll make a motion to adopt them and then we  
18 can discuss them.  
19  
20 MS. STICKWAN: Okay.  
21  
22 CHAIRMAN LOHSE: Okay, a motion to  
23 adopt the minutes is in order, do I hear one.  
24  
25 MR. SHOWALTER: So moved.  
26  
27 CHAIRMAN LOHSE: It's been moved, do I  
28 have a second.  
29  
30 MR. WILSON: Second.  
31  
32 CHAIRMAN LOHSE: It's been moved and  
33 seconded to adopt the minutes. Now, discussion,  
34 questions, changes. Gloria, it was on the minutes, if  
35 you had one that you saw that you thought needed  
36 changed.  
37  
38 MS. STICKWAN: I can;t find it.  
39  
40 REPORTER: Gloria.  
41  
42 MS. STICKWAN: I can't find it.  
43  
44 CHAIRMAN LOHSE: You can't find it?  
45  
46 MS. STICKWAN: No.  
47  
48 CHAIRMAN LOHSE: Anybody else.  
49  
50 (Pause)

1 CHAIRMAN LOHSE: Let's give Gloria  
2 another couple minutes and see if she can find what she  
3 was thinking of.

4  
5 (Pause)

6  
7 MS. STICKWAN: It's okay.

8  
9 CHAIRMAN LOHSE: It's okay. Okay, no  
10 changes, no additions, no corrections by anybody.

11  
12 (No comments)

13  
14 CHAIRMAN LOHSE: Then the question's in  
15 order.

16  
17 MR. ENCELEWSKI: Question.

18  
19 CHAIRMAN LOHSE: Question's been  
20 called. All in favor of adopting the minutes of the,  
21 and I should say this, so I'll have to go back and look  
22 at it real quick, since I shut the page down, of the  
23 March 12th through the 15th, 2008 meeting, signify by  
24 saying aye.

25  
26 IN UNISON: Aye.

27  
28 CHAIRMAN LOHSE: All opposed, signify  
29 by saying nay.

30  
31 (No opposing votes)

32  
33 CHAIRMAN LOHSE: Motion carries. With  
34 that we go on to the Chair's report.

35  
36 And the Chair really doesn't have much  
37 to report. You've all seen the results of what the  
38 Board has done with what we presented to them and the  
39 results of some of the requests for reconsideration.  
40 If there's any questions anybody has for me, I'd be  
41 happy to give you as much information as I have on  
42 anything. But I don't really have anything  
43 specifically to report at this point in time.

44  
45 (No comments)

46  
47 CHAIRMAN LOHSE: No questions.

48  
49 MS. STICKWAN: Did they ever decide  
50 what to do about.....

1                   REPORTER:  Gloria.  Gloria.  
2  
3                   MS. STICKWAN:  .....the working group  
4 they were supposed to form?  
5  
6                   CHAIRMAN LOHSE:  We haven't decided  
7 what to do on the working group and that's something we  
8 need to put on our agenda, at least I haven't heard  
9 anything specifically on that as far as what's going to  
10 happen with that, and that's something that -- I wish  
11 Donald was here on that one but maybe Maureen's got  
12 anything -- do you have.....  
13  
14                   MS. CLARK:  I'm sorry I don't.  
15  
16                   CHAIRMAN LOHSE:  You don't have  
17 anything on that at all?  
18  
19                   MS. CLARK:  I don't, sorry.  
20  
21                   CHAIRMAN LOHSE:  I'll have to get  
22 together with Donald on that.  I'm going to put that on  
23 my -- because I can remember that now, that that was  
24 supposed to be taken care of.  
25  
26                   And the annual report reply which  
27 you'll find on Page 38, that's the Federal answer to  
28 the things that we presented them, and you'll find that  
29 on Page 38, and if you all turn to that.  Most of the  
30 answers recognize our concern, to a large extent,  
31 funding is a big problem.  And part of it is also some  
32 of the areas we had concern in, like the sheep and  
33 moose population, the predation on it, they haven't --  
34 they have a management policy which basically, and I'll  
35 use this word fairly loosely, doesn't do any  
36 management, it allows things to go the way they go.  So  
37 it's their policy not to step in and manage predators  
38 for the sheep and moose population.  
39  
40                   The customary and traditional use  
41 policy, there hasn't been any clarification on that  
42 that I can see and it's going to be revisited in the  
43 future.  I've had a lot of comments on that from other  
44 people, that's still our hottest issue, you know,  
45 there's still a lot of concern about customary and  
46 traditional use in both directions.  
47  
48                   And other than that I didn't see  
49 anything in here that was earth shaking or needed to be  
50 addressed.

1 Maureen.

2

3 MS. CLARK: Mr. Chairman. I think Pete  
4 can address the customary and traditional use.

5

6 CHAIRMAN LOHSE: Okay, Pete.

7

8 MR. PROBASCO: Good morning, Mr. Chair.  
9 As far as the C&T policy, what has been putting this on  
10 hold, of course, has been the Chistochina case, which  
11 has recently been resolved. And for all intents and  
12 purposes it has been resolved in our favor, the Federal  
13 side favor, in that, the Court upheld how C&T findings  
14 the Board has done in the past is acceptable to the  
15 courts and is the way we will continue to do business.

16

17 Now, where we go from here with the C&T  
18 policy, we will be meeting with the Board in executive  
19 session on November 3rd to discuss the C&T policy  
20 because of the Chistochina case, and my anticipation  
21 from that work session, based on the Chistochina  
22 findings, is probably taking the C&T policy that you  
23 all saw about a year ago, taking that off the shelf,  
24 dusting it off, making appropriate changes as this  
25 Chistochina case directed us, and then taking it  
26 forward.

27

28 Mr. Chair.

29

30 CHAIRMAN LOHSE: Thank you, Pete.  
31 Yeah, when I read through that Chistochina case they  
32 ended up supporting what we did, but they questioned  
33 certain areas of how we did it. And are those going to  
34 then be -- are those kinds of questions going to be  
35 addressed in our customary and traditional policy, in  
36 the final policy that will come out from the Board  
37 then?

38

39 MR. PROBASCO: Mr. Chair, that's  
40 correct. The main point that the court questioned and  
41 didn't agree with the Federal side, is taking the broad  
42 expanse of a C&T. So in other words, if your community  
43 were found to have C&T, for example, let's say Cordova,  
44 the Federal side argued you would qualify for C&T  
45 throughout the state, and the court found that that was  
46 too a broad of an interpretation. That's the intent of  
47 the legislation that supports a C&T finding, narrowed  
48 it to where you traditionally utilized that resource.

49

50 Mr. Chair.

1 CHAIRMAN LOHSE: Thank you, Pete. But  
2 didn't it also do some things on what was classed as a  
3 resource or how broad we could spread it, you know, to  
4 a similar resource or a similar type of resource?

5  
6 MR. PROBASCO: That's correct, Mr.  
7 Chair. The C&T finding is, if you will, resource  
8 specific, and our C&T policy, depending upon the  
9 Board's direction, would capture that as the court had  
10 found.

11  
12 CHAIRMAN LOHSE: Any other questions  
13 for Pete on this subject.

14  
15 MS. STICKWAN: So that means you  
16 couldn't say fish, you'd have to say specifically what  
17 fish?

18  
19 REPORTER: Gloria.

20  
21 MS. STICKWAN: You'd have to say what  
22 fish you were talking about, you can just say fish from  
23 now on, is that what they mean by specific?

24  
25 CHAIRMAN LOHSE: That's kind of a good  
26 question, Pete. That's kind of what I got out of it,  
27 which, we, in the past, have recognized the -- I'll say  
28 the nature of subsistence is you use what's there, but  
29 from what I looked at it, it's almost like you'd have  
30 to say what specific species of fish, you couldn't just  
31 say all fish or all freshwater fish or something like  
32 that.

33  
34 MR. PROBASCO: That's correct, Mr.  
35 Chair. When you get into these allocation -- the arena  
36 of allocation, when we find a C&T finding for a  
37 species, i.e., salmon, you can't apply that to pike if  
38 you will.

39  
40 Mr. Chair.

41  
42 CHAIRMAN LOHSE: Thank you, Pete. Any  
43 other questions. Bill.

44  
45 MR. STOCKWELL: Yeah. I read through  
46 the case and I couldn't really determine what this will  
47 do for how specific areas have to be?

48  
49 CHAIRMAN LOHSE: Yeah, that's.....

50

1 MR. PROBASCO: Mr. Chair. Mr.  
2 Stockwell. That's where the Board comes in. You have  
3 a proposal to find a C&T for a species for an area and  
4 so then you go through the process of developing that  
5 C&T and trying to define the borders and the level of  
6 use, and that's where your Board comes in, and it's  
7 based on those findings in the analysis, that the Board  
8 will make its decision on.

9  
10 CHAIRMAN LOHSE: I have a question on  
11 that, Pete, because that was one of the questions that  
12 I had, too.

13  
14 And on one hand they were saying you  
15 needed to be -- show specific use areas and then on the  
16 other hand, the same court was saying that for  
17 reasonable administration purposes you could use areas  
18 that were broader than those specific areas because  
19 they were areas that were already set out for  
20 management purposes and that that was a legitimate way  
21 to go.

22  
23 MR., PROBASCO: That's correct, Mr.  
24 Chair. And that's the whole premise of the Chistochina  
25 case, in that the data made the decision for Unit 12, I  
26 believe, that's the correct subunit, the data and the  
27 findings were in areas smaller than Unit 12 as a whole,  
28 but since the population of moose management in that  
29 area is for Unit 12, the court upheld that that was  
30 reasonable for the Board to make the interpretation  
31 that broad. Where the Court disagreed with the Federal  
32 side was taking that and making it much broader for the  
33 entire state.

34  
35 CHAIRMAN LOHSE: Okay. So the  
36 disagreement wasn't over the management areas, it was  
37 over that if you would have broadened it to where  
38 you were putting that species anywhere in the state  
39 into it?

40  
41 MR. PROBASCO: That's correct, Mr.  
42 Chair.

43  
44 CHAIRMAN LOHSE: Okay, thank you.

45  
46 MR. STOCKWELL: Thank you.

47  
48 CHAIRMAN LOHSE: Any other questions.

49  
50 (No comments)

1 CHAIRMAN LOHSE: You can see why we're  
2 asking these questions, Pete, because with some of the  
3 things that are on our agenda in front of us, that  
4 these are very -- these are very critical, very --  
5 they're going to have to enter into our discussion.

6  
7 MR. PROBASCO: Most definitely, Mr.  
8 Chair. But keep in mind that your review of the data  
9 is use and what reasonable you assume the area  
10 encompassed and then as far as getting into the minute  
11 details, you'd rely on the analysis and then ultimately  
12 it's the Board's final decision.

13  
14 CHAIRMAN LOHSE: Yeah.

15  
16 MR. PROBASCO: Keep in mind on C&T  
17 deference is not given to the Councils, it's the  
18 Board's decision.

19  
20 MS. STICKWAN: I have a question.

21  
22 CHAIRMAN LOHSE: Gloria.

23  
24 MS. STICKWAN: So the policies have to  
25 be written and then go through the public process and  
26 then that will be the end of the court, is that right  
27 -- is the court going to look at the policies?

28  
29 MR. PROBASCO: Mr. Chair. Ms.  
30 Stickwan. The police that the court upheld, you don't  
31 have a policy per se passed by the Board, but the court  
32 upheld how the Board has been doing business. So  
33 everything we've been exposed to on how we develop C&T  
34 findings, the court supported. Now, if you recall a  
35 little over a year ago, the Board made an attempt at a  
36 C&T policy that did just that, captured how we did  
37 business. All the Councils have reviewed that and  
38 commented on that. Since the court upheld how we've  
39 done business, I'm just guessing right now, but I think  
40 the Board would take that off the shelf, dust it off,  
41 and go forward with that type of policy.

42  
43 Mr. Chair.

44  
45 It would not go back to the courts.

46  
47 CHAIRMAN LOHSE: And it does not need  
48 to go back -- since it's already had public review, it  
49 does not need to go back for public review or anything,  
50 either, does it?

1 MR. PROBASCO: That's correct. Unless  
2 the Board felt that any changes made in that, based on  
3 the Chistochina case, were significant enough where  
4 they would want the Councils to look at it, then they  
5 would do that. But if they just take what you've  
6 already reviewed, your comments, they would not need to  
7 go back to the Councils.

8  
9 CHAIRMAN LOHSE: Thank you, Pete. Any  
10 other questions.

11  
12 (No comments)

13  
14 CHAIRMAN LOHSE: Okay, thank you. Do  
15 any of the Council members have anything that they  
16 would like to report at this time or bring to the  
17 attention of the Council or ask questions from some of  
18 the people that we have here for information and that.

19  
20 (No comments)

21  
22 CHAIRMAN LOHSE: Boy, we've got a quiet  
23 Council this morning. Go ahead. Doug.

24  
25 MR. BLOSSOM: Mr. Chair. I guess I'd  
26 like maybe the Kenai Refuge Manager to step up for a  
27 question or two on our next meeting.

28  
29 CHAIRMAN LOHSE: Okay. Is the Kenai  
30 Refuge manager willing to do that?

31  
32 MR. WEST: I'll step up.

33  
34 CHAIRMAN LOHSE: Okay. Doug.

35  
36 MR. BLOSSOM: Chair. Robin, I hear via  
37 the grapevine that the Department is going to pretty  
38 much close the bench behind Tustumena for moose in the  
39 future, have you heard that rumor also?

40  
41 MR. WEST: I'll tell you what I believe  
42 the Department's going to do but I'm not going to speak  
43 for the Department, so I guess we are talking rumors  
44 here and I don't know how much time we want to spend on  
45 it.

46  
47 But my understanding is that for some  
48 time the existing regional biologist has not supported  
49 late moose hunting at all but he inherited it. So, you  
50 know, rut or post-rut hunting, and as this Council is

1 aware, that's been a sticking point for quite some time  
2 on, you know, talking about the late hunt that's been  
3 approved in this process.

4  
5                   What the Board of Game has allowed is  
6 so many permits to be issued but that doesn't mean they  
7 have to be. And so I think this year they were cut in  
8 half, roughly, and I think the hunt in 15A was  
9 eliminated in terms of actually issuing any permits  
10 with the intent of not issuing any sporthunting permits  
11 for late hunting opportunity in the future.

12  
13                   So that's my understanding even though  
14 they're authorized, it's not the intent to issue any  
15 because of the concern of late hunting. So I've heard  
16 that but that's all I can share.

17  
18                   CHAIRMAN LOHSE: Doug.

19  
20                   MR. BLOSSOM: Chair. Robin. I guess I  
21 just want to pass my comments on then so they're on the  
22 record. First of all that's Federal land that they're  
23 doing all this hunting on, and so the State Department  
24 of Fish and Game needs to be aware that Federal  
25 subsistence land -- there's Federal subsistence users  
26 use that land before anyone so if they think they can  
27 cut subsistence users out by lowering the permits, I  
28 think they're wrong. I think can't stop subsistence  
29 just because they're in a fight with them. So I just  
30 want you to be aware that, you know, if they start  
31 closing it down there's still a right to use those  
32 moose for subsistence and the real root of the problem,  
33 they're not addressing, why aren't there moose up there  
34 like there used to be, you know, make them come up with  
35 a plan to restore that moose population and then we can  
36 talk more about it.

37  
38                   So I just wanted to pass those comments  
39 on so they're on record.

40  
41                   Thank you.

42  
43                   CHAIRMAN LOHSE: Thank you, Doug.  
44 Robin.

45  
46                   MR. WEST: Mr. Chair. Mr. Blossom. I  
47 think we're all in agreement that if the State locally,  
48 or statewide board regulations change the sporthunting,  
49 it doesn't automatically affect the Federal subsistence  
50 hunting that's been allowed. That's not to say if the

1 State doesn't have concerns over the moose population  
2 and they're taking action on their end, they're not  
3 going to come and petition this Council and the Board  
4 for changes in the future. But it doesn't  
5 automatically change what's going on, certainly.

6

7 Thank you.

8

9 CHAIRMAN LOHSE: Thank you, Robin.

10 Thank you, Doug. Any other questions.

11

12 (No comments)

13

14 CHAIRMAN LOHSE: Thank you, Robin. Any

15 other Council members have anything they'd -- Bill.

16

17 MR. STOCKWELL: Yes. The people in  
18 Cooper Landing found the dipnetting on the Russian  
19 River successful this summer and I've had several  
20 comments to please tell the Council that they enjoyed  
21 it and don't want it changed, to leave it the way it  
22 is. There's no proposals, I was just passing it on to  
23 put it on the record.

24

25 Thank you.

26

27 CHAIRMAN LOHSE: So, Bill, you feel  
28 like it was success for meeting some of the subsistence  
29 needs in the Cooper Landing area?

30

31 MR. STOCKWELL: Yes, the people that  
32 did use it found it useful and used the resource in  
33 various ways. Some people -- most of the people that I  
34 talked to would go up and harvest a few fish and take  
35 families and so on and so it worked out. There was  
36 some sharing around. I know the seniors got a few fish  
37 out of it, so it was useful for the village.

38

39 CHAIRMAN LOHSE: Can I ask you a  
40 question on that?

41

42 MR. STOCKWELL: Sure.

43

44 CHAIRMAN LOHSE: Because I talked to  
45 Ricky about this a little bit. And do you feel like  
46 more fish were taken or do you feel like it was just  
47 more convenient for the subsistence users to be able to  
48 take them locally at a lower cost and everything else?  
49 Would those fish have been taken anyway, they'd just  
50 have had to work harder to do it or was there quite an

1 increase in the amount of people who made use of the  
2 resource or took more fish?

3

4 MR. STOCKWELL: I think there might  
5 have been a few more people using it than did the year  
6 before. I don't know how many more fish but there's a  
7 report that we'll get here eventually that'll have the  
8 number on it, but the people -- I know local people  
9 found it handy. They could go up after work and get a  
10 few fish. As we brought up before, the two things that  
11 I hear concerns on, pay to go park to have to go up  
12 there because they were in the campground and the  
13 other, of course, there's some of us elderly kind it's  
14 kind of a long walk up there, but there's ways to solve  
15 that, too, that's not a big problem.

16

17 The only other thing is I guess some of  
18 the tourists find it kind of strange when they go up  
19 there to the falls to watch the fish and there's people  
20 up there fishing in a closed area. I think maybe if  
21 the land manager, the Forest Service, put some signage  
22 up there what these people are doing, it might solve a  
23 little bit of that problem. So we'll just pass that  
24 on.

25

26 Thank you.

27

28 CHAIRMAN LOHSE: Thank you, Bill. And  
29 I think that's something that is a pretty good idea in  
30 a lot of situations all over the state where we have a  
31 subsistence fishery or hunt taking place at the same  
32 time that you have recreational hunters or tourists.

33

34 I know I can think of one incident in  
35 Cordova where a bunch of tourists were there in  
36 September viewing a moose and enjoying the sight of  
37 this nice big moose -- bull moose alongside of the road  
38 and one of the locals drove up to them and said, does  
39 anybody here have a permit, and they said no, okay,  
40 bang.

41

42 (Laughter)

43

44 CHAIRMAN LOHSE: And so they got to see  
45 the subsistence moose hunt all the way to the point  
46 where the moose was hauled out. But it's nice, you  
47 know, and -- and they didn't complain about it and they  
48 thought it was pretty neat, but sometimes a little bit  
49 of education in that way goes a long ways. And I think  
50 that's a good idea that you had there Bill.

1 MR. STOCKWELL: Yeah, we had one of  
2 those hunts in Cooper Landing a couple years ago  
3 so.....

4  
5 CHAIRMAN LOHSE: Yeah.

6  
7 (Laughter)

8  
9 CHAIRMAN LOHSE: Any other Council  
10 members got anything they'd like to put on the table or  
11 ask questions on or anything like that.

12  
13 (No comments)

14  
15 CHAIRMAN LOHSE: Hearing none, we'll go  
16 on to administrative business.

17  
18 MS. CLARK: Mr. Chairman. I just have  
19 one item. We received a letter from Board of -- rather  
20 Commissioner Denby Lloyd letting us know that Regional  
21 Advisory members will now have the same amount of time  
22 before the Board to testify as State Advisory Committee  
23 representatives, and that's 15 minutes, so just to let  
24 you know.

25  
26 CHAIRMAN LOHSE: We'll have to write  
27 him a letter in return and thank him for that because I  
28 think that's a good step in the right direction.

29  
30 MS. CLARK: That's all I have.

31  
32 CHAIRMAN LOHSE: That's all, yeah. And  
33 if I remember right you said you haven't got any  
34 information on the working group.

35  
36 MS. CLARK: I don't.

37  
38 CHAIRMAN LOHSE: Okay, I'll have to get  
39 together with Donald on that and find out about that  
40 then.

41  
42 Pete.

43  
44 MR. PROBASCO: Mr. Chair. What working  
45 group -- we have quite a few working groups going so  
46 which one are you referring to -- Ms. Stickwan.

47  
48 MS. STICKWAN: I was referring to the  
49 working group that they were talking about -- the  
50 Federal Subsistence Board about the brown bear.

1 MR. PROBASCO: About bear handicrafts,  
2 is that the one you're.....  
3  
4 MS. STICKWAN: (Nods affirmatively)  
5  
6 MR. PROBASCO: Actually that is a joint  
7 effort with the State as the lead and it's in the works  
8 and that's about as far as it is right now, so that's  
9 where we're at.  
10  
11 CHAIRMAN LOHSE: Okay. So the State is  
12 taking the lead on that but we haven't got any place  
13 yet on it?  
14  
15 MR. PROBASCO: That's correct.  
16  
17 CHAIRMAN LOHSE: Okay. Thank you,  
18 Pete. Okay, public testimony. We have two requests  
19 for public testimony. Anybody that wants to testify  
20 fill out one of these green sheets and give it to  
21 Maureen. With that we'll go into public testimony and  
22 then I think we're going to -- we haven't been going  
23 very long but I think we'll take a little break so  
24 everybody can get rid of their first morning's cup of  
25 coffee and maybe refill another cup.  
26  
27 Ivan Encelewski.  
28  
29 MR. I. ENCELEWSKI: I want to speak to  
30 the proposal.  
31  
32 CHAIRMAN LOHSE: You want to testify on  
33 a specific proposal?  
34  
35 MR. I. ENCELEWSKI: Yeah, I'll wait.  
36  
37 CHAIRMAN LOHSE: Okay, we'll save it  
38 for the proposal. And Darrel.  
39  
40 MR. I. ENCELEWSKI: He does too.  
41  
42 CHAIRMAN LOHSE: Same thing, okay.  
43 We'll save it for specific proposals. Okay, with that  
44 I'm going to go through the way that we over proposals  
45 and then we're going to take a break.  
46  
47 To go over the proposals we'll have an  
48 introduction and an analysis presented  
49 by the Staff;  
50

1 We'll open it for Alaska Department of  
2 Fish and Game comments;  
3  
4 Then for Federal and tribal and State  
5 agency comments that's not specific  
6 Fish and Game;  
7  
8 InterAgency Staff Committee comments,  
9 if the InterAgency Staff has comment;  
10  
11 And Fish and Game Advisory Committee  
12 comments;  
13  
14 We'll read the public -- written public  
15 testimony and I'll also allow public  
16 testimony at that point in time, too;  
17  
18 And then we'll go on to the Regional  
19 Council deliberations, recommendations  
20 and justification.  
21  
22 So with that we're going to take five  
23 minutes, yeah, take a seven minute -- an eight minute  
24 break.  
25  
26 (Off record)  
27  
28 (On record)  
29  
30 CHAIRMAN LOHSE: I'd like to call this  
31 meeting back into session. I've been told to tell  
32 everybody that when you take a break there's a tray  
33 full of sweetbreads there, they're not sitting there  
34 for looks, anybody can help themselves.  
35  
36 Okay, with that we're going to go on to  
37 our first proposal. As you can see we don't have a lot  
38 of proposals for this round. Who's going to be doing  
39 the introduction to 06.  
40  
41 MR. FRIED: Right here.  
42  
43 CHAIRMAN LOHSE: Okay, we're looking at  
44 FP09-06 submitted by the Alaska Department of Fish and  
45 Game.  
46  
47 Steve.  
48  
49 MR. FRIED: Good morning Council  
50 members. I'm Steve Fried. I work as a fisheries

1 biologist at OSM and I'm currently assigned to the  
2 Southcentral region, and I'll try to summarize today  
3 for you, the Staff analysis for regulatory proposal  
4 FP09-06. It was submitted by the Alaska Department of  
5 Fish and Game, and it could be found on Page -- well,  
6 the executive summary's on Page 43 and the Staff  
7 analysis begins on Page 44 in your Council books.

8  
9 This proposal seeks to clarify existing  
10 Federal regulatory language and insure consistency with  
11 State regulations in the Cook Inlet area concerning the  
12 harvest of three fish species, rainbow steelhead trout  
13 that are 20 inches or longer, Arctic grayling and  
14 burbot. The proposal is seeking to insure that rainbow  
15 steelhead trout 20 inches or longer are not  
16 incidentally harvested in the combined Kasilof River  
17 Federal subsistence salmon dipnet and rod and reel  
18 fishery.

19  
20 You can find the existing Federal  
21 regulations that are relevant to the proposals on Pages  
22 44 and 45 in the books. The proposed changes to these  
23 regulations are on Pages 45 and 46 and the existing  
24 State regulations that are relevant to the proposal are  
25 on Page 46 also. There's a map on Page 47 that shows  
26 the extent of Federal public waters for the Kenai River  
27 drainage and there's a map for the Kasilof River  
28 drainage showing Federal waters on Page 48.

29  
30 The customary and traditional use  
31 determinations for the areas covered in the proposal  
32 are as follows: For the Kenai River drainage,  
33 residents of Cooper Landing and Hope have a positive  
34 customary and traditional use determination for all  
35 fish and residents of Ninilchik have a positive  
36 customary and traditional use determination for salmon.  
37 For the Kasilof River drainage, residents of Ninilchik  
38 have positive customary and traditional use  
39 determinations for all fish and for the remainder of  
40 Cook Inlet all Federally-qualified rural residents of  
41 the Cook Inlet area have a positive traditional use  
42 determination use for fish other than salmon, trout,  
43 Dolly Varden, char, grayling and burbot.

44  
45 The Federal Subsistence Board  
46 considered fishery proposals for Cook Inlet in both  
47 2007 and 2008. It adopted regulations to allow for  
48 dipnet salmon fisheries at designated sites in the  
49 Kenai, the Russian and the Kasilof Rivers for rod and  
50 reel salmon and resident species fisheries in the Kenai

1 and Kasilof River drainages. There's also an under the  
2 ice gillnet and jig fishery for resident species in  
3 Tustumena Lake, and a temporary fishwheel fishery for  
4 salmon in the Kasilof River.

5  
6 It did not adopt a proposal, that was  
7 Proposal FP07-10 that would have provided specific  
8 Federal subsistence fishing regulations for the harvest  
9 of steelhead trout, so this means that existing Federal  
10 regulations for this species continue to be the same as  
11 State regulations. And no proposals were submitted in  
12 those years for allowing an open Federal season for  
13 Arctic grayling or burbot in the Cook Inlet area.

14  
15 Steelhead trout occur in the Kasilof  
16 River drainage but they do not occur in the Kenai River  
17 drainage. There's only a limited amount of information  
18 regarding the distribution of steelhead trout  
19 population in the Kasilof River. The Federal Fisheries  
20 Monitoring Program has funded three projects to obtain  
21 information on steelhead movements and abundance in the  
22 Kasilof.

23  
24 Two of these projects are using  
25 radiotelemetry to obtain information on the spawning  
26 and seasonal distribution of steelhead trout in the  
27 Kasilof. And so far what's been found is that most  
28 tagged steelhead remained in Federal public waters  
29 during late fall, winter and spring prior to the  
30 spawning season. And during the spring spawning  
31 migration, there were 36 tagged steelhead trout  
32 detected in Crooked Creek, which is, for the most part,  
33 outside of Federal waters, there were six in Nikolai  
34 Creek, two in Indian Creek and there were three in Cold  
35 Creek.

36  
37 One project is using weirs and  
38 underwater video systems to extend the information we  
39 have on the abundance of steelhead in the Kasilof. For  
40 Crooked Creek we have information from 2005 to 2008 and  
41 spawning population estimates has ranged from about 379  
42 to 877 adults. In Nikolai Creek during these same  
43 years, the spawning population estimates have ranged  
44 from a low of 84, which was actually an incomplete  
45 count up to 588 adults.

46  
47 As I said Federal subsistence fishery  
48 regulations for steelhead trout follow the same --  
49 follow the State fishery regulations in Cook Inlet by  
50 reference and to my knowledge no Federal subsistence

1 steelhead trout harvest have been reported in either  
2 2007 or 2008.

3

4                   Moving on to Arctic grayling, Arctic  
5 grayling do not occur naturally on the Kenai Peninsula  
6 but stocking has occurred during the late 1950s to  
7 1960s and this has resulted in self-sustaining  
8 populations in Crescent Lake, Twin Lakes, Lower fuller  
9 Lake and Grayling Lake.

10

11                   As for burbot, burbot occur in both  
12 Skilak and Kenai Lakes.

13

14                   There are no Federal subsistence  
15 fisheries for Arctic grayling or burbot in Cook Inlet.

16

17                   If adopted, this proposal would mostly  
18 duplicate existing Federal regulations and really  
19 they'd have no effect on Federal subsistence fisheries  
20 or the fish populations. The only requested  
21 modification is for the incidental harvest of rainbow  
22 steelhead trout in the Kasilof River salmon dipnet  
23 fishery and that would change what we have in existing  
24 regulations.

25

26                   The existing regulations allow harvest  
27 of up to 200 rainbow steelhead trout from June 16  
28 through August 15th and they prohibit retention of all  
29 rainbow steelhead trout beginning on August 16th in  
30 that fishery.

31

32                   Adopting size restrictions on harvest  
33 made prior to August 16th would likely have no effect  
34 on either the fishery or the resource because steelhead  
35 trout are generally not in Federal public waters prior  
36 to August 16th.

37

38                   I guess it's important that the Council  
39 should note that the proponent actually also no longer  
40 think's it's necessary to adopt size restrictions  
41 because the information from the Monitoring Program  
42 Projects I mentioned indicate that steelhead trout  
43 spawning population in the Kasilof River drainage is  
44 somewhat more abundant and more widely distributed than  
45 was previously documented, and there's some comments  
46 from the State Department of Fish and Game on Page 55.

47

48                   The preliminary OSM recommendation is  
49 to oppose this proposal for the following reasons:

50

1                   None of the proposed modifications to  
2 existing Federal regulatory language appear to be  
3 needed since all but one of the proposed modifications  
4 are already contained within existing Federal  
5 regulations. In other words, Federal subsistence  
6 fishery regulations already apply to Federal public  
7 waters, the annual limit for rainbow trout 20 inches or  
8 longer, it's two fish for Kenai Peninsula waters, no  
9 accumulation of Federal and State steelhead trout  
10 annual harvest is allowed in the Cook Inlet areas and  
11 there is no open Federal subsistence season for Arctic  
12 grayling or burbot within the Cook Inlet area.

13  
14                   As I mentioned before, the only  
15 proposed modification that would actually change  
16 existing regulations is the one that would prohibit the  
17 retention of rainbow steelhead trout 20 inches or  
18 longer in the Kasilof River salmon dipnet fishery from  
19 June 16th through the 15th [sic], but these dates were  
20 adopted by the Board to allow Federally-qualified  
21 subsistence users the opportunity to harvest up to 200  
22 incidentally caught rainbow trout in the dipnet fishery  
23 while still protecting adult steelhead trout, which are  
24 usually not present in Federal public waters in the  
25 Kasilof River until after August 15th.

26  
27                   Again, I'll mention that during 2007  
28 and 2008 no rainbow steelhead trout were reported to  
29 have been harvested from the Kasilof River salmon  
30 dipnet fishery and there appears to be no reason to  
31 adopt the maximum size limit for retention of rainbow  
32 steelhead trout prior to August 16th to protect  
33 steelhead trout and the proponent now seems to agree  
34 that this change isn't needed.

35  
36                   So with that I'll conclude my  
37 presentation. I'd be happy to answer any questions.

38  
39                   CHAIRMAN LOHSE: Thank you. Steve, did  
40 I understand -- twice did I understand you to say that  
41 the proponent no longer thinks that adoption of this is  
42 needed?

43  
44                   MR. FRIED: Adoption of the.....

45  
46                   CHAIRMAN LOHSE: 20 inch.

47  
48                   MR. FRIED: .....20 inch or longer  
49 limit for rainbow steelhead prior to August 16th.

50

1 CHAIRMAN LOHSE: And the other ones  
2 actually are already.....  
3  
4 MR. FRIED; The other ones are.....  
5  
6 CHAIRMAN LOHSE: .....are already  
7 contained in our.....  
8  
9 MR. FRIED: That's -- that's correct.  
10  
11 CHAIRMAN LOHSE: We're already  
12 consistent in those.  
13  
14 MR. FRIED: And it could be that what  
15 we need to do is take the public hand out and make it  
16 clearer so people really understand that, that might be  
17 part of the problem, but there doesn't seem to be any  
18 reason to add to the codified regulations.  
19  
20 CHAIRMAN LOHSE: Okay. Any questions  
21 for Steve.  
22  
23 (No comments)  
24  
25 CHAIRMAN LOHSE: Hearing none. I'd  
26 like Doug to come up and kind of give us a little bit  
27 of an overview, you handed out this green paper, if you  
28 could come up -- because we're going into these Kenai  
29 subsistence proposals and that, just kind of give us an  
30 overview of what's happened and a little bit of history  
31 on it and things like that so we have that fresh in our  
32 mind.  
33  
34 Doug.  
35  
36 And I think if I understand right, you  
37 said that there was no reported rainbow or steelhead  
38 take in any of our Federal subsistence fisheries this  
39 summer?  
40  
41 MR. FRIED: At the time that we wrote  
42 the Staff analysis, and the information that we had at  
43 hand that was true. There might be some changes to  
44 some of the things because he would have the more up to  
45 date information.  
46  
47 CHAIRMAN LOHSE: Yeah. Okay, Doug.  
48  
49 MR. PALMER: Council members. My name  
50 is Doug Palmer. I'm the in-season Federal manager for

1 the Cook Inlet area. I know some of you, others I  
2 don't. You probably all knew Gary Sonnevile, he  
3 retired in April and I filled in behind him as the in-  
4 season manager.

5  
6 I think you have a hand out there that  
7 kind of provides a summary of Federal harvest, so to  
8 date in 2008, the reports are still coming in, I've  
9 probably only received a third of the harvest reports.  
10 Most of the reporting for the dipnet fisheries,  
11 however, is done in-season within 72 hours of harvest  
12 so these are numbers for the dipnet fisheries are  
13 fairly accurate.

14  
15 And then I'll try to put it in  
16 perspective, too, as compared to what we observed in  
17 2007.

18  
19 We issued 190 subsistence permits for  
20 salmon and resident fish species in the Kenai and  
21 Kasilof Rivers during 2008. A majority of these  
22 permits were issued for Kenai River salmon, Cooper  
23 Landing residents were issued just over half the  
24 permits. No permits were issued for the winter ice  
25 fishery on Tustumena Lake.

26  
27 Now, how does this compare with what we  
28 observed in 2007. We really saw two shifts.

29  
30 In 2007 we saw about the same number of  
31 permits, 203 so actually a few more permits in 2007,  
32 but what we observed in 2008 was that more people were  
33 interested in the Kenai River salmon permits. In 2008  
34 we had about 70 percent of the permits were Kenai River  
35 salmon permits in 2008 compared to only about 54  
36 percent in 2007. And then we saw a shift away from the  
37 resident fish permits in the Kenai River. In the first  
38 year, in 2007 a lot of folks got those permits but  
39 realized that they didn't use them very much, in fact,  
40 we've had no resident fish harvest reported to date,  
41 and so we saw a decline in the number of those permits  
42 from 2007 to 2008.

43  
44 Moving on to harvest. Again the  
45 harvest reports for 2008 are only up through September  
46 15th, those reports are still coming in daily, but it  
47 should be a fairly accurate representation, I expect  
48 these numbers to change a little bit but we had about  
49 just short of 1,500 fish harvested. All those were  
50 salmon. And with an exception of two chinook and a

1 handful of coho they were all sockeye salmon. About 75  
2 percent of the harvest was from the Kenai -- the  
3 Russian River dipnet fishery. Cooper Landing and Hope  
4 residents harvested the lion's share of those fish,  
5 about 96 percent. We did have a few Ninilchik  
6 residents come up and participate in that. But most of  
7 the Ninilchik residents harvested their fish in the  
8 Kasilof River dipnet fishery or with rod and reel at  
9 the Moose Range Meadows area. And as I mentioned  
10 earlier we have not had any harvest of resident species  
11 that has been reported to date.

12

13                   We did have one special action that we  
14 issued in early August toward the tail end of the  
15 second run of red salmon returning to the Kenai River.  
16 The in-season goal was about 650,000 and the run never  
17 materialized and I don't think we were about 30 or  
18 40,000 fish short of the goal so we did restrict the  
19 hook and line fishery in the main stem Kenai, reduced  
20 that limit from six to three, but that did not affect  
21 the -- the Russian River return was adequate to meet  
22 escapement goals so we never did restrict that in any  
23 way.

24

25                   That's my report. I could answer any  
26 questions if anybody had any.

27

28                   CHAIRMAN LOHSE: Any questions for  
29 Doug.

30

31                   (No comments)

32

33                   CHAIRMAN LOHSE: I have just a couple  
34 just for clarification and to put them on the table  
35 more than anything else.

36

37                   Basically Ninilchik's Moose Range  
38 Meadows was strictly rod and reel, right?

39

40                   MR. PALMER: Yes.

41

42                   CHAIRMAN LOHSE: And as far as resident  
43 species, the number of permits, the interest in permits  
44 actually went down because of the, basically lack of  
45 take the year probably.

46

47                   MR. PALMER: About half the number of  
48 permits on the percentage basis, yeah.

49

50                   CHAIRMAN LOHSE: About as half as many

1 permits for resident species. And only one other  
2 question I had we put in for a fishwheel permit, did  
3 anything ever come -- was anything done with fishwheel  
4 down there at all?

5  
6 MR. PALMER: We did receive a proposal  
7 from Ninilchik and the Fish and Wildlife Service  
8 reviewed and provided comments back to Ninilchik and my  
9 understanding is that they're still working out the  
10 details of what they want to do there.

11  
12 CHAIRMAN LOHSE: So there was no  
13 fishwheel in the 2008 season?

14  
15 MR. PALMER: No, that's correct.

16  
17 CHAIRMAN LOHSE: Okay. Any other  
18 questions for Doug by anybody. Bill.

19  
20 MR. STOCKWELL: Yeah, there was -- just  
21 for clarification, on the 25 resident species permits,  
22 there was no use on those, right?

23  
24 MR. PALMER: No harvest has been  
25 reported to date.

26  
27 MR. STOCKWELL: To date.

28  
29 MR. PALMER: They're not due in until  
30 April 15th so there still could be some harvest that  
31 shows up but it's probably going to be minimal.

32  
33 MR. STOCKWELL: But as of now there's  
34 been no reported harvest?

35  
36 MR. PALMER: That's correct.

37  
38 MR. STOCKWELL: Thank you.

39  
40 MR. PALMER: I've received about a  
41 third of the reports back so far.

42  
43 MR. STOCKWELL: Okay. So two-thirds of  
44 the resident species permits are still out.....

45  
46 MR. PALMER: Still out, uh-huh.

47  
48 MR. STOCKWELL: .....for use -- thank  
49 you.

50

1 CHAIRMAN LOHSE: One other question,  
2 Doug, and, again, this is mostly to just put it on the  
3 table. One of the things that you've got down, you got  
4 about 1,500 salmon taken in our subsistence fishery  
5 right here but all of the people who were qualified to  
6 take those 1,500 salmon were also qualified to take  
7 salmon under the current State regulations under the  
8 personal use fisheries, but these aren't in addition to  
9 the personal use fisheries, the take is -- I don't know  
10 how we say this, is it a cumulative or is it -- in  
11 other words, you don't get two limits, right?

12  
13 MR. PALMER: That's correct, you cannot  
14 harvest your limit in the State personal use fishery  
15 and then go harvest the household limit in the Federal  
16 subsistence fishery.

17  
18 CHAIRMAN LOHSE: So we have no way of  
19 knowing whether these fish would have been taken  
20 anyway, just underneath a different fishery so  
21 basically what we did, to a certain extent, we've given  
22 them opportunity to take them in two fisheries instead  
23 of one but the number of fish may be exactly the same.

24  
25 MR. PALMER: It could be, we have no  
26 way of telling.

27  
28 CHAIRMAN LOHSE: Yeah, we have no way  
29 of telling, that's what I was thinking. Okay. Okay,  
30 any other questions or comments.

31  
32 (No comments)

33  
34 CHAIRMAN LOHSE: Okay, then at this  
35 point in time Alaska Department of Fish and Game  
36 comments.

37  
38 MR. PAPPAS: Good morning, Mr. Chair.  
39 Members of the Council. My name's George Pappas,  
40 Department of Fish and Game. I represent the  
41 Commercial Fisheries and Sportfisheries Divisions for  
42 the Department of Fish and Game on the Federal  
43 Subsistence Liaison Team.

44  
45 As directed by the Federal Subsistence  
46 Board Chair, our comments will be incorporated in whole  
47 into the transcripts and I'll be summarizing from those  
48 instead of being too long-winded, so I'll get to it.

49  
50 Proposal FP09-06 requests clarification

1 in Federal subsistence regulations to insure  
2 conservation of rainbow steelhead trout, grayling and  
3 burbot in the Kenai Peninsula freshwaters. The  
4 Department also proposes a modification of this  
5 proposal.

6  
7                   The existing Federal regulations could  
8 be construed to allow accumulation of State and Federal  
9 bag limits for mature breeding age rainbow and  
10 steelhead trout 20 inches or longer and authorize  
11 harvest of grayling and burbot.

12  
13                   The proposal will establish consistency  
14 between Federal and State regulations, reduce user  
15 confusion and reduce a likelihood of State enforcement  
16 actions against Federal subsistence users who might  
17 mistakenly interpret the regulations to allow  
18 accumulation of Federal and State bag limits or harvest  
19 of grayling and burbot under Federal subsistence  
20 regulations.

21  
22                   Subsequent to submitting the proposal,  
23 additional information that Mr. Palmer brought forth  
24 became available that indicates the number of steelhead  
25 and distinct stocks within the Kasilof River drainages  
26 is greater than previously known. The Department  
27 proposed modifying this proposal to delete the request  
28 that in our original proposal requests that no fish  
29 over 20 inches be taken in a dipnet and rod and reel  
30 fishery, however, the existing limitation to rainbow  
31 trout less than 20 inches or the annual limit of 20  
32 inches and over per year per person and the year-round  
33 Federal subsistence rod and reel fishery should remain  
34 in place. The Department has serious concerns with  
35 potential over exploitation for Kasilof River rainbow  
36 and steelhead trout stocks based on the cumulative  
37 effect from all the combined fisheries that might be  
38 targeting in the future. Additional, multiple directed  
39 harvest oriented fisheries to the currently sustainable  
40 but limited populations of these fish may require  
41 drastic conservation measures in the future for all  
42 fisheries.

43  
44                   As for impacts to the subsistence user,  
45 if this proposal is adopted with the modifications as  
46 suggested, Federal subsistence users will continue to  
47 be provided with subsistence uses at the levels  
48 intended by the Board in the May 2007 meeting and  
49 without harming conservation of rainbow steelhead  
50 trout, grayling and burbot. The Department supports

1 this proposal as modified and the State's regulation  
2 specialists have concluded that this proposed  
3 corrections to Federal regulations were submitted to  
4 clarify, to legally clarify the regulations, not to  
5 duplicate the regulations.

6  
7                   And a further note, some of the  
8 justification of this proposal is specifically legal  
9 response to some of the verbiage that was added to it  
10 after the 2007 meeting of the Federal regulations which  
11 includes the phrase, unless modified here within, the  
12 words, additionally, and another section, in addition  
13 to modify. So there are legal-wise or regulations-  
14 wise, there are possibilities that Federal subsistence  
15 users could misinterpret the regulations as written.  
16 The State has been in the business of writing fisheries  
17 regulations for many, many years and this is the  
18 recommendations from our legal staff.

19  
20                   The retraction of the recommendation  
21 for -- the proposed recommendations for not retaining  
22 fish over 20 inches in length in the dipnet and rod and  
23 reel fishery was specifically in response to the  
24 Federally funded research project up there. That's  
25 good news, it seems like there's a few more fish than  
26 previously thought. In addition to this for sake of  
27 clarity, the Department would like to see the two inch  
28 -- excuse me, the two fish over 20 inches per year  
29 annual limit apply towards that fishery, too. So if  
30 you're in the sportfishery and you catch a 22 inch  
31 rainbow and then you go Federally subsistence fish and  
32 catch a 27 inch rainbow, that would be your two 20 inch  
33 per year, over 20 inch per year. Currently, as  
34 regulations are written 200 incidentally caught  
35 rainbows could be harvested in the dipnet/rod and reel  
36 fishery in the upper Kasilof and they all could be over  
37 -- one person can theoretically go up and catch 200 25  
38 inch fish. Those are -- even though the research  
39 project indicates there's probably a lack of steelhead  
40 in the area at the time, there's the still -- the fish  
41 over 20 inches are one of the heaviest contributors to  
42 the reproductive populations of both rainbow and  
43 steelhead in that area.

44  
45                   That concludes my comments.

46  
47                   Thank you, Mr. Chair.

48  
49                   Alaska Department of Fish and Game  
50 Preliminary Comments to the Regional Advisory Council

1 FP09-06 Cook Inlet Rainbow/Steelhead  
2 Trout, Grayling, and Burbot

3

4 Introduction:

5

6 Proposal FP09-06 requests  
7 clarifications in federal subsistence regulations to  
8 ensure conservation of rainbow/steelhead trout,  
9 grayling, and burbot in Kenai Peninsula freshwaters.  
10 The Alaska Department of Fish and Game (Department)  
11 also proposes a modification of the proposal.

12

13 The existing federal regulations could  
14 be construed to allow accumulation of state and federal  
15 bag limits for mature, breeding age rainbow/steelhead  
16 trout 20 inches or longer and to authorize harvest of  
17 grayling and burbot. The proposal will establish  
18 consistency between federal and state regulations,  
19 reduce user confusion, and reduce the likelihood of  
20 State enforcement actions against federal subsistence  
21 users who might mistakenly interpret the regulation to  
22 allow accumulation of federal and state bag limits or  
23 harvest of grayling and burbot.

24

25 Subsequent to submitting the proposal,  
26 additional information became available that indicates  
27 slightly higher numbers of distinct steelhead stocks  
28 exists within the Kasilof River drainage than  
29 previously known. The Department proposes modifying  
30 this proposal to delete the requested prohibition  
31 against taking rainbow/steelhead trout 20 inches or  
32 more in length in the combined dip net and rod and reel  
33 fishery. However, the existing limitation to rainbow  
34 trout less than 20 inches in length in the year-round  
35 federal subsistence rod and reel fishery should remain  
36 in place. The latest information continues to identify  
37 relatively small numbers of mature, breeding steelhead  
38 stocks within the Kasilof River drainage, including  
39 steelhead tracked to Tustumena Lake. The State  
40 supports continued studies, careful monitoring, and  
41 precise harvest reporting of these stocks in order to  
42 protect their sustainability. Similar concerns were  
43 expressed by federal managers at the Federal  
44 Subsistence Board fish proposal meeting in May 2007.

45

46 Impact on Subsistence Users:

47

48 If proposal FP09-06 is adopted with the  
49 modification suggested above, federal subsistence users  
50 will continue to be provided with subsistence uses at

1 the levels intended by the Board in its May 2007  
2 actions without harming conservation of  
3 rainbow/steelhead trout, grayling, or burbot. Adoption  
4 of the proposal to clarify unclear regulatory language  
5 will prevent taking more than 2 rainbow/steelhead trout  
6 20 or longer per year by preventing accumulation of  
7 federal and state limits and will prevent possessing  
8 more than 2 rainbow/steelhead trout at any time from  
9 flowing waters on the Kenai Peninsula (except Swanson  
10 River). If this proposal is adopted, it would also  
11 clarify the prohibition on taking of grayling or burbot  
12 for federal subsistence on the Kenai Peninsula.

13

14 Federal subsistence users could benefit  
15 from adoption of proposal FP09-06 because the proposal  
16 is aimed at ensuring conservation of Kenai Peninsula  
17 rainbow/steelhead trout populations and reducing the  
18 likelihood of enforcement actions against federal  
19 subsistence users who may not understand that the  
20 regulations prohibit federal subsistence harvest of  
21 grayling and burbot.

22

23 Enforcement Issues:

24

25 Adoption of this proposal will reduce  
26 the likelihood of state enforcement actions being taken  
27 against federal subsistence users who might otherwise  
28 incorrectly believe that, after filling their federal  
29 limit, they can harvest additional fish in a state  
30 fishery that has an annual limit. It also reduces the  
31 likelihood of enforcement relating to taking grayling  
32 and burbot by making it clearer to federal subsistence  
33 users that they can only fish for grayling and burbot  
34 under State sport fishing regulations and must have  
35 their State fishing license to legally retain grayling  
36 and burbot.

37

38 Jurisdiction Issues:

39

40 The Department requests detailed land  
41 status maps that distinctly illustrate land ownership,  
42 easements, and exact boundaries within which it is  
43 claimed federal regulations would apply and  
44 justification for claiming those boundaries. While  
45 standing on state and private lands (including state-  
46 owned submerged lands), persons must comply with state  
47 law and cannot harvest under conflicting federal  
48 regulations. Portions of both the upper and lower  
49 Kenai and Kasilof rivers are bordered by state or  
50 private lands within or adjacent to areas where federal

1 jurisdiction is claimed. It is important that federal  
2 subsistence users know exactly where federal  
3 regulations are claimed to apply in both watersheds to  
4 keep from violating state regulations.

5  
6 Dual harvest regulations for individual  
7 resident species can unintentionally lead to  
8 unsustainable harvests and dangerous depletions of  
9 discrete fish stocks. Although the State is  
10 responsible for sustainable management of all fish  
11 stocks in all fresh waters of Alaska, the federal  
12 subsistence fisheries target the same freshwater stocks  
13 as they cyclically transit in and out of federal public  
14 lands. Development of expansive federal harvest  
15 regulations targeting the same stocks harvested in  
16 State fisheries could lead to long-term damage to these  
17 stocks unless severe restrictions or closures of State  
18 fisheries are adopted. Such results violate ANILCA  
19 Sections 805 and 815. This issue specifically applies  
20 to Kenai Peninsula resident fish stocks targeted by  
21 both federal and state fisheries.

22  
23 Opportunity Provided by State:

24  
25 The State has comprehensive and  
26 conservative sport fishing regulations that have proven  
27 to be successful at maintaining sustainable populations  
28 of rainbow/steelhead trout as well as grayling and  
29 burbot on the Kenai Peninsula. The Kenai and Kasilof  
30 rivers are located in the Anchorage-MatSu-Kenai Non-  
31 subsistence area designation under state law. The  
32 State provides the opportunity to retain two  
33 rainbow/steelhead trout 20 inches or longer per year  
34 from the Kasilof River sport fishery, although the  
35 current predominant practice of sport fishers is to  
36 catch-and-release those fish. Retention of  
37 rainbow/steelhead trout in the personal use and  
38 educational fisheries of the Kasilof and Kenai rivers  
39 is prohibited. Due to the highly restrictive size  
40 limits for retaining rainbow trout in all Kenai River  
41 state and federal fisheries (less than 16 or 18 inches,  
42 depending on the area fished), retention of mature,  
43 breeding age rainbow/steelhead trout is prohibited by  
44 all users.

45  
46 Conservation Issues:

47  
48 Excessive harvest could occur if  
49 federal subsistence users accumulate daily and  
50 annual/seasonal harvests from federal subsistence and

1 State fisheries. The existing federal subsistence  
2 regulations could be misinterpreted to allow  
3 accumulation of State and federal harvest limits of  
4 mature, breeding age rainbow/steelhead trout 20 or  
5 longer and to allow a federal subsistence harvest of  
6 grayling and burbot.

7  
8                   The small and discrete stocks of  
9 rainbow/steelhead trout within the Kasilof River  
10 drainage are an example of limited resident species  
11 stocks that could suffer from over-exploitation if  
12 cumulative harvest limits established by the Federal  
13 Board result in increased harvest of larger-sized  
14 resident species (20 or longer), which contain the  
15 greatest reproductive potential for such populations.  
16 The situation is further aggravated by the federal  
17 subsistence Tustumena Lake winter ice fisheries (net  
18 and jig fisheries), which may result in adding  
19 rainbow/steelhead trout 20 or longer to the take  
20 authorized in the Kasilof drainage rod and reel and dip  
21 net fisheries.

22  
23                   The Department is seriously concerned  
24 with potential over-exploitation of Kasilof River  
25 rainbow/steelhead trout stocks based on cumulative  
26 effects from all combined fisheries. Though long-  
27 standing commercial and personal use fisheries are  
28 likely indirect sources of some unknown level of  
29 mortality and the sport fishery is a small source of  
30 directed mortality on rainbow/steelhead trout stocks,  
31 all of these fisheries have been in existence for  
32 decades (spanning many rainbow/steelhead trout life  
33 cycles), and rainbow/steelhead trout stocks appear to  
34 have continued to exist at sustainable levels prior to  
35 the recent establishment of the federal subsistence  
36 fisheries. Adding multiple directed harvest-oriented  
37 fisheries to currently sustainable, but limited,  
38 populations of these fish may require drastic  
39 conservation measures in the future for all fisheries.

40  
41                   The Department, through the Alaska  
42 Board of Fisheries, has developed conservative  
43 fisheries management plans, sustainable exploitation  
44 rates, and time-proven fishery regulations which  
45 establish daily and annual limits and gear restrictions  
46 to provide for sustainable harvest of fish stocks. The  
47 evolution of each regulation is either based upon  
48 historic, hard scientific data or, where such data is  
49 not available, on the development of conservative  
50 fishing regulations based upon the best information

1 available, including long-term average harvest  
2 information which indicates levels of harvest that have  
3 a high probability of being sustainable. The new  
4 federal fisheries, with less restrictive methods and  
5 means, may eventually reach levels of participation  
6 which could create conservation concerns even without  
7 accumulation of state and federal bag limits. Without  
8 a clear prohibition on accumulation of state and  
9 federal limits, even much lower levels of participation  
10 can be expected to create conservation concerns.

11

12 Other Issues:

13

14 Currently a Fishery Information Service  
15 project is mid-way through a multi-year study of  
16 Kasilof River rainbow/steelhead trout stocks. Even  
17 preliminary information from this study may assist with  
18 determining when, where, and what numbers of  
19 rainbow/steelhead trout pass through various fisheries  
20 and if the current absence of harvest size limits in  
21 federal subsistence Kasilof River rainbow/steelhead  
22 trout fisheries is a biologically sound management  
23 decision.

24

25 Recommendation:

26

27 Support as modified.

28

29 CHAIRMAN LOHSE: Thank you. Any  
30 questions. James.

31

32 MR. SHOWALTER: Yes, how many steelhead  
33 do you tag and know they are there and I'm just  
34 guessing there's a lot of them that you miss and don't  
35 tag, so do you have any idea how many steelhead there  
36 are?

37

38 MR. PAPPAS: Through the Chair. Mr.  
39 Palmer's research project is working on coming up with  
40 an idea of what's out there. The Department only has  
41 hard numbers going through Crooked Creek weir and  
42 that's in cooperation with the Refuge Fisheries Office  
43 there. We don't know yet. I assume the project is  
44 going to give us an idea. It won't give us a solid  
45 number because it's missing some components of  
46 population estimates but it'll at least tell us if it's  
47 over 1,000 I believe, or 2,000 or 500 so they're  
48 working on that. And I believe that project is  
49 continuing, but you make a very good point, you know,  
50 do we miss them, there's an excellent possibility we

1 are but Mr. Palmer will have to answer that.

2

3 Mr. Chair.

4

5 CHAIRMAN LOHSE: Thank you. Bill.

6

7 MR. STOCKWELL: Thank you, Mr.

8 Chairman. You've modified the proposal and I'm not

9 sure just what you modified, do you have it in writing

10 what you modified so we can look at it or can we go

11 back to the proposed proposal so that we have a current

12 writing if we so desired to put it into effect?

13

14 MR. PAPPAS: Mr. Chair. Mr. Stockwell.

15 I don't have the recommended language in front of you.

16 If you look on Page 45 of your book, under proposed

17 Federal regulations, the bold text, let's see here, on

18 the bottom of that first paragraph that has the bold

19 text, you know:

20

21 The except the rainbow trout over 20

22 inches or longer may not be taken from

23 the Kasilof River drainage by rod and

24 reel dipnet.

25

26 I would assume that would be scratched.

27 A line drawn through that, beginning.....

28

29 MR. STOCKWELL: Where?

30

31 MR. PAPPAS: Beginning with except and

32 ending with dipnet.

33

34 MR. STOCKWELL: Everything -- I mean

35 the first paragraph, everything in bold would be --

36 wait a minute.

37

38 MR. PAPPAS: I apologize. Yes, okay,

39 the actual language that we're looking for is on the

40 top of Page 46, first paragraph, you'll see the less

41 than 20 inches in length -- excuse me -- less than 20

42 inches in long, that would be struck from the proposal.

43

44 MR. STOCKWELL: Okay.

45

46 MR. PAPPAS: So the Federal regulation

47 would say:

48

49 Including up to 200 rainbow steelhead

50 trout taken through August 15th.

1                   And somewhere within the language we  
2 want to add, as stated earlier, the 20 inches -- the 20  
3 inch length of two fish annual limit on the Kenai  
4 Peninsula harvest would remain in place.

5  
6                   MR. STOCKWELL: Would that be the  
7 wording that's on top of the first, fishing permit  
8 and/or State sport regulations.

9  
10                  MR. PAPPAS: I apologize for the  
11 inconvenience here. Through the Chair. Mr. Stockwell.

12  
13                  Actually the language submitted at the  
14 bottom of Page 45, the last bit of bold there where it  
15 says:

16  
17                         Except that the annual limit of two  
18 rainbow steelhead trout 20 inches or  
19 longer where otherwise limited and  
20 prohibitions against taking grayling  
21 and burbot also apply.

22  
23                  So that recommendation would -- would  
24 keep the 20 inch annual limit on the Kenai Peninsula  
25 independent if you're Federal subsistence user or a  
26 State user, you'd be allowed two fish over 20 inches in  
27 the combined fishery, not actually accumulation of  
28 both.

29  
30                         Does that make sense, sir?

31  
32                  MR. STOCKWELL: I'm not sure really.

33  
34                  CHAIRMAN LOHSE: Yeah, currently if I  
35 understand right, the 200 rainbow trout limit is an  
36 accumulative limit for all subsistence users, so we  
37 can't very well apply a two limit in there for the  
38 whole fishery but you could apply a two limit to an  
39 individual permit.

40  
41                  MR. PAPPAS: That is the intent of the  
42 Department.

43  
44                  CHAIRMAN LOHSE: And that basically --  
45 since grayling and burbot really don't enter into it  
46 since they're closed anyhow under subsistence  
47 regulations, so that really the only change that we're  
48 -- if I understand what the State's looking for, the  
49 only change would be to limit the individual permit to  
50 an accumulative limit of no more than two rainbows over

1 20 inches for the year in all fisheries.

2

3 MR. PAPPAS: That is correct, sir.

4

5 CHAIRMAN LOHSE: Bill, is that the same  
6 understanding you get?

7

8 MR. STOCKWELL: I think, but I'm just  
9 trying to find out where we were wording it.

10

11 CHAIRMAN LOHSE: Yeah.

12

13 MR. STOCKWELL: And we don't really  
14 have it worded in here.

15

16 CHAIRMAN LOHSE: No, we don't have that  
17 worded. And that's -- if I understand what the State  
18 is trying -- has changed their request to, the  
19 modification would be to basically limit the individual  
20 permit holder, the individual, to no more than two  
21 rainbows over 20 inches in all fisheries on the Kenai  
22 Peninsula.

23

24 MR. PAPPAS: That is correct.

25

26 CHAIRMAN LOHSE: And we could add  
27 something like that, that kind of language and that  
28 would cover what the State is trying to do.

29

30 Because the concern is that somebody  
31 would learn how to get into them real strongly and  
32 accumulate the whole 200 limit that the fishery is  
33 entitled to for everybody and take more than 200  
34 rainbows over 20 inches.

35

36 MR. PAPPAS: Mr. Chair. Realistically  
37 one person doing so would be difficult but if -- yeah,  
38 if everybody sorted through the fish and only retained  
39 very large fish, without the limit up to 200 large fish  
40 over 20 inches could be harvested in the dipnet fishery  
41 and that's our primary concern, conversely if 100  
42 participants go up there and catch two fish over 20  
43 inches each, well, we'd have to address that at a later  
44 date.

45

46 CHAIRMAN LOHSE: That's what I was  
47 going to say. You still have that potential if  
48 everybody would sort through the fish -- if you had  
49 enough participants, everybody sorted through their  
50 fish and kept two, but what this would basically do

1 would limit the individual to more than two over 20  
2 inches and that's the biggest -- that currently looks  
3 to me like that's the biggest State's concern, the --  
4 the burbot and the grayling don't really enter into it  
5 and the consistency does not.

6

7 Under the State regulations have they  
8 written into that in the State regulations in such a  
9 way that under all State fisheries no more than two  
10 rainbows over 20 inches can be taken annually?

11

12 MR. PAPPAS: Yes, that is correct. Mr.  
13 Pawluk, is that correct?

14

15 MR. PAWLUK: In the Cook Inlet area.

16

17 MR. PAPPAS: In the Cook Inlet area,  
18 yes, it's two rainbows over 20 inches but that does not  
19 include the personal use fishery.....

20

21 CHAIRMAN LOHSE: Uh-huh.

22

23 MR. PAPPAS: .....which is a rare  
24 harvest.

25

26 CHAIRMAN LOHSE: Yeah. But the  
27 personal use fishery isn't -- are they allowed to keep  
28 a rainbow?

29

30 MR. PAWLUK: No, salmon only.

31

32 CHAIRMAN LOHSE: No, salmon only.  
33 Okay, so basically they have a two rainbow over 20 inch  
34 annual limit on the Kenai Peninsula which would be easy  
35 to add in if we wanted to do that.

36

37 Bill.

38

39 MR. STOCKWELL: Mr. Chairman. A point  
40 of clarification I think the two rainbow over 20 inches  
41 is for all of Cook Inlet, not just for the Kenai; is  
42 that correct?

43

44 MR. PAWLUK: Yes.

45

46 CHAIRMAN LOHSE: Yeah.

47

48 MR. PAPPAS: That is correct. And as  
49 you know you're not allowed to keep fish over 16 or 18  
50 inches in the Kenai River itself.

1 MR. STOCKWELL: With respect to  
2 regulations for the Kenai River, but all of Cook Inlet  
3 is two over 20.  
4  
5 MR. PAWLUK: I believe that's so, yeah.  
6  
7 CHAIRMAN LOHSE: So it would depend on  
8 the Council whether they wanted to add something like  
9 that, but it could be added. And that would meet what  
10 the State is actually trying to do.  
11  
12 MR. PAWLUK: I'm sorry, sir, I missed  
13 the question.  
14  
15 CHAIRMAN LOHSE: I was just wondering  
16 if you had anything that you could add to the  
17 discussion you've heard up to this point in time.  
18  
19 MR. PAWLUK: No, nothing.  
20  
21 CHAIRMAN LOHSE: Bill.  
22  
23 MR. STOCKWELL: I just got one other  
24 question looking at this regulation, in the present  
25 regulation it says, residents may use rod and reel gear  
26 and may fish with up to two baited single or treble  
27 hooks; does that mean that people can't fish with  
28 double hooks?  
29  
30 (Laughter)  
31  
32 CHAIRMAN LOHSE: Up to.  
33  
34 MR. STOCKWELL: It doesn't say up to,  
35 it's up to two baited.  
36  
37 (Laughter)  
38  
39 CHAIRMAN LOHSE: I didn't know there  
40 were any -- do you know.....  
41  
42 MR. STOCKWELL: It says or treble  
43 hooks.  
44  
45 CHAIRMAN LOHSE: .....anybody who uses  
46 double hooks?  
47  
48 MR. STOCKWELL: I just got reading it  
49 and I was wondering, it seemed like.....  
50

1                   REPORTER: Bill. Bill.  
2  
3                   MR. STOCKWELL: .....I mean it's poor  
4 worded.  
5  
6                   CHAIRMAN LOHSE: Bill, you need to turn  
7 your mic on when you're talking.  
8  
9                   MR. STOCKWELL: Excuse me. I said when  
10 I was reading this, the wording just seemed like we  
11 specified just single and treble.  
12  
13                  CHAIRMAN LOHSE: Bill, do you know  
14 anybody that fishes double hooks.  
15  
16                  MR. STOCKWELL: I do know that there  
17 are double hooks on -- some lures I have double hooks  
18 on them, and then there's also hooks made that are  
19 double hooks.  
20  
21                  CHAIRMAN LOHSE: Yeah, but I think in  
22 this case we're talking about baited hooks and I just  
23 was wondering if you knew anybody that actually fished  
24 a double baited hook?  
25  
26                  MR. STOCKWELL: Well, I don't know  
27 about that, you can bait any kind of hook.  
28  
29                  CHAIRMAN LOHSE: Yeah. Yeah.  
30  
31                  (Laughter)  
32  
33                  CHAIRMAN LOHSE: Okay, with that you  
34 can always put a modification in for that Bill. Okay,  
35 any other questions for the Alaska Department of Fish  
36 and Game on that.  
37  
38                  (No comments)  
39  
40                  CHAIRMAN LOHSE: Do we have any  
41 Federal, tribal or State comments. Greg, did you have  
42 something you wanted to add -- I mean James.  
43  
44                  MR. SHOWALTER: Yes. All you got to  
45 remember here, this is State proposed regulations and  
46 with subsistence you get out there dipnetting, you're  
47 going for subsistence and you aren't saying, well, I'm  
48 not going to catch this size or that size, if you're  
49 going for subsistence you catch the fish you do and  
50 usually that's the fish you take home to eat.

1                   Just a comment.

2

3                   CHAIRMAN LOHSE: Okay. Let's go on  
4 then to Federal, tribal and -- thank you Fish and Game  
5 -- does anybody from those areas they'd like to add.

6

7                   (No comments)

8

9                   CHAIRMAN LOHSE: InterAgency Staff  
10 Committee comments.

11

12                   MR. BERG: Thank you, Mr. Chair. Jerry  
13 Berg with Staff Committee with Fish and Wildlife  
14 Service.

15

16                   We did have that discussion about the  
17 potential that somebody could go and take up -- you  
18 know 200 rainbows larger than 20 inches, you know,  
19 technically that would be feasible but we felt that,  
20 you know, with the 72 hour reporting in place and  
21 basically we have seen very little, if no harvest of  
22 rainbow trout that it really seems like we have enough  
23 protections in place at this time, at least with the  
24 dipnet and rod and reel fishery and if we did see some  
25 increase in harvest, it does seem like we would be able  
26 to respond in-season to try to address that if we  
27 needed to. So we did have that discussion and thought  
28 that we'd be able to respond to it with our in-season  
29 manager if a problem occurred.

30

31                   So I just wanted to point that out,  
32 thanks, Mr. Chair.

33

34                   CHAIRMAN LOHSE: Thank you. Fish and  
35 Game Advisory committee comments.

36

37                   (No comments)

38

39                   CHAIRMAN LOHSE: Hearing none.

40

41                   MR. CRAWFORD: Is that me?

42

43                   CHAIRMAN LOHSE: Are you.....

44

45                   MR. CRAWFORD: I wrote it down.

46

47                   CHAIRMAN LOHSE: Okay. Well, if you're  
48 speaking for Fish and Game Advisory Committee you don't  
49 need this, you can just come up and speak right now.  
50 This is for your own personal public testimony.

1 MR. CRAWFORD: I'm just going to speak  
2 for the AC.

3  
4 CHAIRMAN LOHSE: Okay.

5  
6 MR. CRAWFORD: Thank you, Mr. Chairman.  
7 My name is Mike Crawford. I'm with the Kenai Soldotna  
8 Fish and Game Advisory Committee.

9  
10 Our AC has supported this proposal, No.  
11 06, it's for protection of steelhead in the Kasilof  
12 River. As you heard, no one really has a firm grasp  
13 for the numbers of fish that may be in the river or may  
14 not be in the river. In the -- in the regulations it  
15 says -- I believe they're dipnetting June 16th through  
16 August 15th and so the OSM opposed this based on the  
17 fact that they didn't believe that the steelhead were  
18 present during that time period.

19  
20 In my understanding of the steelhead,  
21 the process, what they do, they're going to come into  
22 the river in the fall, which may or may not be after  
23 August 16th and then they're going to overwinter in the  
24 system and spawn in the spring/early summer, and then  
25 unlike salmon, steelhead return to the saltwater, and  
26 so are those fish exposed at that period of time. And  
27 as we all know fish -- steelhead are like salmon, it's  
28 the -- run timing is not an exact science. And if you  
29 look on Page 50 it shows an estimated sport catch and  
30 you can see that that ranges anywhere from zero to 65.  
31 And I'm guessing that the pressure has been -- has been  
32 equal through that period, but obviously the run timing  
33 is highly variable.

34  
35 So I believe it was the intent of the  
36 Board to protect the steelhead trout in the Kasilof  
37 drainage and that's why we supported this proposal  
38 because we felt it would protect those fish over 20  
39 inches, which are most likely steelhead in that  
40 drainage. And I guess that was our main thing.

41  
42 And the out-migration of those fish  
43 hasn't been discussed. We've talked about the in-  
44 migration, but what about the out-migration. And those  
45 fish do survive spawning and do return to the ocean and  
46 can come back and spawn multiple times.

47  
48 So that's it, Mr. Chairman.

49  
50 CHAIRMAN LOHSE: Thank you. Any

1 questions.

2

3 (No comments)

4

5 CHAIRMAN LOHSE: I got two if you don't  
6 mind.

7

8 If you go back to your Page 50.

9

10 MR. CRAWFORD: Yes, sir.

11

12 CHAIRMAN LOHSE: We're talking about  
13 harvest there, not catch. I mean this is not catch and  
14 release, this is how many we're taking for harvest and  
15 if I understand right there's been some stronger  
16 regulations put in on keeping steelhead on the Kasilof  
17 River in about 2005, 2006 area right there. And so  
18 since then I don't think -- I'd like to somebody with  
19 Fish and Game, but I don't think there's much sport  
20 harvest of steelhead on the Kasilof any more, is there,  
21 there's catch and release and that's pretty much all  
22 that's there now. And that's -- so that would -- that  
23 would affect the harvest but, you're right, it does  
24 vary.

25

26 From what I've seen on steelhead, most  
27 of your steelhead are done spawning by April -- their  
28 March and April -- when the ice goes out in spring and  
29 right after that and they're pretty much out of the  
30 river by May, and I'd like to get some kind of  
31 correspondence -- some kind of correlation from that  
32 from the Fish and Game. Doug.

33

34 MR. PALMER: Yes. I.....

35

36 REPORTER: Come on up here.

37

38 MR. PALMER: I could add a little bit  
39 of information to that because it's been our office  
40 that's been conducting the research there. The timing  
41 that we see with the steelhead and we've got research  
42 crews out there right now netting from mid-August all  
43 the way through mid-October putting radiotags on both  
44 steelhead and coho. So we really start seeing the  
45 steelhead arrive very, very late August, first week of  
46 September are the first fish that arrive into the  
47 system. When they go in they -- they primarily are  
48 migrating up into Federal waters and are taking  
49 advantage of food resources from the late run chinook  
50 and then the coho that are spawning on the Federal

1 waters there. They overwinter primarily in that upper  
2 watershed, both in Tustumena Lake and in the upper  
3 Kasilof River, and don't enter the spawning tributaries  
4 until May. So it's a little later than some other  
5 systems that you might be familiar with.

6

7

CHAIRMAN LOHSE: Yeah.

8

9

MR. PALMER: We have weirs on both  
10 Nikolai Creek and Crooked Creek. We've monitored the  
11 returns there for the past three or four years and each  
12 year the run timing is slightly different depending on  
13 the environmental conditions, water temperatures, snow  
14 melt and the run off regime. But typically the peak is  
15 about the second week in May when the peak numbers of  
16 steelhead are entering these streams. And they're  
17 pretty much all into the streams, spawning streams by  
18 the third week in May. Spawning takes place in late  
19 May, early June and then after the -- the fish that do  
20 survive spawning and there is a fair amount of  
21 mortality associated with the spawning event, but there  
22 are fish that survive, they out-migrate as kelts  
23 primarily in June.

24

25

And the radio fish that we did have in  
26 the system last year -- there is some mortality  
27 associated with the catch and release fishery at the  
28 confluence of Crooked Creek and the Kasilof River in  
29 the spring because we've seen the mortality codes on  
30 four or five transmitters there last spring, and then  
31 we also do have some mortality associated with the  
32 personal use fishery, the gillnet fishery on the  
33 beaches, both to the north and to the south of the  
34 mouth of the Kasilof River. We have had some reports  
35 last spring of a couple fish being harvested in that  
36 fishery.

37

38

As far as the Kasilof being primarily a  
39 catch and release fishery, it is down stream of the  
40 Sterling Highway bridge, up stream there is a harvest  
41 allowed under State regulation.

42

43

CHAIRMAN LOHSE: Okay. Is that harvest  
44 the two fish a year, it' the same.....

45

46

MR. PALMER; That's correct.

47

48

CHAIRMAN LOHSE: That's above the  
49 bridge there.

50

1 MR. PALMER: Right.  
2  
3 CHAIRMAN LOHSE: But the harvest  
4 level's been fairly low recently, is that because of  
5 education or is that just because of lack of effort?  
6  
7 MR. PALMER: It's -- most people  
8 practice catch and release with steelhead, there is  
9 some harvest that takes place there. It's a unique  
10 opportunity because most of the steelhead fisheries on  
11 the Kenai Peninsula are catch and release, so it allows  
12 -- it's one of the few fisheries that it does allow  
13 harvest. The run used to be enhanced back in the early  
14 '90s but it's resorted back to natural production now  
15 so there is some harvest allowed but it's pretty  
16 minimal, less than 100 fish for sure. I don't think  
17 the -- the State can only -- those numbers come from  
18 the statewide postal krill survey and they're not all  
19 that accurate unless the fishery is large enough and  
20 you canvas enough of the folks that are participating  
21 in it to give you the accurate numbers.  
22  
23 CHAIRMAN LOHSE: Two more questions  
24 while I have you there and I think I have one more for  
25 -- okay, now it's a late -- they're spawning in May,  
26 early June then in that system?  
27  
28 MR. PALMER: Yeah, primarily I would  
29 say late May or early -- first week in June, yes.  
30  
31 CHAIRMAN LOHSE: From your tagging  
32 system, how fast after they're done spawning do they  
33 get out of the river, in other words, what's your  
34 timing for out-migration?  
35  
36 MR. PALMER: June. Yeah, by the end of  
37 June. A lot of them are out by the middle of June but  
38 there probably are still a few kelts left, yeah, in  
39 mid-June and they're migrating out to Cook Inlet.  
40  
41 CHAIRMAN LOHSE: Uh-huh.  
42  
43 MR. PALMER: And we're repeating the  
44 tagging again this year so we'll have a second year of  
45 data come this spring.  
46  
47 CHAIRMAN LOHSE: Okay. Okay. Any  
48 other questions. Greg. Greg, do you have anything?  
49  
50 MR. ENCELEWSKI: James.

1                           CHAIRMAN LOHSE: James, my fault,  
2 excuse me.  
3  
4                           MR. SHOWALTER: Okay, you're excused.  
5 With the spawning steelhead, with the numbers of  
6 females spawning and the numbers of eggs that hatch and  
7 going out to sea and returning with the way you're  
8 indicating a small run of steelhead, I'm assuming  
9 they're like your salmon, they got quite a big roe  
10 system that they spawn and do you know what the spawn  
11 is and what the survival rate might be?  
12  
13                           MR. PALMER: We have not looked at  
14 that, no.  
15  
16                           MR. SHOWALTER: Because I was thinking,  
17 because, with the steelhead spawning and with all those  
18 eggs, I'm sure there'll be a lot more steelhead  
19 returning than you're finding.  
20  
21                           Thank you.  
22  
23                           CHAIRMAN LOHSE: Doug.  
24  
25                           MR. BLOSSOM: Mr. Chair. Mr. Palmer.  
26 While we got you up here again. What's the advantage  
27 in letting the over 20 inch rainbow go over the 19  
28 inch?  
29  
30                           MR. PALMER: I think that the intent of  
31 the regulation is that all the steelhead, for the most  
32 part, are going to be over 20 inches long so that  
33 regulation protects the steelhead but doesn't overly  
34 restrict harvest of resident species which could be  
35 less than 20 inches.  
36  
37                           MR. BLOSSOM: Mr. Chair. Mr. Palmer.  
38 I said rainbow not steelhead.  
39  
40                           MR. PALMER: Yes, they're basically the  
41 same species, the only thing different between rainbow  
42 and steelhead are that steelhead are sea run rainbow  
43 trout.  
44  
45                           MR. BLOSSOM: But rainbow aren't?  
46  
47                           MR. PALMER: Rainbow are considered  
48 freshwater residents but it's the same species.  
49  
50                           CHAIRMAN LOHSE: One more question on

1 that then. Do your rainbow "steelhead" out-migrate  
2 from the Kasilof River as fry smolts or do they grow to  
3 a larger size and out-migrate out of the Kasilof River.  
4 In other words are some of your resident rainbows  
5 really resident steelhead?

6  
7 (Laughter)

8  
9 MR. PALMER: It's kind of like a --  
10 I'll use an analogy, most everybody's familiar with  
11 Dolly Varden and they have a lot of different life  
12 history strategies, some of them go to the sea and some  
13 of them don't, I think you could say the same thing  
14 with rainbow trout, some of them choose to go to sea  
15 and some of them don't, but I think it's also a genetic  
16 trait, you know, whereas steelhead that have gone to  
17 the sea aren't going to produce progeny that will also  
18 be anadromous.

19  
20 CHAIRMAN LOHSE: And people who do a  
21 lot of migrating have a tendency to have children who  
22 do a lot of migrating.....

23  
24 (Laughter)

25  
26 CHAIRMAN LOHSE: .....and people who  
27 stay in one spot have children who stay in one spot.

28  
29 (Laughter)

30  
31 CHAIRMAN LOHSE: But people who stay in  
32 one spot can have children that migrate.

33  
34 (Laughter)

35  
36 MR. STOCKWELL: Are you saying there's  
37 some straying.....

38  
39 CHAIRMAN LOHSE: Yes. I'm saying what  
40 we're dealing with is we're dealing with basically --  
41 to me, I look at that and when my kids were little and  
42 they did -- and it's one of the things that got a  
43 regulation down in Prince William Sound, we used to go  
44 cutthroat fishing and we did a fecundity study on  
45 cutthroat. We counted all the eggs on all the  
46 cutthroat we caught for a year and it's very, very  
47 obvious that the larger the fish the greater the number  
48 of eggs and it's not a direct curve, and so when you  
49 keep fish that are 20 inches and better alive in the  
50 system they produce a lot more eggs than if you kept

1 twice as many 10 inchers in the system. And I think  
2 that's -- to me that's the only rationalization that  
3 there can be for, you know, protecting fish over 20  
4 inches is they just -- they're much more successful at  
5 spawning and they produce a lot more eggs, you know.

6

7 MR. PALMER: Let me make one more  
8 comment regarding steelhead in the Kasilof. We're at  
9 the northern extent of their geographic range right  
10 there and so that's probably a pretty good explanation  
11 why we don't have huge returns of steelhead there, is  
12 that, that -- that conditions are such that numbers of  
13 fish are limited.

14

15 CHAIRMAN LOHSE: Am I correct in  
16 assuming that the Kasilof is the most northern most  
17 steelhead stream in the United States?

18

19 MR. PALMER: With the exception of  
20 maybe the Cooper River. The Copper River has steelhead  
21 returns and maybe get.....

22

23 CHAIRMAN LOHSE: They get farther up  
24 north.

25

26 MR. PALMER: Yes.

27

28 CHAIRMAN LOHSE: That's right because  
29 they go farther inland.

30

31 MR. PALMER: Yeah. We have documented  
32 steelhead in small numbers in the Kenai watershed as  
33 well.

34

35 CHAIRMAN LOHSE: Yeah. Doug.

36

37 MR. BLOSSOM: Mr. Chair. Mr. Palmer.  
38 That is the question I was trying to get answered by  
39 you, not by the Chair. What was the reason why we have  
40 over 20 inch steelhead not being harvested over a 19  
41 incher, what was the reason the Department and the like  
42 of that put that regulation in?

43

44 MR. PALMER: Maybe the Department would  
45 like to comment on that.

46

47 (Laughter)

48

49 MR. PALMER: But my understanding is  
50 that they want to protect the steelhead trout. Yeah,

1 we have not seen any steelhead in any of the -- in  
2 either Nikolai Creek or Crooked Creek that have been  
3 less than 20 inches, of the fish that we've sampled.  
4 So all the steelhead are over 20 inches in length in  
5 that watershed.

6  
7 CHAIRMAN LOHSE: Did you want to add  
8 anything to that, Fish and Game.

9  
10 MR. PAPPAS; George Pappas, Fish and  
11 Game. Yeah, I helped the current area manager write  
12 his Masters on steelhead in Karluk and we tagged four  
13 or 5,000 fish and I believe all of them over 20 inches.  
14 When the steelhead out-migrate as juveniles, the first  
15 time they feed and they do grow, I don't know, 22 or 24  
16 inches long, by the time they come back, but I believe  
17 one of the first times they do come back as -- as  
18 reproductively mature steelhead, I think, as a rule  
19 over 20 inches and that's kind of a statewide  
20 regulation and biological fact, sir.

21  
22 CHAIRMAN LOHSE: Doug.

23  
24 MR. BLOSSOM: Mr. Chair. George. We  
25 got you.

26  
27 (Laughter)

28  
29 CHAIRMAN LOHSE: Go ahead.

30  
31 MR. BLOSSOM: The reason I understood  
32 it -- because I was on the Fish and Game Advisory  
33 Committee, still am, that was put on there for a trophy  
34 trout, trophy steelhead fishing, it wasn't for  
35 conservation, wasn't it, the bigger fish they wanted to  
36 keep for trophies and so they didn't want as many  
37 taken, isn't that the real reason behind it?

38  
39 MR. PAPPAS: Let's see here.  
40 Regulations have been established in different parts of  
41 the state for different species. Like for example you  
42 were talking about cutthroat earlier, in Southeast  
43 Alaska, the regulation is 14 inches or longer, that  
44 allows the fish to reproduce twice. I believe for  
45 rainbows it's 11 inches or longer, it allows the fish  
46 to reproduce once. Was it established for a trophy  
47 fishery, I can't answer that question. I just know  
48 that when they come back, like the first time, and  
49 maybe the second time they're larger fish because, you  
50 know, the growth rate from a juvenile to a reproductive

1 adult does put them in that range, so I don't have a  
2 solid answer for why the decision was made.

3

4 MR. BLOSSOM: Mr. Chair. One more  
5 thing, George, so what I'm hearing you say is all the  
6 fish, if the subsistence users catches are going to be  
7 over 20 inches so there's no use talking about little  
8 ones or 200 or anything, we're going to go from 200 to  
9 two.

10

11 MR. PAPPAS: No, that is incorrect. It  
12 is not two fish over 20 inches, 198 fish under 20  
13 inches, it'd be 20 inches per individual -- or excuse  
14 me, two fish over 20 inches individual independent of  
15 what fishery they're fishing in, sportfishing or  
16 Federal subsistence fishery combined, that would be as  
17 many large fish as being proposed by the Department; am  
18 I clear?

19

20 MR. BLOSSOM: Okay, but what I'm  
21 hearing you say there aren't any fish under 20 so we  
22 should just talk about 20 and over. Okay. So we can  
23 still -- the Federal regulations will still stand at  
24 200 total, you're just going to limit the individual  
25 subsistence user to two.

26

27 MR. PAPPAS: Correct. And there's also  
28 a component here that no one's discussed, there is a  
29 resident population of rainbows in the Kasilof and  
30 there are some eight, nine, 10 pound rainbows in there  
31 that some of the local folks aren't really sharing the  
32 information about, we don't have a population census or  
33 some other work there, but there is a concern for the  
34 larger rainbows that do not out-migrate are not  
35 steelhead that might just live in between the lake and  
36 the river, migrate back and forth. That's a concern.  
37 And as you mentioned earlier the larger the fish, the  
38 more eggs.

39

40 CHAIRMAN LOHSE: I'm going to ask you a  
41 question because I think that Doug's missing something  
42 here that I'm not sure we're getting across. What  
43 you're saying is all the steelhead are over 20 inches,  
44 but all the resident rainbows are not over 20 inches,  
45 so consequently you could take 200 rainbows that are  
46 under 20 inches but none of them would probably be  
47 steelhead.

48

49 MR. BLOSSOM: I asked that and they  
50 refused to answer.

1 MR. PAPPAS: Mr. Chair. I think we  
2 concur that unlikely, unless you are harvesting  
3 juvenile steelhead that are in the system and haven't  
4 out-migrated yet. Trying to make this as complex as  
5 possible.

6  
7 CHAIRMAN LOHSE: So a juvenile  
8 steelhead is basically classed as a resident species  
9 until it goes to saltwater and comes back?

10  
11 MR. PALMER: Yeah, although we haven't  
12 studied out-migration of steelhead in the Kasilof but  
13 my experience elsewhere is that steelhead will -- much  
14 like salmon will rear in the freshwater environment for  
15 about two years, maybe three years, depending on the  
16 environmental conditions and then out-migrate as if  
17 they were a juvenile -- just like juvenile salmon, so  
18 they would out-migrate at probably a length of six to  
19 eight inches or somewhere in that neighborhood.

20  
21 CHAIRMAN LOHSE: Yeah. Bill.

22  
23 MR. STOCKWELL: Thank you. Do you have  
24 any data of the resident species rainbows in the  
25 Kasilof watershed?

26  
27 MR. PALMER: We have very little  
28 information but we do see resident species, resident  
29 rainbow trout migrate upstream in Crooked Creek and  
30 Nikolai Creek both, concurrently with the steelhead and  
31 we're identifying them by -- typically we're using the  
32 spotting pattern on the resident fish are somewhat  
33 different than the steelhead.

34  
35 MR. STOCKWELL: Would it be safe to say  
36 that there is a healthy population of resident species,  
37 rainbows in the watershed?

38  
39 MR. PALMER: Yes, I would say it's  
40 healthy but not that large.

41  
42 MR. STOCKWELL: Right. But there is a  
43 population.

44  
45 MR. PALMER: Yes.

46  
47 MR. STOCKWELL: So they are susceptible  
48 to harvest the same as the others, along with juvenile  
49 steelhead?

50

1 MR. PALMER: Absolutely.

2

3 MR. STOCKWELL: Thank you.

4

5 CHAIRMAN LOHSE: Thank you. And I had  
6 another question for you and I can't remember it so if  
7 you have another comment to make to us as an Advisory  
8 Committee.

9

10 MR. CRAWFORD: Mr. Chairman. I didn't  
11 mean to open that big can of worms.

12

13 (Laughter)

14

15 MR. CRAWFORD: But when I was -- I  
16 think maybe there was a little confusion when I was  
17 speaking of out-migration of the fish, I'm talking  
18 about adult fish, not smolts. So the adult fish go up  
19 and spawn and like they said, probably leave the river  
20 in June, that's an adult fish, that's a fish over 20  
21 inches, and that was our point on that.

22

23 CHAIRMAN LOHSE: Thank you. I think we  
24 understood that part. I think I threw the can of worms  
25 when I brought up the smolt and the resident steelhead  
26 but I was under the impression that the kelts had gone  
27 out a little bit earlier and I was glad for the  
28 clarification. But it still sounds like most of the  
29 kelts have left the system prior to having a personal  
30 use fish -- or a subsistence fishery there, but, you're  
31 right maybe not all of them have.

32

33 MR. CRAWFORD: Also, it's very  
34 difficult to tell -- a steelhead that's been in the  
35 river for very long and a rainbow that's been there for  
36 a while, it's not an easy thing for someone who didn't  
37 know exactly what they were looking at, to tell the  
38 difference between the two, so that's why the  
39 regulation is the size, not a steelhead versus a  
40 rainbow, because it would be a difficult thing to  
41 enforce, just because the appearance of the fish is  
42 very similar, especially once the steelhead is spawned  
43 is a kept whereas once the fish has been in the river  
44 for awhile.

45

46 CHAIRMAN LOHSE: I agree with you and  
47 now I'm going to speak from somebody that likes to eat  
48 fish, I can't imagine anybody that likes to eat fish  
49 keeping a steelhead kelt, I mean that would be like  
50 taking a spawned out king salmon off the spawning

1 grounds and trying to eat it. I mean there's nothing  
2 that looks worse than a steelhead after spawning, you  
3 know, I mean it just -- so I'm hoping that anybody  
4 that's out there subsistence fishing turns them loose  
5 because they're not going to be very good eating.

6

7 So any other comments, questions.

8

9 MR. ENCELEWSKI: Through the Chair and  
10 through Mike. I do have a question, I guess I'm  
11 missing something and I'm not sure who to direct it to  
12 really. But are the 200 fish total fish, you know,  
13 whatever that are going to be allowed under  
14 subsistence, my question is what is the total use, I  
15 mean you got a total use on each streams of catch, how  
16 does that compare to the 200 subsistence?

17

18 MR. PAPPAS: Mr. Chair. George Pappas,  
19 Fish and Game. The total use would be, if you look at  
20 the OSM analysis that has information about catch rates  
21 of approximately less than 600 fish on average in the  
22 last seven -- six or seven years, of course there's  
23 catch and release mortality, conservatively there's  
24 like about 50 papers out on it and I think the  
25 Department uses about two to three percent catch and  
26 release mortality, so you multiply two or three  
27 percent times 600, additionally from zero to 65 fish  
28 have been reported in the statewide harvest survey, one  
29 year being 65 and the rest of the years being 30 or  
30 less, about, you're looking at 200 fish limit on the  
31 dipnet fishery, I don't believe there is a limit for  
32 the rod and reel Federal subsistence fishery, not the  
33 rod and reel/dipnet fishery but the third fishery and  
34 additionally in Tustumena, the through the ice fishery,  
35 with the net and both jigging with the Federal  
36 subsistence fishery probably harvests -- oh, can  
37 harvest a few and I don't know what the limit is on  
38 that and the sportfishery in the lake itself, which I  
39 don't think too many participate for resident species,  
40 maybe some lake trout, so combined, in addition another  
41 piece of information, the personal use fishery which is  
42 a couple radiotags in, same thing in Southeast, all the  
43 steelhead reported on the subsistence permits and the  
44 personal use permits always are out-migrating kelts, I  
45 think four or five a year get turned up in Southeast  
46 fisheries, so you're looking at multiple sources on the  
47 same fish, so is there accumulation there, yeah, is the  
48 State always -- it's an enormous amount of fish if the  
49 potential's realized. I'm not sure if that's a  
50 thousand math, I'd have to do the math on it and get

1 back to you but cumulatively it adds up, sir.

2

3 CHAIRMAN LOHSE: I think what you  
4 basically were asking is what is the take in the other  
5 fisheries right now?

6

7 MR. ENCELEWSKI: That is true in  
8 compared to -- I'm trying to get the comparison.

9

10 CHAIRMAN LOHSE: To compare it to the  
11 200.

12

13 MR. PAPPAS: Through the Chair. The  
14 200 fish limit set for the Federal subsistence  
15 dipnet/rod and reel fishery for harvest, I believe  
16 would be higher than the current sportfishery harvest  
17 and sportfishery estimated catch and release mortality.

18

19 So it would be -- if I remember  
20 correctly from the conversations at the Board meeting  
21 the idea of doubling the harvest -- yeah, doubling the  
22 harvest would be acceptable, was being presented by  
23 Federal Staff, that'll all probably be clarified fairly  
24 soon here but currently I think the proposed harvest  
25 limits are higher than what is current going on with  
26 the current levels of fisheries in the Kasilof. Now,  
27 if it spikes, people really start fishing for steelhead  
28 in the Kasilof that could change on the sportfish side.

29

30 Mr. Chair.

31

32 CHAIRMAN LOHSE: Thank you. That was  
33 my interpretation of the data on the Kasilof. If we  
34 were talking the Kenai it'd be a different story  
35 because there's a much greater sportfishing take and  
36 mortality on the Kenai than there is on the Kasilof at  
37 this point in time anyhow.

38

39 MR. PAPPAS: And, Mr. Chair, as Robin  
40 West testified there, I think at the last RAC meeting,  
41 a lot of folks did not know about some of the steelhead  
42 populations in the Kasilof and of the local folks kept  
43 it under the table, and now a few more people might be  
44 drawn that direction so we might see an increase in the  
45 sportfishery, we don't know. A lot of that was  
46 unknown, it was local knowledge but I believe it's  
47 becoming public, sir.

48

49 Mr. Chair.

50

1 CHAIRMAN LOHSE: Any other questions.  
2  
3 MR. ENCELEWSKI: No, just a comment, I  
4 know they're catching a lot of steelhead up there and  
5 releasing them, I noticed some just last week.  
6  
7 CHAIRMAN LOHSE: Thank you. Thank you,  
8 sorry we kept you up there so long.  
9  
10 MR. CRAWFORD: No problem.  
11  
12 CHAIRMAN LOHSE: Summary of written  
13 public comments, do we have any.  
14  
15 MS. CLARK: Mr. Chairman. We have one  
16 from the Kenai River Sportsfishing Association.  
17  
18 CHAIRMAN LOHSE: Could you read it.  
19  
20 MS. CLARK: Yes. Kenai River  
21 Sportfishing Association supports this important  
22 regulatory change to benefit resource conservation and  
23 making consistent State and Federal regulations.  
24  
25 This regulation/update is being  
26 proposed as a means to ensure the conservation of  
27 rainbow/steelhead trout, grayling and burbot in the  
28 Kenai Peninsula freshwaters.  
29  
30 Additionally, it removes confusing  
31 language in the current regulation that could be  
32 construed to permit accumulation of State and Federal  
33 bag limits. We believe this regulation will also  
34 establish consistency between Federal and State  
35 regulations and be consistent with the direction of the  
36 Federal Subsistence Board in May 2007.  
37  
38 Furthermore, this proposed --  
39 furthermore this proposal clarifies regulatory language  
40 and reduces the likelihood of State enforcement actions  
41 against Federal subsistence users who might mistakenly  
42 interpret the regulation to allow accumulation of  
43 Federal and State bag limits.  
44  
45 CHAIRMAN LOHSE: Thank you. We have  
46 some people for testifying, do you want to testify on  
47 these proposals -- on this proposal, Darrel or -- no,  
48 neither one of them, Darrel or Ivan, no.  
49  
50 Okay. So a motion to put this proposal

1 on the table is in order so that we can discuss it,  
2 deliberate it, make recommendations.

3

4 MR. ENCELEWSKI: I so moved to put it  
5 on the table.

6

7 CHAIRMAN LOHSE: It's been moved to put  
8 FP09-06, if I remember right, FP09-06 on the table, do  
9 I hear a second.

10

11 MR. STOCKWELL: Second.

12

13 CHAIRMAN LOHSE: It's been moved and  
14 seconded to put FP09-06 on the table, okay, to support  
15 FP09-06 on the table.

16

17 MR. ENCELEWSKI: Correct.

18

19 CHAIRMAN LOHSE: Okay. With that let's  
20 have some discussion on this.

21

22 I would like a clarification from the  
23 State if I could, because I've heard that word twice  
24 about needing a clarification so that a subsistence  
25 user doesn't think he can have an accumulation, and I'm  
26 trying to find where wording in there that says  
27 anything that gives -- if I were reading the  
28 regulations that would give me any idea that I could  
29 accumulate and I can't find it.

30

31 So if somebody wants to explain that to  
32 me where the idea that those regulations, as currently  
33 written, give a person the idea that they can  
34 accumulate, you know, State and Federal bag limits, I  
35 can't find it.

36

37 MR. FRIED: Steve Fried. Fish and  
38 Wildlife Service. If you look on Page 44 and existing  
39 regulations, and in the middle there 27(c)(ii)(16) it  
40 says:

41

42 You may not accumulate harvest limits  
43 authorized in this section;

44

45 or;

46

47 100.28 with harvest limits authorized  
48 under State regulations

49

50 So that's what I was speaking to so I

1 don't -- so I'm not sure.

2

3 CHAIRMAN LOHSE: Well, it's brought up  
4 a couple times and the person in this letter had the  
5 same thing and I was just wondering where it's unclear  
6 enough that somebody would think that they could  
7 accumulate it when it specifically says you can't.

8

9 MS. HENDRICKSON: Mr. Chair. This is  
10 Nancy Hendrickson with the State/Federal Subsistence  
11 Liaison Team. If you look under Page 45 under the  
12 general regulations under 27(i)(10)(iv), the language  
13 that got added after the Board passed in May of '07,  
14 the terms in that paragraph;

15

16 Unless modified herein and additionally

17

18 In the next sentence created a  
19 potential confusion in the specific regulations that  
20 we're trying to update, which further on goes specific  
21 to the Cook Inlet, and that's what creates the  
22 potential for misinterpretation because of the terms;

23

24 Unless modified herein or additionally

25

26 And so that's why the State determined  
27 that they would like to clarify the regulations so  
28 there wouldn't be an error by a user.

29

30 CHAIRMAN LOHSE: Okay. So the word  
31 additionally would make it look like these were  
32 additional regulations on top of existing regulations  
33 and that's where the confusion could come?

34

35 MS. HENDRICKSON: That's correct, sir.

36

37 CHAIRMAN LOHSE: Doug.

38

39 MR. BLOSSOM: Mr. Chair. Nancy, define  
40 the Kasilof drainage.

41

42 MS. HENDRICKSON: Sir, I'm not a  
43 biologist and I'll leave that to my biologist experts.  
44 I'm fairly new to the Department, but I was just  
45 qualifying language where interpretation might be  
46 misinterpreted.

47

48 CHAIRMAN LOHSE: Okay.

49

50 MR. BLOSSOM: I need someone to answer

1 that.

2

3 CHAIRMAN LOHSE: Okay, we can ask --  
4 he'll come up and answer that for you.

5

6 I just have one more question for Nancy  
7 then. So what the State would like seen there is the  
8 word additionally removed, I mean that would clarify  
9 the -- because I know like Steve pointed out, we  
10 specifically say in 27(c)(ii)(16) you may not  
11 accumulate, I mean it spells it right out; you may not,  
12 which to me would clarify the word additionally very  
13 clearly but if the word additionally was stricken then  
14 that would take out the concern for confusion?

15

16 MS. HENDRICKSON: Mr. Chair. Also the  
17 term; unless modified herein. When you leave that term  
18 in there, unless modified herein, it allows for more  
19 specific area regulations to be addressed a little  
20 differently than the more general regulation. So the  
21 two terms, both:

22

23 Unless modified herein and additionally  
24  
25 can affect the more specific  
26 regulations.

27

28 CHAIRMAN LOHSE: Well, this would look  
29 to me like this would be more -- this wouldn't be  
30 something we need to act on because this is just a  
31 legal clarification of language that could be addressed  
32 -- Pete that could be addressed under -- with legal  
33 clear up with consultation there. I mean because we  
34 don't write the language as much as we give the idea.

35

36 Don't run off, you're on the docket.

37

38 (Laughter)

39

40 CHAIRMAN LOHSE: Pete.

41

42 MR. PROBASCO: Thank you, Mr. Chair.  
43 In fact we're in the process of doing this, dealing  
44 with accumulation of limits throughout the state and  
45 clarification. And the way we're approaching it is  
46 we've discussed this with the Board electronically to  
47 clarify their intent on accumulations, and particularly  
48 to your area, the Kenai Peninsula, once the Board acts  
49 on that they will send a clarification letter to  
50 managers Forest Service and US Fish and Wildlife

1 Service clarifying with what you guys are wrestling  
2 with as far as accumulation.

3

4                   And our interpretation is accumulation  
5 is not allowed, but we need to clarify it with our  
6 managers by the Board's intent through a letter.

7

8                   Mr. Chair.

9

10                   CHAIRMAN LOHSE: Okay. So from as an  
11 OSM person, questions like this, like these language  
12 questions, can be addressed right in Staff -- I mean  
13 these language ones, this has nothing to do with bag  
14 limits, seasons or anything like that that we're  
15 addressing right here, that's a language one, that can  
16 be addressed under Staff. But the question we really  
17 need to address whether or not we want to limit the  
18 take of rainbow trout over 20 inches to two a year.

19

20                   MR. PROBASCO: That's correct, Mr.  
21 Chair. That's the question before you on the proposal.

22

23                   Now, your earlier statement, I wouldn't  
24 go as broad as it can always be corrected through  
25 administrative. There may be instances that the Board,  
26 for whatever reason, didn't take a certain section of  
27 the regulations and address it in their deliberations,  
28 that's where you get into the grey area. But if  
29 there's sufficient record and it's just through the  
30 composing of the regulations that we find that an error  
31 was made, then in most of those cases and I underline  
32 most of those cases, we can correct those  
33 administratively.

34

35                   Mr. Chair.

36

37                   CHAIRMAN LOHSE: Thank you. Any other  
38 questions for Pete.

39

40                   Bill.

41

42                   MR. STOCKWELL: Thank you, Mr. Chair.  
43 Just when you -- this is one where, I think -- do we  
44 need a clarification so people actually reading  
45 actually what they're going to harvest needs to be  
46 identified at the same place rather than going --  
47 referring them to some other regulation where it says  
48 you can't double up the harvest. In other words are we  
49 trying to make this user friendly, easier for the  
50 people to understand that they can't double up the

1 harvest?

2

3 MR. PROBASCO: Mr. Chair. Mr.  
4 Stockwell. I think in instances not only to this, but  
5 other parts of our regulations, sometimes bureaucracy  
6 gets in our way and they become very cumbersome. Our  
7 goal is when things like this are identified, that with  
8 our handy dandy that we issue, we can put introducing  
9 statements at the regulation that specifically  
10 addresses these types of concerns and so we can tackle  
11 that in that manner.

12

13 Thank you, Mr. Chair.

14

15 MR. STOCKWELL: I agree with you. I  
16 think this is one time you need to have it specific in  
17 the item and I'd like to address that.

18

19 Thank you.

20

21 MR. PROBASCO: And, Mr. Chair, if I  
22 may, we could reflect with Ms. Clark's notes that that  
23 can be an action item when we do the handy dandy.

24

25 Mr. Chair.

26

27 CHAIRMAN LOHSE: Gloria.

28

29 MS. STICKWAN: I heard him say your  
30 area, were you talking about Cordova as well?

31

32 MR. PROBASCO: Mr. Chair. Ms.  
33 Stickwan. I was specifically addressing the Kenai  
34 Peninsula where this is, right now, an area that needs  
35 to be clarified.

36

37 To my knowledge, and I could be wrong,  
38 I'm not aware of any misinterpretation in the Cordova  
39 area. Because you have specific.....

40

41 MS. STICKWAN: I just heard you say  
42 your area and I was wondering what you meant by that.

43

44 MR. PROBASCO: I'm speaking to you, as  
45 the Council.

46

47 MS. STICKWAN: Okay.

48

49 CHAIRMAN LOHSE: Okay. Okay, what was  
50 the question that you wanted to ask him.

1 MR. BLOSSOM: Mr. Chair. George, what  
2 is the Kasilof drainage consist of?

3  
4 MR. PAPPAS: Mr. Chair. Mr. Blossom.  
5 I couldn't find a legal definition of it. But it would  
6 be Tustumena Lake, its tributaries and flowing waters,  
7 basically Tustumena Lake down to saltwater would be the  
8 Kasilof River drainage.

9  
10 MR. BLOSSOM: Mr. Chair. That is the  
11 problem I have with this. We specifically gave the  
12 subsistence area a winter fishery through the ice with  
13 a limit of 200 rainbow steelhead trout and this  
14 regulation here will take that away. We specified that  
15 it have a limit of 200 that way when they put a net  
16 under the ice it's hard to stop at two, but if we had a  
17 limit of 200, which we thought was fair, and this  
18 regulation will completely obliterate that.

19  
20 CHAIRMAN LOHSE: Comments on that.

21  
22 MR. PAPPAS: Mr. Chair. The  
23 Department's position is related to gear selectivity, I  
24 mean a gillnet in comparison to a dipnet. I would  
25 assume, you know, the Department's concerns,  
26 everybody's concerns was you're not going to release a  
27 dead fish out of a gillnet in comparison to say a  
28 fishwheel or dipnet, sir.

29  
30 Mr. Chair.

31  
32 CHAIRMAN LOHSE: But you can see Doug's  
33 concern, if we put a total limit of 200 and if we make  
34 it a two for an individual, that would apply to all the  
35 fisheries and that would basically stop any individual  
36 from putting a net under Tustumena Lake because there's  
37 no way they could limit themselves to two.

38  
39 MR. PAPPAS: Point taken, Mr. Chair.

40  
41 CHAIRMAN LOHSE: Doug.

42  
43 MR. BLOSSOM: Mr. Chair. An additional  
44 comment is that when we developed this Kasilof River  
45 fishery, the concern was not harvesting too many, so we  
46 also put the 200 limit there and that's what it's  
47 there, we didn't try to go hog wild, we said, 200, they  
48 can't catch any more than that. So now we're going to  
49 a different scheme, and, I guess, I don't really like  
50 what I hear.

1 CHAIRMAN LOHSE: Doug. We're not going  
2 to a different scheme, we have a proposal proposing a  
3 different scheme. It's up to us as a Council to decide  
4 where we're going.

5  
6 Bill.

7  
8 MR. STOCKWELL: Mr. Chairman. In the  
9 regulations it says all rainbow and steelhead must be  
10 released unless otherwise provided in this section. It  
11 seems like the ice comes after August 15th, which means  
12 that you can't harvest rainbows in the Tustumena ice  
13 fishery anyhow, is that correct or am I misreading  
14 something.

15  
16 Thank you.

17  
18 CHAIRMAN LOHSE: Maybe we need some  
19 clarification on that from somebody.

20  
21 MR. BLOSSOM: This is for all of Cook  
22 Inlet, and this is because this is winter.....

23  
24 CHAIRMAN LOHSE: Yeah. Mr. Palmer.

25  
26 MR. PALMER: Mr. Chair. Council  
27 members. I think I can probably shed a little light on  
28 that. We don't have a lot of information on the  
29 Tustumena ice fishery because we've only issued five  
30 permits on that fishery in 2007 and zero permits in  
31 2008. But typically with the winter weather that we  
32 have there, the ice conditions aren't safe for anybody  
33 to go out there and do any fishing until after the  
34 first of the year each year, so we're primarily talking  
35 about a fishery that would take place in January,  
36 February, March, and we've had five permits issued in  
37 that fishery to date so.....

38  
39 CHAIRMAN LOHSE: And so that would then  
40 be before August 15th.

41  
42 MR. PALMER: It would be before August  
43 15th.

44  
45 CHAIRMAN LOHSE: Okay. So we don't  
46 really run into a problem there. I see what you're  
47 getting at there, but we don't end up running into  
48 problems. I think we discussed that once before.

49  
50 Jerry.

1 MR. BERG: Thank you, Mr. Chair. Jerry  
2 Berg, for the record. And also what you're not seeing  
3 is that there's a separate section for the Tustumena  
4 ice fishery regulations that don't have that August  
5 15th date in them, you're seeing the Kasilof River  
6 fishery which has the August 15th date in it so there's  
7 a separate section that you're not seeing in the  
8 Federal regulations that simply addresses the Tustumena  
9 Lake ice fishery, and it does not have the August 15th  
10 date in it.

11  
12 CHAIRMAN LOHSE: George.

13  
14 MR. PAPPAS: Mr. Chair. It's not the  
15 intent of the Department to restrict the through the  
16 ice fishery with this regulation as a side effect, it's  
17 a different issue, that's a different fishery and we  
18 definitely don't want folks releasing dead fish from a  
19 gillnet.

20  
21 Mr. Chair.

22  
23 But a very good point, that'll be  
24 incorporated into our comments.

25  
26 Mr. Chair.

27  
28 CHAIRMAN LOHSE: Okay. Any other  
29 discussion, comments from the Council members. Doug.

30  
31 MR. BLOSSOM: Mr. Chair. George. Just  
32 for the record, also, it says in our Federal  
33 regulations for jig fishery, annual household limits  
34 are 30 fish and any combination of lake trout, rainbow  
35 trout or Dolly Varden or Arctic char, so, there, again,  
36 we're going to take this down to two instead of 30.

37  
38 CHAIRMAN LOHSE: Again, Doug, this  
39 regulation would -- this proposed regulation would not  
40 take it down to two, it would just limit it to no more  
41 than two over 20 inches. You could still have 28 fish  
42 under 20 inches.

43  
44 MR. BLOSSOM: Mr. Chair. They told me  
45 just a little while that there weren't any 20. I guess  
46 for me to swallow this, we have to make this specific  
47 to the Kasilof River.

48  
49 CHAIRMAN LOHSE: Bill.

50

1 MR. STOCKWELL: Mr. Chairman. For  
2 clarification, I'm not looking at our printed book but  
3 I'm looking at the regulatory book, and the regulatory  
4 book has Kasilof River salmon dipnet, fishwheel and  
5 then Kasilof River salmon rod and reel, Kasilof River  
6 resident species rod and reel and then it has the  
7 Tustumena Lake fishery. Now, what fisheries does this  
8 proposal apply to.

9  
10 MR. ENCELEWSKI: That's it.

11  
12 MR. STOCKWELL: And I think there's a  
13 clarification, a need, because in a sense I'm not sure  
14 what we're talking about.

15  
16 Thank you.

17  
18 CHAIRMAN LOHSE: Thank you. My  
19 understanding was that what was being proposed, and  
20 correct me if I'm wrong, was that the cumulative  
21 personal annual limit for an individual was no more  
22 than two rainbows over 20 inches, that was my  
23 understanding of what was trying to be done. Am I  
24 correct?

25  
26 MR. PAPPAS: Mr. Chair, that's correct.  
27 But you'll notice that our State comments do not  
28 incorporate the winter fisheries through the ice so  
29 that's going to have to be addressed.

30  
31 Mr. Chair.

32  
33 CHAIRMAN LOHSE: However, if you make  
34 the statement that the annual personal limit of an  
35 individual can't be accumulated and is no more than two  
36 rainbows over 20 inches, it applies to all fisheries,  
37 you know, I mean it would have to apply to all  
38 fisheries, so I can see Doug's point there, too.

39  
40 Council.

41  
42 Bill.

43  
44 MR. STOCKWELL: It's a question for the  
45 State, do you only intend this proposal to apply to the  
46 Kasilof River, to dipnet, rod and reel fisheries and  
47 not apply to Tustumena Lake fisheries?

48  
49 MR. PAPPAS: For clarification here,  
50 for this proposal cycle, I would say that's the intent.

1 Mr. Chair.  
2  
3 MR. STOCKWELL: Thank you.  
4  
5 CHAIRMAN LOHSE: Council members we  
6 have a motion on the table, are there any proposals for  
7 modifications or amendments or do we care to vote on  
8 the proposal as it's in front of us, do we make a  
9 modified proposal.  
10  
11 Bill.  
12  
13 MR. STOCKWELL: An amendment. I.....  
14  
15 REPORTER: Bill. Bill.  
16  
17 MR. STOCKWELL: .....want to make a  
18 motion to.....  
19  
20 REPORTER: Bill.  
21  
22 MR. STOCKWELL: Sorry. Thank you.  
23  
24 MR. WILSON: More discussion.  
25  
26 MR. STOCKWELL: I'd like to first.....  
27  
28 CHAIRMAN LOHSE: Yeah, we can have more  
29 discussion on it.  
30  
31 MR. STOCKWELL: .....make a motion to  
32 modify the proposal that it does not apply to the  
33 Tustumena winter fishery, it only applies to the salmon  
34 rod and reel fisheries, dipnet, fishwheels and rod and  
35 reel fisheries and it does not apply to the Tustumena  
36 fisheries. I think we should take that up and then I  
37 have another motion to make after that.  
38  
39 Thank you.  
40  
41 CHAIRMAN LOHSE: So the motion would  
42 be, the proposal as written does not apply to the  
43 Tustumena Lake under the ice fishery?  
44  
45 MR. STOCKWELL: That's correct.  
46  
47 CHAIRMAN LOHSE: Okay, do I hear a  
48 second.  
49  
50 (No comments)

1                   CHAIRMAN LOHSE: Hearing none, the  
2 amendment dies. Do I have any other proposals or  
3 amendments.

4  
5                   (Pause)

6  
7                   CHAIRMAN LOHSE: Dean, did you have  
8 something to say.

9  
10                  MR. WILSON: I guess it's more  
11 clarification than anything. Not being from this area,  
12 I'm fairly confused on what you guys are trying to do  
13 and I doubt if I'm much farther off than the rest of  
14 everybody out here.

15  
16                  (Laughter)

17  
18                  MR. WILSON: I don't know how anybody  
19 can possibly fish in this area right now it's so  
20 confusing.

21  
22                  But just to back up a little bit, right  
23 now, those folks can -- and maybe you guys can answer  
24 this, those folks that are catching steelhead or  
25 rainbow in this fishery are catching it incidentally  
26 and it's getting caught incidentally under the existing  
27 Federal regulations, it's not the target fish. If it  
28 is picked up incidentally you may retain them for  
29 subsistence purposes, so it's not necessarily a  
30 targeted fish right now although it can be eaten. And  
31 my understanding from the very first person with the  
32 State that showed up, we're not picking up any  
33 steelhead or rainbow with this fishery as it is right  
34 now; is that correct, nothing is getting caught.

35  
36                  CHAIRMAN LOHSE: (Nods affirmatively)

37  
38                  MR. WILSON: So -- and there's a  
39 conservation concern with people getting over 20  
40 inchers and actually targeting the limit of 200 and  
41 we're not even getting one; is that right, is that what  
42 I'm.....

43  
44                  CHAIRMAN LOHSE: Yeah.

45  
46                  MR. WILSON: So I guess what would be  
47 wrong with putting a limit on there if there's none  
48 getting caught -- well, what's the discussion on that,  
49 if they want two on there or they want 20 on there for,  
50 a limit of 20 inchers, just for a concern of

1 conservation on their end, if none are getting caught  
2 incidentally, what's the issue with putting that out  
3 there?

4

5 CHAIRMAN LOHSE: Doug.

6

7 MR. BLOSSOM: Mr. Chair. Doug. Dean,  
8 I'll take three areas in our subsistence regulations.  
9 On Page 60 it says you can take 200 lake trout, 200  
10 rainbow trout and 500 Dolly Varden with a gillnet. It  
11 says in the jig fishery under the ice you can take a  
12 limit of 30 in any combination per household. And then  
13 you go over on Page 58 and you got a Kasilof River  
14 fishwheel that is allowed to take an accumulated 200  
15 rainbow. We worked hard to get all these limits in  
16 there to get it done with and now what I see happening  
17 is we're going to two instead of 200. Because some of  
18 these fisheries are going to be hard to limit to two.  
19 So I thought we had it all worked out and now we're  
20 going back, in my estimation, to ground zero.

21

22 MR. WILSON: And the amendment that was  
23 proposed would eliminate Tustumena, right?

24

25 MR. BLOSSOM: It eliminates all three  
26 of those that I just stated.

27

28 CHAIRMAN LOHSE: Right.

29

30

31 MR. WILSON: And that would eliminate  
32 the fishwheel as well, so that would cover that, so if  
33 you limited it to Tustumena, that would take care of  
34 the under ice fishery, that would still be allowed to  
35 get 200, and that doesn't cover the fishwheel though,  
36 correct.

37

38 CHAIRMAN LOHSE: Doug.

39

40 MR. BLOSSOM: Mr. Chair. Dean. It  
41 doesn't cover any of those three areas. And so I guess  
42 my position is, is we're not taking any right now, we  
43 got a long way to go to 200, so when it starts getting  
44 close to 200 then we should get worried, not now. This  
45 was a thing for subsistence users to use until we see  
46 it getting to that maximum amount, what's the big  
47 worry.

48

49 CHAIRMAN LOHSE: Doug, if I understand  
50 you correct, what you're saying is that rather than

1 amending this proposal, you would just vote to vote  
2 this proposal down?

3

4 MR. BLOSSOM: Yeah.

5

6 MR. ENCELEWSKI: So would I.

7

8 CHAIRMAN LOHSE: Bill.

9

10 MR. STOCKWELL: Mr. Chairman. Just to  
11 add to the confusion, if you look under Kasilof River  
12 resident species rod and reel, the second paragraph  
13 says there's an annual limit of two rainbow steelhead  
14 trout 20 inches or longer taken from the Kenai  
15 Peninsula waters.

16

17 MR. BLOSSOM: It's already there.

18

19 MR. STOCKWELL: Right.

20

21 CHAIRMAN LOHSE: So if we have no  
22 amendments or proposals for modification then this  
23 motion is going on the table the way it's -- this  
24 proposal's going on the table it's written and we've  
25 had a proposed amendment, nobody seconded it. Do I  
26 have any other modifications or amendments that anybody  
27 wishes to put on the table?

28

29 (No comments)

30

31 CHAIRMAN LOHSE: Okay.

32

33 MR. BLOSSOM: Call for the question.

34

35 CHAIRMAN LOHSE: The question's been  
36 called. The question is on the proposal as presented,  
37 as -- presented might not be the word -- the correct  
38 word for it, what would it be.....

39

40 REPORTER: As written.

41

42 CHAIRMAN LOHSE: As written, yes, thank  
43 you.

44

45 All in favor of the proposal as written  
46 signify by saying aye -- you want some discussion.

47

48 MR. WILSON: Yeah, I got some  
49 discussion.

50

1 CHAIRMAN LOHSE: We had a question, you  
2 know, the question's been called.  
3  
4 MR. WILSON: All right, go for it.  
5  
6 MR. BLOSSOM: Let's hear what Dean has  
7 to say.  
8  
9 CHAIRMAN LOHSE: You called the  
10 question, okay, we'll have some more discussion. Dean.  
11  
12 MR. WILSON: Just a little bit here,  
13 proposed regulations is what we're going with. Now,  
14 initially when the person that was discussing that was  
15 talking about this, they said to scratch out the less  
16 than 20 inches on the second page.  
17  
18 CHAIRMAN LOHSE: Uh-huh.  
19  
20 MR. WILSON: Is that going to be  
21 scratched out as well or.....  
22  
23 MR. BLOSSOM: No.  
24  
25 MR. ENCELEWSKI: No.  
26  
27 CHAIRMAN LOHSE: No.  
28  
29 MR. BLOSSOM: We're just going to stay  
30 with what's in the book as written.  
31  
32 CHAIRMAN LOHSE: Yeah.  
33  
34 MR. WILSON: Exactly what we have then,  
35 okay. And one more item, you don't feel conservation  
36 issues merit this proposal at all?  
37  
38 MR. BLOSSOM: No.  
39  
40 CHAIRMAN LOHSE: No, okay.  
41  
42 MR. WILSON: I'll call the question.  
43  
44 CHAIRMAN LOHSE: Okay. The question's  
45 been called on the proposal, as written on Page 45. We  
46 have no amendments on the table, we have no proposals  
47 for modification on the table, despite the fact that a  
48 couple things have been brought forward, so we will  
49 vote on this as it's presented on Page 45.  
50

1 All in favor signify by saying aye.  
2  
3 (No aye votes)  
4  
5 CHAIRMAN LOHSE: All opposed signify by  
6 saying nay.  
7  
8 IN UNISON: Nay.  
9  
10 CHAIRMAN LOHSE: Motion fails. Okay.  
11 And we went round and round and round, it's okay. With  
12 that we take a break.  
13  
14 Bill.  
15  
16 MR. STOCKWELL: Just for the record, I  
17 did not vote on that proposal. Thank you.  
18  
19 CHAIRMAN LOHSE: You what?  
20  
21 MR. STOCKWELL: Just for the record, I  
22 abstained from voting on that proposal.  
23  
24 Thank you.  
25  
26 CHAIRMAN LOHSE: Okay, you got that  
27 Tina.  
28  
29 REPORTER: (Nods affirmatively)  
30  
31 (Off record)  
32  
33 (On record)  
34  
35 CHAIRMAN LOHSE: For those of you that  
36 have cell phones and have people that you want to meet  
37 and things like that, we are going to recess this  
38 meeting at 12 noon, and so if you've got somebody you  
39 want to meet for lunch or something like that, you can  
40 make your arrangements.  
41  
42 We're going to go on now to FP09-07,  
43 and Helen's going to present it to us.  
44  
45 MS. H. ARMSTRONG: Thank you, Mr.  
46 Chair. My name is Helen Armstrong, I'm with the Office  
47 of Subsistence Management.  
48  
49 FP09-07 analysis begins on Page 60 in  
50 your books. Proposal FP09-07 was submitted by the

1 Ninilchik Traditional Council, NTC, and requests that  
2 Ninilchik be added to the communities with a positive  
3 customary and traditional use determination for  
4 harvesting all fish in the Kenai River area. And the  
5 Kenai River area is defined as the Kenai Peninsula  
6 district waters north of and including the Kenai River  
7 drainage within the Kenai National Wildlife Refuge and  
8 the Chugach National Forest.

9  
10                   You've all been on the Council for a  
11 little while and this issue has come before you in the  
12 past. Right now Ninilchik has a positive C&T for all  
13 fish in the Kasilof River drainage, but in the Kenai  
14 River area the Federal Subsistence Board only  
15 recognized the customary and traditional uses of salmon  
16 and not resident species by Ninilchik residents. So  
17 for the Kenai River area they broke it up and that's  
18 why this proposal's come before you.

19  
20                   The proponent of FP09-07 requests that  
21 the Board recognize the community of Ninilchik's C&T  
22 uses of all fish in the Kenai River area similar to its  
23 uses of salmon. currently the existing C&T for the  
24 Kenai River area is for all fish for Hope and Cooper  
25 Landing, so Ninilchik wants to be added to that to make  
26 it all fish.

27  
28                   The analysis for this proposal focuses  
29 on the uses of resident fish or non-salmon freshwater  
30 fish in the Federal public waters in the Kenai River  
31 area by residents of Ninilchik.

32  
33                   Because this has come before you a  
34 number of times I'm not going to go into a lot of  
35 detail, but if you have some questions please feel free  
36 to ask me. I also won't go into the regulatory  
37 history, I think you're all familiar with that as well  
38 but if you want any refreshment of that let me know.

39  
40                   So this focuses on Ninilchik, it's the  
41 only community under consideration, and Ninilchik is  
42 comprised of two census designated places, Ninilchik as  
43 well as Happy Valley CDP, census designated place.  
44 Until 1952 the freshwater streams in the Kenai  
45 Peninsula were open to subsistence fishing and then in  
46 1952 all streams and lakes of the Kenai Peninsula were  
47 closed to subsistence fishing under territory of Alaska  
48 regulations. Only rod and reel or hook and line were  
49 allowed for personal use. From 1952 until 2002 when  
50 Federal management began on Federal waters Ninilchik

1 residents were not allowed to subsistence fish for  
2 resident species in the Kenai River area.

3  
4                   Because such a prohibition constitutes  
5 an interruption beyond the control of Ninilchik  
6 residents, the Board necessarily makes its decision on  
7 the best available information concerning historical  
8 patterns of use prior to the imposition of the  
9 prohibition or contemporary patterns of use under  
10 existing regulations.

11  
12                   As you all recall we did provide  
13 information regarding Ninilchik's more recent harvest  
14 of resident species in the Kenai River area. It was  
15 provided by a study done by Fall in -- studies done by  
16 Fall from ADF&G Subsistence Division from 2000 and  
17 2004, and then additional work in 2006 from NTC, two  
18 studies done in 1994 and 1999, from some information  
19 gathered by Chen in 2005, Wolfe in 2006, and then  
20 during public testimony at Southcentral Council in  
21 2005, 2006 and 2007 and Board meetings in 2006 and  
22 2007. Information provided by Fall and NTC and Wolfe  
23 documented the lifetime uses of fish species by  
24 Ninilchik residents in the Kenai River area.  
25 Unfortunately distinctions weren't made by Fall between  
26 salmon and resident species but Fall did find that 28  
27 percent of Ninilchik households had fished for either  
28 salmon or resident fish species in the Federal public  
29 waters of the Kenai River or the Swanson River areas in  
30 their lifetime. 17 percent frequently, four percent  
31 intermittently and less than six percent infrequently.

32  
33                   All of the information provided in the  
34 analysis in your book indicates that residents of  
35 Ninilchik have harvested all fish in the Kenai River  
36 area since the community was settled in the mid-1800s.  
37 But we do know that the Kenai River area use has  
38 decreased in recent years due to changes in  
39 regulations, competition with other users and  
40 population changes.

41  
42                   Two studies conducted by Fall in 2000  
43 and 2004 documented Ninilchik residents recent harvest  
44 and use of resident fish in the Kenai River area. Fall  
45 reported that less than one percent of households  
46 harvested rainbow trout and lake trout in the Kenai  
47 Lake or Kenai Mountain streams on the Kenai Refuge.  
48 Based on Falls research in each of the two years of  
49 study, although the levels were low, and they were low,  
50 there was some level of use by the Ninilchik residents

1 in the Kenai River area for harvesting fish.

2

3                   While Ninilchik's uses of the Kenai  
4 River area were not substantial during the study years  
5 there also are, under ANILCA, no unimportant  
6 subsistence uses.

7

8                   The opportunistic nature and associated  
9 values of subsistence hunting and fishing is that it  
10 does not limit harvest to a specific species.

11 Specifically, if a Ninilchik resident is fishing in the  
12 Kenai River area for salmon, for which they have a  
13 positive customary and traditional use determination  
14 and a rainbow trout is harvested instead, it is the  
15 nature of subsistence users to harvest what -- to use  
16 what is harvested. This is a pattern throughout Alaska  
17 of subsistence hunting and fishing.

18

19                   Resident species such as trout are  
20 usually harvested in much smaller quantities, parti --  
21 by any subsistence users, partially because resident  
22 species of fish often do not preserve as well as  
23 salmon. The harvest of resident species in the Kenai  
24 River area are most likely to occur when associated  
25 with hunting or other harvesting activities such as  
26 berrypicking. This pattern of use where multiple  
27 activities occur, berrypicking, fishing for Dolly  
28 Varden and rainbow trout while hunting is common among  
29 subsistence users.

30

31                   Based on the available history of the  
32 pattern of Ninilchik's use of resident species in the  
33 Kenai River, the opportunistic nature of subsistence  
34 uses and the demonstrated history of fishing activities  
35 by Ninilchik residents, it is reasonable to conclude  
36 that Ninilchik residents have customary and  
37 traditionally used resident fish species in the Kenai  
38 River area, thus, there is a reasonable basis for a  
39 positive customary and traditional use determination  
40 for the community of Ninilchik in the Kenai River for  
41 all fish with no distinction between salmon and  
42 resident fish species.

43

44                   Finally, just a note to remember,  
45 conservation concerns are not part of the decision  
46 process for making customary and traditional use  
47 determinations. If there are conservation concerns,  
48 these are properly addressed through the implementation  
49 of seasons, harvest limits and methods and means of the  
50 harvest.

1                   The OSM preliminary conclusion is to  
2 support FP09-07.  
3  
4                   Thank you, Mr. Chair, that concludes my  
5 presentation.  
6  
7                   CHAIRMAN LOHSE: Any questions for  
8 Helen.  
9  
10                  MS. STICKWAN: I got one.  
11  
12                  CHAIRMAN LOHSE: Gloria.  
13  
14                  MS. STICKWAN: This morning we.....  
15  
16                  REPORTER: Gloria, your microphone.  
17  
18                  MS. STICKWAN: This morning we heard  
19 something about all fish not being part of C&T, how's  
20 that going to affect this proposal, I just -- I guess  
21 -- are they going to make us be -- how does this affect  
22 this proposal, I guess is my question?  
23  
24                  MS. H. ARMSTRONG: All fish not being  
25 part of C&T, I'm not sure I understand what -- maybe  
26 Pete can clarify what your question is.  
27  
28                  CHAIRMAN LOHSE: Pete.  
29  
30                  MR. PROBASCO: Mr. Chair. Ms.  
31 Stickwan. In this case where the C&T finding is for  
32 all fish, the decision made by the Chistochina case  
33 would not prevent the Board making such a decision.  
34 It's when you want to refine the C&T finding where you  
35 go to species specific to limit to those communities in  
36 an area that you feel have the customary and  
37 traditional use of that resource.  
38  
39                  So in this case, if your Council and  
40 the Board finds that these communities listed, Hope,  
41 Cooper Landing and Ninilchik have utilized all fish,  
42 which are trout, salmon, burbot, grayling, et cetera,  
43 then you can do that.  
44  
45                  Mr. Chair.  
46  
47                  And for simplicity sake we list that in  
48 the regulation as all fish.  
49  
50                  Mr. Chair.

1                   CHAIRMAN LOHSE: Thank you, Pete. So  
2 basically we don't see any conflict with the  
3 Chistochina decision on being -- on having to be  
4 species specific when we say all freshwater fish at  
5 this point in time for this kind of a regulation.  
6  
7                   MR. PROBASCO: That's correct, Mr.  
8 Chair, because all fish are defined and I don't have  
9 the regulations in front of me but you have a  
10 definition for that.  
11  
12                   Mr. Chair.  
13  
14                   CHAIRMAN LOHSE: Okay. Any other  
15 questions for Helen.  
16  
17                   MS. STICKWAN: The boundaries are not  
18 going to come.....  
19  
20                   REPORTER: Gloria. Gloria.  
21  
22                   MS. STICKWAN: .....into question then?  
23  
24                   REPORTER: Gloria.  
25  
26                   MS. STICKWAN: The boundaries won't  
27 become an issue either or something -- you said  
28 something about where the resource is used, that's not  
29 going to be an issue here, either, is it?  
30  
31                   MS. H. ARMSTRONG: I think if I'm not  
32 mistaken what Chistochina said is there does need to be  
33 a geographic boundary, that you can't just say all  
34 residents of Alaska, there has to be some kind of  
35 geographic boundary and there is in this case, the  
36 Kenai River area.  
37  
38                   MS. STICKWAN: Okay.  
39  
40                   CHAIRMAN LOHSE: So this proposal is  
41 basically trying to decide whether they have C&T on the  
42 Kenai River drainage like they have C&T on the Kasilof  
43 River drainage for all fish and not just salmon.  
44  
45                   MS. H. ARMSTRONG: It's the Kenai River  
46 area, which includes the Swanson River and all the  
47 drain.....  
48  
49                   CHAIRMAN LOHSE: Yeah, okay.  
50

1 MS. H. ARMSTRONG: Yeah.

2

3 CHAIRMAN LOHSE: Okay. Any other  
4 questions.

5

6 (No comments)

7

8 CHAIRMAN LOHSE: Thank you, Helen.

9 We'll go on then with the Alaska Department of Fish and  
10 Game comments.

11

12 MR. PAPPAS: Mr. Chair. George Pappas,  
13 Department of Fish and Game.

14

15 Proposal FP09-07 is identical in intent  
16 to the portion of Proposal FP06-09 which the Federal  
17 Subsistence Board denied on September 13th, 2007. The  
18 Federal Board found no substantive evidence to support  
19 determination of a customary and traditional use of  
20 resident species within the Kenai River area by  
21 residents of Ninilchik and Happy Valley after a lengthy  
22 public process, which actually in intense examination  
23 lasting well over a year.

24

25 No new information is presented in the  
26 proposal or the Federal Staff analysis which justifies  
27 reversing the 2007 Federal Board C&T determination. In  
28 fact, the current Federal Staff analysis contains the  
29 same information taken from the same surveys and data  
30 compilations reported in 2003 through 2006 as the  
31 Federal Staff reported before. The Federal Board  
32 carefully considered that information and they  
33 concluded those communities had rarely harvested or  
34 fished for those specific fish stocks in those Kenai  
35 River waters -- excuse me, Kenai River area waters.

36

37 Without new substantive evidence of  
38 harvest of those specific fish stocks by those  
39 communities, the Department recommendation is to oppose  
40 this proposal.

41

42 Thank you, Mr. Chair.

43

44 Alaska Department of Fish and Game  
45 Preliminary Comments to the Regional Advisory Council

46

47 FP09-07 Ninilchik Customary and  
48 Traditional Use Determination for Resident Species in  
49 the Kenai River Area

50

1 Introduction:

2

3 Proposal FP09-07 would change the  
4 customary and traditional use (C&T) findings for the  
5 communities of Ninilchik and Happy Valley to allow  
6 those residents to harvest resident fish species under  
7 federal subsistence regulations within and north of the  
8 Kenai River drainage ( Kenai River area ). Proposal  
9 FP09-07 is identical in intent to the portion of  
10 Proposal FP06-09 that the Federal Subsistence Board  
11 (Federal Board) denied on September 13, 2007. The  
12 Federal Board found insufficient evidence to support a  
13 determination of customary and traditional use of  
14 resident species within the Kenai River area by  
15 residents of Ninilchik and Happy Valley after a public  
16 process and intense examination lasting over a year.  
17 No new information is provided that would support  
18 reversing that recent Federal Board determination.

19

20 Opportunity Provided by State:

21

22 The Kenai River drainage is located in  
23 the Anchorage-MatSu-Kenai Non-subsistence area  
24 designation under state law. The State provides a  
25 broad array of personal use, recreational, and  
26 educational fisheries to meet needs for personal and  
27 family consumption as well as cultural purposes. In  
28 addition to personal use and educational fisheries for  
29 salmon, State sport fishing regulations provide  
30 adequate opportunities for harvest of rainbow/steelhead  
31 trout, lake trout, and Arctic char/Dolly Varden in  
32 addition to salmon.

33

34 Conservation Issues:

35

36 No separate harvest proposal was  
37 submitted by the proponent, so, if this proposal is  
38 adopted, Ninilchik and Happy Valley residents would  
39 become eligible to harvest resident species under  
40 existing federal subsistence harvest regulations for  
41 residents of Hope and Cooper Landing to take resident  
42 species in the Kenai River area. The State previously  
43 documented that resident species are easily over-  
44 harvested and a conservative management approach,  
45 developed by the State over time, assures harvest  
46 opportunity while sustaining these distinct, vulnerable  
47 resident stocks in the Kenai River area. Most trout  
48 sport fishermen in that area practice catch-and-release  
49 fishing, and only about 2.4 percent of rainbow trout  
50 harvested in the state fishery are harvested in the

1 area. Current federal regulations allow use of dip  
2 nets and multiple baited treble hooks and for high  
3 daily harvest and possession limits for these Kenai  
4 River area resident stocks, which already raise serious  
5 conservation issues that are amplified by inadequate  
6 reporting requirements. While proposal FP09-07 only  
7 addresses a C&T determination, the Council and Federal  
8 Board should be aware that adding subsistence harvest  
9 of these resident fish by Ninilchik and Happy Valley to  
10 existing federal subsistence harvests of these fish by  
11 Hope and Cooper Landing residents would significantly  
12 increase these concerns.

13

14 Department Recommendation:

15

16 Oppose.

17

18 No new information is presented in the  
19 proposal or in the federal staff analysis which  
20 justifies reversing the 2007 Federal Board C&T  
21 determination. The recent federal staff analysis  
22 contains the same information, taken from the same  
23 surveys and data compilations reported in 2003-2006, as  
24 the federal staff reported before. The Federal Board  
25 carefully considered that information and concluded  
26 those communities had rarely fished for those specific  
27 fish stocks in those Kenai waters.

28

29 CHAIRMAN LOHSE: Thank you, George.  
30 Any questions for George.

31

32 (No comments)

33

34 CHAIRMAN LOHSE: George, if I remember  
35 right this Council supported this same proposal back  
36 then and I think we've supported it a number of times  
37 before that in the past.

38

39 MR. ENCELEWSKI: Three times.

40

41 CHAIRMAN LOHSE: Yeah. I just am  
42 wondering, as I've pointed out time and time to people,  
43 that if your proposal's turned down, you have the  
44 opportunity to submit your proposal again. And so if  
45 this Council -- even if the Board would find not  
46 sufficient evidence, this Council could find sufficient  
47 evidence to meet what we would consider the  
48 requirements that we feel is necessary.

49

50 So in a way I can understand what

1 you've just presented. You've basically told us that  
2 the Board did not find sufficient evidence when they  
3 looked at it, we have no new evidence here. At the  
4 same time we do have the opportunity to say that this  
5 is sufficient evidence for ourselves, to give it back  
6 to the Board and they have to make the same decision  
7 again. But I'm glad you did bring that to our  
8 attention, I'd forgotten that the Board had said that  
9 they -- I mean I just plain had forgotten that it had  
10 already been acted on and I didn't see any new evidence  
11 either, but I thought the evidence in the past was the  
12 same evidence that we'd looked at.

13

14 So I had a question for you and I can't  
15 remember it now, George, I'm sorry. I got rambling on  
16 something else and I forgot what I was going to ask you  
17 specifically and I know it was on -- oh, you said that  
18 all of these studies -- these studies are the same  
19 studies that have been used, have all of these same  
20 studies that we've got in front of us been the same  
21 studies that were used in the past, did you find the  
22 same thing in there.

23

24 MR. PAPPAS: Mr. Chair. From the  
25 information I have in front of me from the State, yeah,  
26 same information, same analysis, taken from the same  
27 surveys and data compilations.

28

29 CHAIRMAN LOHSE: Okay.

30

31 MR. PAPPAS: I may have missed  
32 something that could be corrected by OSM Staff.

33

34 CHAIRMAN LOHSE: Yeah, thank you. Any  
35 other questions for George.

36

37 (No comments)

38

39 CHAIRMAN LOHSE: Thank you, George.

40

41 Helen, can I ask you a question real  
42 quick.

43

44 MS. H. ARMSTRONG: Yes.

45

46 CHAIRMAN LOHSE: Helen, in light of  
47 what George just said, do we have any new information  
48 in this or any new analysis in this or is -- or are we  
49 looking at basically the same that we had before?

50

1 MS. H. ARMSTRONG: It's the same  
2 studies, I did look to -- I mean people have been  
3 digging I think for years trying to find information.  
4 I think I -- I mean I did try to re-analyze it and  
5 tighten it up and put a little bit more information in  
6 there about the fact that why people don't harvest  
7 resident species as much as they do salmon, they don't  
8 dry as well and tried to emphasize a little more that  
9 it is the opportunistic nature of fishing and hunting  
10 as well of subsistence users that you harvest what you  
11 -- I mean when you put your net in the water you're  
12 going to harvest what you get and not throw something  
13 back that's not good quality fish. And then the fact  
14 that people do harvest resident species more in  
15 additional to doing other activities, berrypicking,  
16 hunting. You know, you're out hunting and you want an  
17 evening's meal and so you see what you can get for  
18 fish. And so it's a whole different kind of pattern of  
19 use really, and that there shouldn't be some kind of  
20 distinction made.

21

22 MS. STICKWAN: I have a question.

23

24 CHAIRMAN LOHSE: Gloria.

25

26 MS. STICKWAN: Well, what was the --  
27 what was the reason for the Board's decision, what was  
28 the rationale for it?

29

30 MS. H. ARMSTRONG: I think the Board,  
31 and Pete can correct me if I'm wrong, but the Board saw  
32 the use as not being substantial enough, that it was a  
33 very low level of use and so they decided to break it  
34 out.

35

36 MS. STICKWAN: For resident species?

37

38 MS. H. ARMSTRONG: Yeah.

39

40 CHAIRMAN LOHSE: Helen, haven't we had  
41 that discussion before though and I know, I'm just  
42 trying to think of some of the incidences before that  
43 was brought up and that the Board concurred on, that  
44 substantial doesn't -- that subsistence use doesn't  
45 depend on quantity. Haven't we had decisions in the  
46 past where the Board has found a C&T but that hasn't  
47 been based on quantity, it's been based on the fact  
48 that they are used -- incidental use?

49

50 MS. H. ARMSTRONG: That's true.

1 CHAIRMAN LOHSE: Okay. And usually  
2 those were found in areas that were not quite so  
3 politically volatile.

4  
5 MS. H. ARMSTRONG: That's also true.

6  
7 MR. LAMB: Was there a reason for not  
8 having a substantial use, like geographic or just the  
9 resource isn't there?

10  
11 MS. H. ARMSTRONG: I -- well, I mean I  
12 think you could ask -- we have a lot of people from  
13 Ninilchik here, but I think it's probably distance more  
14 than anything and competition with other users so  
15 people aren't necessarily traveling all the way up  
16 there, it's a good distance away so I think that would  
17 probably be the main reason.

18  
19 CHAIRMAN LOHSE: And it was even more  
20 of a good distance away prior to 1952 when you didn't  
21 have a road system. So I mean you wouldn't have had  
22 the whole community up there at one time, but you could  
23 still, as we've had presented to us in the past, you  
24 had different individuals from that community that  
25 worked those areas up there and went up into that area  
26 and so I guess the thing to look at is whether, you  
27 know, does the whole community have to participate or  
28 do just individuals from that community have to  
29 participate in it, you know.

30  
31 Bill.

32  
33 MR. STOCKWELL: Thank you, Mr.  
34 Chairman. Helen, you said in your -- what you've  
35 changed in your analysis was more emphasis on what  
36 people took like when they were hunting or used passing  
37 through the area, or how would you -- how would you  
38 describe it, is that incidental to some other activity  
39 or would it be a fishery that they were concentrating  
40 on?

41  
42 MS. H. ARMSTRONG: Yeah, I think it's  
43 more incidental, it's that you're not targeting -- not  
44 necessarily saying I'm going up there to, you know, get  
45 trout for dinner but I'm moose hunting and while I'm  
46 moose hunting, incidental to that activity, which is  
47 the targeted activity, I might get fish for dinner. So  
48 it tends to be more something people are getting for  
49 that meal, or that week's meal but not something  
50 they're putting up a lot of fish for the winter.

1 MR. STOCKWELL: So it would be  
2 something that would happen when they were hunting or  
3 traveling through in some manner rather than  
4 specifically going for fish.

5  
6 Thank you.

7  
8 MS. H. ARMSTRONG: I believe that's  
9 correct.

10  
11 CHAIRMAN LOHSE: Doug.

12  
13 MR. BLOSSOM: Mr. Chair. Helen. You  
14 don't have to preserve and put these fish away to be a  
15 subsistence user, is that right, you could --  
16 incidental harvest is just as good as any other way?

17  
18 MS. H. ARMSTRONG: Absolutely. That's  
19 absolutely correct. It could be just -- and, yeah, the  
20 fact that something might not be put up as well and  
21 dried as well or harvested in as large a quantity  
22 doesn't mean that it's not important, and ANILCA says  
23 that, that everything you consume is important to the  
24 subsistence user.

25  
26 CHAIRMAN LOHSE: Mr. Henrichs.

27  
28 MR. HENRICHS: Yeah, did you interview  
29 the elders of the Ninilchik Tribe on this?

30  
31 MS. H. ARMSTRONG: We -- I did not.  
32 There were studies already previously done by NTC where  
33 they interviewed people, that was the study done in  
34 1994 and then again in 1999. And then Jim Fall had  
35 some research as well.

36  
37 But our office doesn't generally  
38 conduct research, we use other research that's done,  
39 predominately by the Subsistence Division, but also  
40 done by tribal entities and others.

41  
42 MR. HENRICHS: Mr. Chairman.

43  
44 CHAIRMAN LOHSE: Mr. Henrichs.

45  
46 MR. HENRICHS: The reason I asked that  
47 is because in Federal court, if your tribe doesn't have  
48 a written history then oral history is admissible as  
49 evidence and it's been used in many, many court cases  
50 so I'd be interested to hear what the oral history is

1 from the elders of Ninilchik.

2

3 MR. ENCELEWSKI: Could I answer that.

4

5 CHAIRMAN LOHSE: Yes, you may, Greg.

6

7 MR. ENCELEWSKI: Through the Chair,  
8 Ralph, just to answer Robert's question. I think  
9 you're going to hear some back up on the stance from  
10 Ninilchik, but there was extensive testimony by elders  
11 and others at meetings, it was supported by the  
12 Kenatize Indians, there was a lot of testimony on this.  
13 I know you wasn't involved at that time and but  
14 actually our Council here, the RAC supported this three  
15 times and one of the reasons is that it's back before  
16 us now is because it came to a tie vote on the Federal  
17 Board and so we chose to put it back before them.

18

19 CHAIRMAN LOHSE: And from that  
20 standpoint, Greg, most of the reason this Council has  
21 supported it has been by personal testimony from  
22 Ninilchik residents and many of them were elders in the  
23 past.

24

25 Okay, with that any more questions for  
26 Helen.

27

28 (No comments)

29

30 CHAIRMAN LOHSE: Helen, did you have  
31 something more you want to say -- Pete.

32

33 MR. PROBASCO: Mr. Chair. Maybe I'm  
34 reading the Board wrong, but I think it's important to  
35 clarify that regardless of an issue that's been  
36 addressed previously by a Board, nothing precludes a  
37 proponent, a Regional Advisory Council, to review that  
38 issue again and resubmit a recommendation. How a  
39 Board acted in the past is definitely something to look  
40 at and consider but there may be additional information  
41 that you get from public members that may not have  
42 attended or during the past year or so some other  
43 information we became aware of is presented as well.  
44 So I wouldn't get wrapped around the axle that just  
45 because this has been presented to the Board before and  
46 one, the decision has already been made, it hasn't and  
47 this should be treated just like any other new proposal  
48 through your deliberations.

49

50 Mr. Chair.

1 CHAIRMAN LOHSE: Thank you, Pete.  
2  
3 MS. STICKWAN: I got something.  
4  
5 CHAIRMAN LOHSE: Gloria.  
6  
7 REPORTER: Gloria. Gloria.  
8  
9 MS. STICKWAN: Well, I think the court  
10 decision reinforces what you just said, you know what  
11 I'm saying, I don't know how to say it but I hope you  
12 can understand what I'm trying to say.  
13  
14 MR. PROBASCO: Mr. Chair. Ms.  
15 Stickwan. I believe I understand what you're trying to  
16 say and there are -- we discussed them already so I'm'  
17 not going to repeat them but for all intents and  
18 purposes the court upheld how the Board has been making  
19 their C&T findings. And it's important to understand  
20 that Helen has alluded to, is there is no threshold  
21 established for C&T, in other words you don't have some  
22 magic threshold or goal there that has to be obtained  
23 before C&T is -- it's through our process, through the  
24 public process and the Board that we discuss and we  
25 determine the amount of use warrants a C&T finding.  
26  
27 Mr. Chair.  
28  
29 CHAIRMAN LOHSE: Thank you. Dean.  
30  
31 MR. WILSON: So just because no new  
32 information is presented doesn't mean the Federal  
33 Board's going to shut it down, they're going to review  
34 it the same as they did the other three times?  
35  
36 MR. PROBASCO: Mr. Chair. Mr. Wilson.  
37 That's correct. And keep in mind that we can't lose  
38 sight that there may be additional testimony that can  
39 come forward. I mean there's still information  
40 gathering means here.  
41  
42 Mr. Chair.  
43  
44 MR. WILSON: I understand that.  
45  
46 CHAIRMAN LOHSE: Thank you. Okay,  
47 Helen, thank you. Federal, tribal or State agencies.  
48 Do you guys wish to testify under individuals or tribal  
49 agencies.  
50

1 MR. ENCELEWSKI: They got their things  
2 up there.

3  
4 CHAIRMAN LOHSE: Yeah, why don't you  
5 Ivan and Darrel. Because I think you're going to be  
6 doing it -- you got the tribe's email address on there  
7 so we'll consider it a tribal agency and an individual  
8 and member of the tribe.

9  
10 MR. I. ENCELEWSKI: Thank you. Thank  
11 you, Mr. Chairman, members of the Regional Advisory  
12 Council. I just want to thank you for the opportunity  
13 under tribal agencies, that's not really afforded under  
14 the Federal Subsistence Board process but I think it's  
15 an important and vital process in the Federal  
16 Subsistence Board proposal process.

17  
18 My name is Ivan Encelewski and I'm the  
19 executive director of the Ninilchik Traditional Council  
20 and I'm also a Federally-qualified subsistence user  
21 from Ninilchik.

22  
23 I guess I just want to start by saying  
24 that obviously we support the proposal and again ask  
25 the Regional Advisory Council, as they have done on I  
26 believe three previous occasions support the C&T for  
27 resident species in the Kenai for the community of  
28 Ninilchik.

29  
30 We obviously stand by the previous  
31 extensive record that's been mentioned here just a  
32 little bit ago. Along those lines there's been  
33 extensive testimony from Federally-qualified  
34 subsistence users attesting to their use, whether it be  
35 incidental or direct catch of resident species in the  
36 Kenai drainages.

37  
38 We've also, as has been mentioned,  
39 provided two studies that were done in '94 and '99  
40 under an ANILCA grant through the Bureau of Indian  
41 Affairs which also documented and supported the finding  
42 that there had been use of resident species in the  
43 Kenai River drainage from the community of Ninilchik.  
44 And, furthermore, one thing that hasn't been brought up  
45 is that we also -- some of you may be familiar with Dr.  
46 Wolfe, who is kind of a renowned subsistence  
47 researcher, and we contacted him and he conducted a  
48 review of our survey information and also provided and  
49 testified at the Federal Subsistence Board when they  
50 originally provided for the C&T to support the findings

1 and also the findings listed in the survey, that's  
2 supported this.

3  
4 I also want to articulate that there is  
5 no threshold and this kind of came up in the original  
6 adoption of some of our C&T uses in the Kenai and  
7 Kasilof, you know, where they talked about arguing  
8 whether 20 percent was sufficient, six percent, it's  
9 about use. And I think, you know, the Chistochina case  
10 obviously supports our request here on many aspects,  
11 but it also defines that there's not this arbitrary  
12 threshold, and I think you can also find through the  
13 record and standing by our record, that the record here  
14 is so extensive and there's so much here versus  
15 decisions that have been made in the past.

16  
17 I mean as I've mentioned we've had  
18 renowned researchers, we've had surveys that we've  
19 provided, direct testimony, evidence, historical  
20 information, I think you'll find that this has been one  
21 of the most backed up and most information directly  
22 provided of many of the proposals, I'm sure that the  
23 Regional Advisory Council has ever dealt with. So we  
24 obviously stand by our record, it's extensive.

25  
26 We feel that the Board, the Federal  
27 Subsistence Board didn't make the appropriate decision,  
28 but also along those lines if you'll remember, that the  
29 Federal Subsistence Board originally approved resident  
30 species in the Kenai and then it came up for a request  
31 for reconsideration, and then it became a 3-3 tied  
32 vote. There was some procedural and very -- if you  
33 participated in those meetings it was -- I want to try  
34 to be politically correct -- but there was definitely  
35 quite a few issues that came up.

36  
37 So the Federal Subsistence Board has  
38 approved these and then there became some problems that  
39 came along there.

40  
41 You know, one thing, and I don't want  
42 to be too long here, but we -- into personal testimony  
43 after this, so I'll conclude with this under the tribal  
44 portion but, you know, this has been ongoing for 10  
45 years, obviously, we're almost on a decade here on some  
46 of these issues. You know, I think it wouldn't hurt to  
47 say that we've had the patience of Job and we're,  
48 again, asking that this be reconsidered by the Council  
49 and that they stand by their previous decisions, the  
50 testimony that we have all heard, all the evidence in

1 the past, the recent new evidence of the Chistochina  
2 case which directly supports this request, whether it  
3 be incidental use, no threshold determination for use.  
4 There can be no doubt and I don't think that State or  
5 anyone or Dr. Falls' survey cannot refute that there  
6 has been use. And so whether you argue over  
7 percentage, you know, whatever, I don't think that's  
8 appropriate and I don't think the courts have decided  
9 that that is appropriate.

10

11 And so real quickly and I'll kind of  
12 let Darrel go on. And, you know, when we talk about  
13 distance, it kind of -- you know, you can't have your  
14 cake and eat it too, we're talking about we have C&T  
15 use in the Kenai drainage for salmon and for moose, and  
16 so, you know, to say that, well, they can't go too far  
17 for resident species, it just doesn't pass muster, it  
18 really doesn't. You know to say, yeah, the Federal  
19 Subsistence Board to say, yeah, they can hunt moose up  
20 there, they can travel that far, they could hunt,  
21 salmon species, yeah, they can travel that far but, no,  
22 they couldn't have traveled that far for resident  
23 species; it doesn't pass the test.

24

25 In regard to -- and regardless of how  
26 it was use, there was various uses for it. And I  
27 think, you know, Doug has mentioned, you know,  
28 irregardless of whether there's been testimony about  
29 use for their dog teams that traveled from Ninilchik  
30 all the way into Seward, incidental catch to maintain  
31 themselves as they traveled.

32

33 So, anyway, I'll kind of pass it on to  
34 Darrel and let him touch up on any other things.

35

36 CHAIRMAN LOHSE: Thank you, Ivan. And,  
37 Darrel, I'm going to cut you off right now.....

38

39 (Laughter)

40

41 CHAIRMAN LOHSE: .....because I know  
42 better than to get you started before lunch.

43

44 (Laughter)

45

46 CHAIRMAN LOHSE: We would like to all  
47 go to lunch today and if I let you get started we'll be  
48 out at 2:00 o'clock, so we'll come back to you as soon  
49 as lunch is over. Because we have a little distance to  
50 go for lunch around here, if it's okay with the rest of

1 the Council shall we take a little longer lunch break,  
2 1:30; I think that we can handle the information that  
3 we have in front of us in enough speed to get done by  
4 Saturday evening if we stay until 1:30 to lunch.

5  
6 (Laughter)

7  
8 MR. HENRICHS: Or you could call  
9 evening sessions.

10  
11 CHAIRMAN LOHSE: Yeah, if we have to we  
12 can call evening sessions that's true. Okay, 1:30 for  
13 lunch.

14  
15 (Off record)

16  
17 (On record)

18  
19 CHAIRMAN LOHSE: I'd like to call this  
20 fall fisheries meeting of the Southcentral Regional  
21 Advisory Council back into session. For the sake of  
22 the rest of the Council members, Gloria Stickwan has a  
23 class she has to attend between 12:30 and 2:30 and so  
24 she won't be here for this afternoon.

25  
26 Does anybody else on the Council have  
27 anything they need to announce at this point in time.

28  
29 (No comments)

30  
31 CHAIRMAN LOHSE: Pete asked me if he  
32 could have a couple minutes to speak prior to Darrel  
33 and then we'll go right into our public testimony and  
34 Darrel's the next one in line.

35  
36 MR. PROBASCO: Well, thank you, Mr.  
37 Chair, and I'll get you warmed up for Darrel here.

38  
39 (Laughter)

40  
41 MR. PROBASCO: But Council members, the  
42 Board has asked the Office of Subsistence Management to  
43 go through all the 10 Regional Advisory Councils and  
44 recognize Council members who have contributed a lot of  
45 their service and time to this process, particularly  
46 our charter members. And on our Council we have a  
47 member here who's been serving since at least 1993, and  
48 he's been a tremendous Council member, a tremendous  
49 leader and as our Chair he's helped us go through some  
50 many difficult issues.

1                   So on behalf of the Board, Mr. Ralph  
2 Lohse, would you please stand up.

3  
4                   CHAIRMAN LOHSE: If I would have known  
5 you were going to do this I wouldn't have given you the  
6 opportunity.

7  
8                   (Laughter)

9  
10                  (Applause)

11  
12                  MR. PROBASCO: And this is a  
13 certificate of appreciation. Ralph is recognized as a  
14 charter member of the Southcentral Alaska Subsistence  
15 Regional Advisory Council from 1993 to 2008 with  
16 gratitude for 15 years of continuous service to the  
17 people of Southcentral Alaska through the Federal  
18 Subsistence Management Program.

19  
20                  Mr. Lohse, congratulations.

21  
22                  CHAIRMAN LOHSE: You're going to fire  
23 me before I qualify for the retirement.

24  
25                  (Laughter)

26  
27                  (Applause)

28  
29                  MR. PROBASCO: And also we wanted to  
30 give him something that was, you know, of practical  
31 sense, this is something we started here at OSM, here's  
32 a Gerber multi-purpose that you can utilize as well.

33  
34                  CHAIRMAN LOHSE: That's nice.

35  
36                  MR. PROBASCO: That's one of the top of  
37 the line ones Ralph, so.....

38  
39                  CHAIRMAN LOHSE: Well, thank you  
40 muchly, and I've been lobbying that trying to get  
41 across to them, you know, if I stay long enough I'm  
42 expecting to get Federal retirement benefits but so far  
43 I haven't gotten anywhere in that.

44  
45                  (Laughter)

46  
47                  CHAIRMAN LOHSE: Yeah. I mean this is  
48 probably worth more with the current state of the  
49 economy, this is probably worth more than Federal  
50 retirement anyway.

1 (Laughter)

2

3 CHAIRMAN LOHSE: But now I just got to  
4 figure out how to open it.

5

6 MR. PROBASCO: Give it to Dean he'll  
7 figure it out.

8

9 (Laughter)

10

11 CHAIRMAN LOHSE: Okay. Well, thank  
12 you, muchly, and I'd like to say it was a pleasure --  
13 but it's been a pleasure working with some of you, but  
14 I'm not sure about the rest of it. And I really mean  
15 it if I'd have known that this was coming you'd have  
16 had to wait until the end of the meeting Pete, so thank  
17 you muchly. And I'm pretty sure I can find some good  
18 use for this in the very near future, especially since  
19 I just lent my wife my knife and I didn't have a knife  
20 on board.

21

22 (Laughter)

23

24 CHAIRMAN LOHSE: Okay. With that we'll  
25 go to Darrel, we'll get something important done. No  
26 wonder I got grey hair, 15 years.

27

28 (Laughter)

29

30 CHAIRMAN LOHSE: Darrel.

31

32 MR. WILLIAMS: Mr. Chairman. Members  
33 of the Board. And congratulations, Ralph, that's a  
34 wonderful commitment you've made. My name is Darrel  
35 Williams. I work for Ninilchik Traditional Council. I  
36 am a Federally-qualified subsistence user. And I am an  
37 environmental scientist.

38

39 I'll continue from what Ivan was saying  
40 earlier about Proposal FP09-07. We've addressed this a  
41 lot, there's been a lot of process and a lot of time  
42 and a lot of effort has been put into this C&T  
43 determination for Ninilchik across the Kenai Peninsula.

44

45 I believe it's really obvious that we  
46 probably came forth with the most complete and the  
47 strongest information out of all the rural communities  
48 who have asked for C&T determinations for a variety of  
49 different things, and it's evident in the Staff  
50 analysis and through all the testimony that we've

1 provided in the past.

2

3                   There's some other interesting aspects  
4 that come along with requesting this C&T determination.

5

6                   One, of course, is the Chistochina case  
7 came out, which is very interesting and I believe  
8 directly relates to Ninilchik, especially in the  
9 matters where we have C&T priorities in areas for  
10 moose, for example, or salmon but we don't have it for  
11 resident species. I believe that the Chistochina case  
12 addressed, as administrative areas would be considered  
13 for subsistence uses. One of the things that we're  
14 wanting to consider is will this decision be able to  
15 help Ninilchik achieve their subsistence needs.

16

17                   That brings me to the next part. As  
18 far as subsistence needs, the proposal earlier on the  
19 Kasilof River, there's some information that impacts  
20 this but I thought this was a more appropriate time to  
21 address it.

22

23                   The fishwheel proposal that we were  
24 required by the Federal Subsistence Board to submit, to  
25 be able to operate a fishwheel to meet our subsistence  
26 needs was never finished, it ended up in a very grey  
27 area of what is a proposal versus an operations plan.  
28 My experience and from the will of the Federal  
29 Subsistence Board was to submit a proposal, well, we  
30 had submitted a proposal and we ended up in what seemed  
31 to be a negotiation about an operations plan and  
32 there's a lot of confusion about that, as  
33 administrative measure. I guess -- the sad reality of  
34 that is that the bottom line is we weren't able to  
35 fish. We weren't able to meet the needs. We weren't  
36 able to harvest for subsistence as per what we intended  
37 to do. There's been a lot of changes and a lot of  
38 conpitolations. But it also supports what we need to  
39 do, is be able to have options to be able to subsist  
40 and be able to harvest resources.

41

42                   It's an interesting thing, I don't want  
43 to take a lot of time on the record to talk about it  
44 but I do have some information if any of you are  
45 interested, I'd be happy to share, and maybe we could  
46 help that move along.

47

48                   One of the other things that's came up  
49 with the Chistochina Case was the delineation of areas.  
50 We spent a lot of time talking about how Ninilchik's

1 use would be delineated by area according to who  
2 thought, who used what and what kind of thing.

3  
4 We spent a lot of time and a lot of  
5 effort, collaboratively, which we, ourselves, the RAC  
6 and the Federal Subsistence Board and the public  
7 process to be able to address those needs. I'm really  
8 hoping that this is going to help provide everyone a  
9 tool to be able to once and for all give us a better  
10 answer on how we can have our customary and traditional  
11 use determination met.

12  
13 With these kind of issues that we're  
14 having to deal with for subsistence issues and  
15 resources, I think it's important just to point out  
16 that this has gone on for a long time. We're starting  
17 to even see some of the generation type gaps that are  
18 coming. We have had people who have passed away during  
19 this process, who have literally died and not been able  
20 to see this come through, it's sad. And culturally for  
21 a rural Federal, it's really, really difficult. We've  
22 covered so much in the past on record and, I don't  
23 really want to get into rehashing all that, but I hope  
24 that you guys consider looking at the C&T issue again  
25 and being able to provide a consistent positive  
26 determination for us.

27  
28 Mr. Chairman, thank you.

29  
30 CHAIRMAN LOHSE: Thank you, Darrel. I  
31 have a question for you, Darrel, having worked in the  
32 field that you work in and having been part of this for  
33 as long as you have, do you feel the decision on the  
34 Chistochina case as clarified some of the issues that  
35 we've dealt with time and time again on this issue that  
36 we've dealt with here as to location and distance and  
37 things like that?

38  
39 MR. WILLIAMS: Mr. Chairman. I believe  
40 that it does. I believe it provides a consistent way to  
41 address an area and a use of the area.

42  
43 CHAIRMAN LOHSE: Anybody else have some  
44 questions for Darrel. Bill.

45  
46 MR. STOCKWELL: Thank you, Mr.  
47 Chairman. Darrel. The question before us is the C&T,  
48 I realize, but also there's a question of what the C&T  
49 will lead to, there is present restrictions of resident  
50 species in the Kenai River for subsistence set aside

1 for the Cooper Landing and Hope people, and you're  
2 asking for the same C&T that Cooper Landing and Hope  
3 have. Do you envision requesting changes to the ways  
4 and means and bag limits on the Kenai or would you stay  
5 with what's in the regulation book now?

6  
7 MR. WILLIAMS: Mr. Chairman. Mr.  
8 Stockwell. I don't foresee that this would take  
9 anything away from any other community as far as that  
10 would go. And I believe it's evident in the numbers  
11 that came out earlier, the impact of subsistence as far  
12 as -- I don't think we're talking about allocation, I  
13 think we're talking about actual harvest; am I correct?

14  
15 MR. STOCKWELL: What I'm talking about  
16 is if you were granted the C&T that you're requesting,  
17 then would the present bag limits that are set aside  
18 now for usage, would those be sufficient or would you  
19 be requesting something else?

20  
21 MR. WILLIAMS: Mr. Chairman. Mr.  
22 Stockwell. I believe that the current limits that are  
23 applied for specific communities would be applied to  
24 all the communities in the same amounts.

25  
26 MR. STOCKWELL: Right.

27  
28 MR. WILLIAMS: If that answers your  
29 question. You know as far as allocation I think  
30 there's still some real unclear issues about what is  
31 allocated and what is not allocated for subsistence  
32 versus sportfishing and all that kind of stuff.

33  
34 Mr. Chairman.

35  
36 MR. STOCKWELL: Yeah, I'm not sure --  
37 maybe you didn't understand my question, but there are  
38 ways and means and bag limits for people resident  
39 species in the Kenai River for people who have a  
40 resident species permit in the Kenai River and, of  
41 course, those would apply to Ninilchik if the C&T was  
42 granted and my question is would those be sufficient  
43 for Ninilchik or would Ninilchik be requesting in the  
44 future some changes to those ways and means and bag  
45 limits?

46  
47 MR. WILLIAMS: Mr. Chair. Mr.  
48 Stockwell. I believe they'd be sufficient, you know,  
49 it's something that we need to explore more of.  
50

1 MR. STOCKWELL: Right.

2

3 MR. WILLIAMS: I'm sorry I don't mean  
4 to have done that. One of the issues, as an example,  
5 like the fishwheel where we wound up in a position  
6 where we had an opportunity to be able to harvest for  
7 subsistence but didn't have the opportunity to exercise  
8 it. I think that those are things that are going to  
9 have to be worked out over time. I don't think that  
10 the impact of subsistence will be a profound impact  
11 where you'd have to go back and look at different  
12 species and harvest amounts due to conservation  
13 concerns or something like that.

14

15 Is that more clear?

16

17 MR. STOCKWELL: I think so.

18

19 MR. WILLIAMS: Okay.

20

21 MR. STOCKWELL: You understand where  
22 I'm coming from. There is some very profound  
23 conservation issues on the Kenai River and, which, you  
24 know, affect everybody that uses the Kenai River and  
25 especially affects Cooper Landing because, you know, we  
26 basically -- our economy is tourism and tourism is  
27 affected by the fisheries in the Kenai. So I was just  
28 inquiring if you would need more than what's now  
29 available for other subsistence users, but I think you  
30 answered my question.

31

32 Thank you.

33

34 CHAIRMAN LOHSE: Greg.

35

36 MR. ENCELEWSKI: I was just going to  
37 make a comment through the Chair here. Darrel, yeah, I  
38 mean I understand Bill's question, too, but I don't  
39 think that's the issue we're addressing here, I think  
40 it's strictly the C&T, and I, like, you, too, I don't  
41 think there would be a change there but still I think  
42 it's a separate issue.

43

44 CHAIRMAN LOHSE: James.

45

46 MR. SHOWALTER: Yes, a comment for all  
47 species. This is for customary and traditional use not  
48 for tourism or anything like that but I have seen, like  
49 you said, elders are passing away and I'm getting in  
50 that category myself.

1 (Laughter)  
2  
3 MR. SHOWALTER: Ralph is also.  
4  
5 (Laughter)  
6  
7 CHAIRMAN LOHSE: I hope not passing  
8 away but getting that age.  
9  
10 (Laughter)  
11  
12 MR. SHOWALTER: But for all species,  
13 well, you've got it on the Kenai River but that's for  
14 salmon, yes, I would say all species because like you  
15 indicate, you do hunt in there. I've seen where they  
16 come up with boats, they travel from Ninilchik, they  
17 travel from Tyonek and establish hunting camps. So  
18 while you're there you're not waiting to get a moose or  
19 whatever to subsist, you want to get something to eat  
20 for now. So there's other species other than salmon  
21 you subsist on. So, yes, I would say that was one of  
22 your ways and means of subsistence for other, say  
23 freshwater species, fish.  
24  
25 CHAIRMAN LOHSE: Thank you, James.  
26  
27 MR. WILLIAMS: Mr. Chairman.  
28  
29 CHAIRMAN LOHSE: Thank you, James.  
30 Darrel.  
31  
32 MR. WILLIAMS: Mr. Showalter. I  
33 believe Helen Armstrong covered that really well, too,  
34 in incidental taking of fish, the incidental harvest  
35 that happens that are associated with the other  
36 activities. And it's really true, I think you could  
37 talk to and you could actually look at the testimony  
38 we've provided, a lot of people, you know, they count  
39 on that as a food source and food stock.  
40  
41 Just for conversation sake and to  
42 reflect on it, you know, one of our older folks down in  
43 the community made a really interesting comment and  
44 I've used it here before but Johnny Sykes said, they  
45 make us outlaws, compared to what he was used to doing  
46 when he was younger compared to what he's doing, has to  
47 do or not do today, and it's really interesting that  
48 this has gone on for the duration it has, and that  
49 people, they have a lot of confusion and they're not  
50 real sure, I think things are getting better and people

1 are getting more -- they're getting a better  
2 understanding and they're getting more of a benefit  
3 from the subsistence process as these needs are  
4 addressed and as time goes on, but it's been a process.

5  
6 Mr. Chair.

7  
8 CHAIRMAN LOHSE: Thank you, Darrel.  
9 Anybody else, questions for Darrel.

10  
11 Dean.

12  
13 MR. WILSON: Darrel, the primary  
14 opposition from the State it looks like is no new  
15 information. And your primary support for new  
16 information that this proposal was put in for, was the  
17 Chistochina Case; is that correct, do you have any  
18 specifics on that? I'm not -- have you tore into that  
19 case at all to where we can be more specific on that,  
20 that seems pretty broad.

21  
22 MR. WILLIAMS: Mr. Chairman. Mr.  
23 Wilson. I did not bring it with me, I did read the case  
24 before I came here. And one of the important things I  
25 took from it was that in Game Management Unit 12, one  
26 of the issues was could they allow a -- the size of a  
27 C&T to be determined by the administrative area that's  
28 used, to be able to manage the populations, and my  
29 understanding was, in the end they said that that the  
30 estimated usage was very similar to Game Management  
31 Unit 12 so they made it the entire Game Management Unit  
32 12. On the other side they were also saying that they  
33 didn't want to see that somebody was a rural resident  
34 and had a C&T for the entire state of Alaska, which is  
35 understandable too, so that would be too broad of an  
36 interpretation as opposed to what the scope of the  
37 interpretation should be. That's what I've taken from  
38 it as far as some evidence.

39  
40 But the other point I'd like to make is  
41 that the other evidence that I really wanted to bring  
42 forward was the harvest ability versus actual harvest.

43  
44 We have an opportunity to subsistence  
45 but we have not been able to exercise that opportunity  
46 because of the needs to be able to address proposals,  
47 develop operation plans and things like that, so from  
48 the needs standpoint, we need to be able to provide  
49 some sort of opportunity to subsistence fishermen so if  
50 something happens with this fishwheel and, gosh, it

1 gets broken, it comes undone or something like that,  
2 there should be an alternative means for them to be  
3 able to subsist also. So those are the two points I  
4 wanted to be able to make on that, is that, one is  
5 actual -- the actual true harvest, what it is, what  
6 availability it is, and the other is the Chistochina  
7 case.

8

9 Mr. Chair.

10

11 CHAIRMAN LOHSE: Thank you, Darrel.  
12 Greg.

13

14 MR. ENCELEWSKI: Yeah, through the  
15 Chair. I just have a question or a comment more.

16

17 Darrel, I know you're not here to  
18 analyze the case of Chistochina and I know that's not  
19 our position, but I just wanted to ask you, I mean they  
20 talk about new information, and, yeah, that may be the  
21 State's case but my understanding it's not necessarily  
22 required, new information, I know Pete mentioned  
23 something to that effect.

24

25 But the reason this is brought up from  
26 Ninilchik's standpoint, my understanding, and I want  
27 you to confirm that, was that they wanted this  
28 reconsidered because we felt that there was an  
29 oversight in that determination. I mean that  
30 determination was very clearly that they had used that  
31 and to me that case only strengthens it now. I know  
32 we're not here to debate all that stuff, but I just  
33 wanted to point it out.

34

35 Thank you.

36

37 CHAIRMAN LOHSE: Darrel.

38

39 MR. WILLIAMS: Mr. Chairman. Mr.  
40 Encelewski. Absolutely. That is the case. And I  
41 thought that Ivan had covered that really well in his  
42 testimony before we had lunch.

43

44 MR. ENCELEWSKI: Yeah.

45

46 CHAIRMAN LOHSE: Thank you, Darrel.  
47 Thank you, Greg. And I think that's one thing that  
48 needed to be brought to -- again, brought back on the  
49 table, is that you don't -- as a person submitting the  
50 proposal, you're not required to have new information,

1 you're required to say that this, we think is a valid  
2 proposal, and we are submitting it. It's up to the  
3 Council and OSM and the Board to reconsider if you've  
4 submitted it. And it basically should be given the  
5 same priority as if it was a new proposal and it had  
6 never been on the table before. And if you think the  
7 old information was valid you can use the same  
8 information. So from that standpoint, I thank you for  
9 clarifying that.

10

11 Okay. No more questions for Darrel.

12

13 (No comments)

14

15 CHAIRMAN LOHSE: Yeah, it's a good  
16 thing that we waited until after lunch to have you up  
17 here Darrel.

18

19 MR. WILLIAMS: Mr. Chairman, thank you,  
20 very much.

21

22 CHAIRMAN LOHSE: Okay, with that we'll  
23 go on to InterAgency Staff Committee comments.

24

25 Jerry.

26

27 MR. BERG: Thank you, Mr. Chairman. I  
28 just wanted to kind of remind the Council of, you know,  
29 when the Board took this up, I know some of you were  
30 there and some of you were not, but one of the issues  
31 that they struggled with the most was, was the use  
32 level a pattern that was -- the use enough to  
33 constitute a pattern for the entire community, and so  
34 that's really the issue that divided the Board. So if  
35 there's anything that you, as a Council, can add to  
36 that that might be helpful for the Board.

37

38 And then as the Staff Committee, we  
39 really didn't discuss this proposal that much because,  
40 you know, as you know we've dealt with this issue  
41 numerous times but of course the Chistochina decision  
42 did come out since our meeting, and I think there's two  
43 points in that decision that the Board, as you guys are  
44 also struggling with, well, what does that really mean.

45

46 One is that they suggested that, you  
47 know, it does need to be done by species and within the  
48 geographic scope of that species.

49

50 And so I think it would -- you know,

1 you don't know where the Board's going to go so to just  
2 say it's all fish, it might be helpful to list the  
3 species that you think is most appropriate for a C&T  
4 use determination in case the Board decides to go down  
5 that road of listing the species. So I would just  
6 encourage you to think about that in your  
7 recommendation.

8

9 Thank you, Mr. Chair.

10

11 CHAIRMAN LOHSE: Thank you, Jerry. And  
12 you did bring up one quest -- don't run off.

13

14 (Laughter)

15

16 CHAIRMAN LOHSE: You did bring up one  
17 question. Like you said the Board -- a pattern for  
18 community and yet I'm not sure what would be considered  
19 a pattern for community because all the communities  
20 that I know have different levels of participation in  
21 everything by different members of that community and  
22 how much of the community does it take to be doing one  
23 activity even if it's benefiting the rest of the  
24 community before it becomes a pattern for the  
25 community, and I think that's something the Board's  
26 going to have to struggle with.

27

28 But I'm thinking of a community that I  
29 first started out in when I was in Alaska, I was out in  
30 the Aleutian Peninsula out there. We had one, and I'm  
31 talking about two communities actually, but we had one  
32 family in those two communities that hunted bear. They  
33 hunted bear for both villages, they were the bear  
34 hunters and they were the only ones that would go out  
35 after bear by themselves as individuals, everybody else  
36 would maybe do it as a group or something like that.  
37 There's different people in every community, if we go  
38 back and look at the historical record here, we find  
39 that members of these communities, some of these  
40 members went to this area and they trapped. They were  
41 trapping not just for their own benefit, they're  
42 trapping for the benefit of their family that's back in  
43 the community and if while they're trapping they're  
44 taking this resource at the same time, do you say  
45 that's a pattern for the community or is that a pattern  
46 for an individual in the community who was part of the  
47 community, whose effort that he was there affected the  
48 whole community, you know, even if the rest of the  
49 community didn't take part in the activity itself.

50

1                   And that's where I have a problem when  
2 you start talking about a pattern for a community  
3 because I have never been in a community that's an  
4 actual community where everybody does the same thing,  
5 everybody contributes the same thing, everybody takes  
6 part in all of the same activities. There's always  
7 some division in the community, there's always division  
8 -- if it's a community, the basic idea behind a  
9 community is there's a division of labor. Somebody  
10 does what -- this guy's the toolmaker, this guy's the  
11 guy that does the woodwork, this guy that makes the  
12 groceries, this is the guy that goes out and does the  
13 hunting and this is the guy that sews the clothes or  
14 the girl or woman or whatever you want to call it, and  
15 that division means that that's part of a community  
16 pattern but it's not, you know, so if you -- how many  
17 -- this is what I'm trying to figure out, how many  
18 people in the community have got to have made use of  
19 that resource before that resource was important to  
20 that community.

21  
22                   If it saved one hunter who was up in  
23 that area making a living or bringing food back to the  
24 rest of the community then that resource was good --  
25 that resource was needed for that community, even if  
26 nobody in that community ever used it, other than the  
27 one person who went there.

28  
29                   And I think the Board's going to have a  
30 real problem coming up with a community pattern myself,  
31 I mean because simply for that thing.

32  
33                   And I had another one I was going to  
34 ask you about and now I can't remember what it was,  
35 Jerry, but the -- I should have written it down, I  
36 wrote that one down and I didn't write it down but my  
37 fault. What was it, that you were talking about the  
38 end right there.

39  
40                   MR. ENCELEWSKI: Historical species.

41  
42                   CHAIRMAN LOHSE: Oh, I agree with you  
43 on the species, and I really think that somewhere along  
44 the line if we're talking historical record, we really  
45 need to put in there historical species, too. Because  
46 we obviously have species on the Kenai Peninsula that  
47 were not there prior to 1952, and we're talking about a  
48 record that was formed prior to 1952 before everything  
49 was closed down. And I'm agreeing with you there that  
50 I think possibly for the Board's sake all fish, looking

1 at the Chistochina case, all fish may be too broad and  
2 we may have to define that down to species that were  
3 there and were actually used and I think you're right  
4 there and that might be a modification somebody might  
5 want to put in.

6

7

Bill.

8

9

MR. STOCKWELL: Thank you, Mr. Chair.  
10 What species would you recommend that we look at.  
11 There's the ones that are listed in the reg book.

12

13

MR. BERG: Through the Chair. Mr.  
14 Stockwell. Well, I guess -- I mean it depends on how  
15 the Council feels about, you know, the pattern of use  
16 by species, and I mean you have, you know, some tables  
17 in the analysis that list use levels and information  
18 that Helen's put in there about use of different  
19 species and I mean you could go down the list on Page  
20 73, there's a whole list of use levels for the  
21 community of Ninilchik, and, again, another table on  
22 Page 74.

23

24

MR. STOCKWELL: Okay.

25

26

MR. BERG: So you could list -- you  
27 know, go through some of those species and decide how  
28 you feel as a Council but and I -- you know, and I  
29 guess to comment just a little bit on some of Ralph's  
30 comments, you know, I do realize that there's different  
31 use levels for different species, you know, some people  
32 in a community are going to use moose more than they  
33 are for goats and sheep and it is a tough thing to  
34 struggle with and I think that's why you ended up with  
35 a Board that was split 3-3 because it's not defined in  
36 regulation and so then it's just left up to  
37 interpretation by each individual almost. So it is a  
38 tough one that I think everybody struggles with a  
39 little bit.

40

41

It's a difficult one to define.

42

43

MR. STOCKWELL: Thank you.

44

45

CHAIRMAN LOHSE: Any other questions  
46 for Jerry.

47

48

(No comments)

49

50

CHAIRMAN LOHSE: Thank you, Jerry.

1 Okay, Fish and Game Advisory Committee comments.

2

3 MR. CRAWFORD: Good afternoon. I'm  
4 Mike Crawford with the Kenai/Soldotna AC.

5

6 We oppose this proposal for reasons we  
7 have opposed it in the past.

8

9 We feel that there's plenty of  
10 opportunity for subsistence in the area. We've got the  
11 test fisheries, we've got the subsistence fishery for  
12 all species on the Kasilof, salmon subsistence fishing  
13 on the Kenai, personal use and sport limits also on the  
14 Kenai River. This doesn't address what means and  
15 methods, what limits, those are all concerns of ours.

16

17 This has become a -- and I understand  
18 the subsistence priority but the river brings a lot to  
19 the area, including Ninilchik in its tourism, and  
20 that's -- you know, the people that come and spend the  
21 money to fish the Kenai River they all go down to  
22 Ninilchik and go halibut fishing and spend money in  
23 that area, too, and that's got to be -- I think that's  
24 got to be part of the big picture here. So we've  
25 developed a -- and I know this Board isn't supposed to  
26 look at that part, but we've developed a world class  
27 sportfishery on these rainbow trout. And the damage  
28 that could be done to that fishery as it's perceived --  
29 as it is now could happen rather quickly and we could  
30 lose that part of our economy in that -- and on the  
31 Peninsula.

32

33 And so those were our concerns.

34

35 CHAIRMAN LOHSE: Thank you, Mike. Any  
36 questions for Mike.

37

38 Doug.

39

40 MR. BLOSSOM: Mr. Chair. Mike.  
41 Looking in the subsistence regs, I don't think you  
42 probably have a copy, but right now Cooper Landing is  
43 allowed to take Dolly Varden, Arctic char, lake trout  
44 and rainbow steelhead. So if those species were listed  
45 and their catch is, what, one Dolly Varden a day, I  
46 guess in one place they can take two, lake trout four,  
47 they got some different specs on lake trout 15 in one  
48 place, four in another; rainbow one. So these bag  
49 limits are minimal at most. Do you have any problem  
50 with that if they stuck to those bag limits?

1 MR. CRAWFORD: Well, our concern -- we  
2 spoke about that and our concern was this was asking  
3 for a new C&T finding and with that, was that going to  
4 become new bag limits, new methods and means, you know,  
5 if they -- if the methods and means employed don't meet  
6 the bag -- if they're having trouble catching those bag  
7 limits, is that going to mean a new -- you know, are we  
8 going to put fishwheels, gillnets, we don't know where  
9 that's going to go and that's our concern, that this  
10 could become, you know, where -- where would that go  
11 from there.

12  
13 CHAIRMAN LOHSE: Doug.

14  
15 MR. BLOSSOM: Mr. Chair. Mike. What I  
16 am asking you is if these bag limits went in with that  
17 C&T for Ninilchik, because they're the ones asking for  
18 it, would that be permissible, would you agree with  
19 that?

20  
21 MR. CRAWFORD: I'm speaking for our AC  
22 and we didn't discuss that so I can't -- I don't know  
23 that I could go that far.

24  
25 CHAIRMAN LOHSE: Anybody else,  
26 questions for Mike. Greg.

27  
28 MR. ENCELEWSKI: Yeah, Mike, I just got  
29 a quick question for you here on the -- you know you  
30 referred to the world class sportfishery and I think we  
31 all know that, we know how important that is to you and  
32 to everyone there.

33  
34 I guess my question is, and I would  
35 like you to explain to everyone here, how many fish do  
36 you think are taken in this world class fishery or are  
37 caught and my point is, what I'm trying to make is, you  
38 know, I know the amount of pressure you have on that  
39 and I know the very minimal percentage of pressure by  
40 Hope and Cooper Landing and I think that even if  
41 Ninilchik was included in here, which I rightfully  
42 believe they should be minuscule to what the use is,  
43 other.

44  
45 MR. CRAWFORD: But I think you see that  
46 in a sportfishery it's very much geared toward catch  
47 and release. I believe you keep one fish above --  
48 above the lake you keep one fish over -- or under 16  
49 inches and below the lake I believe you keep one fish  
50 under 18 inches under the current sportfish limits. Is

1 that right?

2

3 MR. STOCKWELL: Yes.

4

5 CHAIRMAN LOHSE: Yeah.

6

7 MR. CRAWFORD: I don't generally keep  
8 rainbows when I catch them but -- so but -- but I know  
9 there's a provision in there to keep smaller fish under  
10 the sportfish rules.

11

12 MR. ENCELEWSKI: Okay.

13

14 CHAIRMAN LOHSE: I think, Mike, what  
15 Greg was asking, and it's a question that I've asked  
16 before, too, it is a world class sportfishery, we know  
17 that and we've looked at figures in the past and I wish  
18 -- I had hoped that somebody would have brought current  
19 figures, what the estimated sport catch on the Kenai  
20 River is at this point in time, but I can remember  
21 once, and this was a long time ago, that we looked at  
22 figures and we were looking at a sport catch and  
23 release of about 15,000 fish, in other words fish that  
24 were caught somewhere in that neighborhood. I don't  
25 know what the current harvest is on the Kenai. But if  
26 you took -- in fact it might have even been more than  
27 15,000, it was a tremendous number, I couldn't believe  
28 how many fish were actually caught and released on the  
29 Kenai River. Do you know, Bill, on the top of your  
30 heard?

31

32 MR. STOCKWELL: Yeah, I think between  
33 Dollys and rainbows you're looking at 100,000 fish or  
34 something like that.

35

36 CHAIRMAN LOHSE: Yeah.

37

38 MR. STOCKWELL: Maybe somebody in the  
39 Department's got some information for us.

40

41 MR. PAWLUK: Yeah, Jason Pawluk, Fish  
42 and Game. Mr. Chair, based on the FMR, fisheries  
43 management report that we created for the 2008 Board of  
44 Fish meeting, with data up to 2006, harvest numbers  
45 have remained pretty steady from 1984 to 2006. On  
46 average a harvest of 2,500 rainbows in the Kenai River  
47 drainage. The number caught, however, has increased  
48 dramatically from 15,000 in 1984 to 131,000 in 2006. So  
49 the percentage kept in 2006 was two percent and so you  
50 had roughly 128,000 released.

1                   CHAIRMAN LOHSE: Okay. So if we're  
2 taking a look at -- we're taking a look at 128,000  
3 released and let's just be really, really generous and  
4 let's put a mortality on it of a half a percent, which  
5 would be -- I think even by Fish and Game's standards,  
6 considered an extremely small catch and release  
7 mortality.

8  
9                   So we put a half a percent on there,  
10 well, at one percent that's 1,280, half a percent is  
11 640 fish. Mortality from catch and release. Plus a  
12 harvest of 2,500. So that puts at a take from the  
13 sportfishery of over 3,000 fish, if I'm doing my  
14 numbers correctly in my head.

15  
16                   So if we have a sportfishery take, and  
17 that would be -- to me that would be minimal, because  
18 if you went to a catch and release mortality of two  
19 percent, you're already up -- you're way, way up there,  
20 you know, but if you had 3,000 fish taken by the  
21 sportfishery and currently from what I understand the  
22 subsistence fishery this year took how many fish out of  
23 the Kenai River, what was the harvest for the  
24 subsistence fishery in the Kenai River.

25  
26                   SEVERAL UNIDENTIFIED VOICES: Zero.

27  
28                   CHAIRMAN LOHSE: Zero. So what we're  
29 talking about here, and this is the thing we need to  
30 get across, we're not talking about whether there's  
31 plenty of opportunity someplace else, we're not talking  
32 about whether there's a conservation concern, we're not  
33 talking about -- on this proposal, we're not talking  
34 about whether or not this is a world class fishery or a  
35 dump of a fishery, how many fish the sportfishermen  
36 take or how many fish the subsistence fishermen take,  
37 we're talking about, do they have C&T.

38  
39                   When the time comes if they have C&T  
40 that we need to address methods and means, and if we do  
41 address methods and means, then we look at these  
42 numbers, then we look at the conservation concern, then  
43 we look at the other things.

44  
45                   But to me, I mean I'm just speaking off  
46 the top of my head here, it's hard for me to think of a  
47 fishery that takes 131,000 fish on a rod and reel  
48 worrying about a 200 fish limit for subsistence.

49  
50                   It's almost ridiculous for me to think

1 about it. Because when you sit there and talk about  
2 the damage that can quickly happen, when we sit and  
3 work -- we work our hardest to put regulations in that  
4 are reasonable, that have checks and balances in them,  
5 that have reporting requirements in them and all the  
6 rest, and the ability for in-season managers to close  
7 them down if there's a problem, and we take a fishery  
8 of that size and we toss it in on a fishery of this  
9 size and there are no checks and balances; there are no  
10 in-season checks and balances to speak of in this  
11 fishery that takes 131,000 rainbows in the course of  
12 the year.

13

14                   You and I both know, I've dealt with  
15 sportfishermen, I've been a sportfishermen, I've been a  
16 charter boat operator, we both know that not every  
17 sportfishermen that's out there catching a king salmon  
18 on the Klutina River carefully releases that king  
19 salmon in the water and takes the hook out. Some of  
20 them drag them up the bank and kick them back in the  
21 water. And if that's the case there, I'm sure you have  
22 the same thing with the rainbow fishery on the Kenai  
23 River, and so at this point in time our question is,  
24 does Ninilchik have -- do we feel Ninilchik has C&T.

25

26                   At the point in time that we start  
27 addressing methods and means and bag limits and  
28 conservation concerns, we need to address all the  
29 methods and means and conservation concerns and put  
30 them in perspective because the perspective is -- the  
31 perspective is the flea on the elephant at this point,  
32 and the flea can be very irritating and if he's  
33 carrying a disease he can cause the elephant to get  
34 sick, too, yes, but, you know, let's look at this in  
35 perspective sometime.

36

37                   But we sit here and we always -- and  
38 this is my pet-peeve, we always look at what's the  
39 potential damage of the subsistence fishery but we  
40 don't look at what the actual damage has been. Let's  
41 take -- if we put one of these things in, let's see  
42 what happens and let's put the regulations in that can  
43 be closed down fast enough to cause no damage and give  
44 us the credit that if we do put a season in we'll try  
45 to put those regulations in place.

46

47                   And I'm not bawling you out, Mike,  
48 because that's not.....

49

50                   (Laughter)

1 CHAIRMAN LOHSE: This is not a personal  
2 attack on you and I didn't mean it that way.

3  
4 (Laughter)

5  
6 CHAIRMAN LOHSE: But this is something  
7 we hear time and time and time after again and what  
8 we'd like to do is we're addressing here, do you feel,  
9 and this is the question I should ask you, and this is  
10 the only question that should be of concern right here,  
11 do you feel that the historical use of the people who  
12 lived in the Ninilchik area, do you feel that they  
13 would have gone up to the Kenai River in the course of  
14 their normal business, their hunting, fishing and  
15 trapping, would they have gone to the Kenai River and  
16 taken the resident species of trout that were in the  
17 Kenai River to eat?

18  
19 MR. CRAWFORD: That, I don't have the  
20 answer for. I'm thinking that -- and maybe I'm not  
21 looking at a big enough picture, but were the  
22 traditional residents of that area going to leave the  
23 Ninilchik, Deep Creek, Anchor River, Stariski Creek,  
24 cross the Kasilof River or Tustumena Lake, 50, 60, 70  
25 miles from home to catch some trout, I don't know. And  
26 I know that's -- I know you guys have talked about  
27 while you were hunting and I haven't thought about that  
28 part of that, so, you know.....

29  
30 CHAIRMAN LOHSE: Yeah.

31  
32 MR. CRAWFORD: .....I do think -- I do  
33 think that -- I think our AC would be more supportive  
34 of a proposal that said that these limits, which  
35 basically mirror the sportfish limits and address means  
36 and methods, that would be -- we'd be a lot more  
37 agreeable to that.

38  
39 CHAIRMAN LOHSE: If we were dealing  
40 with means and methods I'd agree with you.....

41  
42 MR. CRAWFORD: I understand.

43  
44 CHAIRMAN LOHSE: .....100 percent Mike.  
45 But my question to you would be put this way then, if  
46 you lived in Ninilchik prior to 1950 or 1900, and you  
47 make your living hunting and fishing and trapping and  
48 running around the Kenai Peninsula and you went to the  
49 Kenai River, would you take fish to eat?

50

1 MR. CRAWFORD: I'm sure I would.  
2  
3 CHAIRMAN LOHSE: I'm sure I would too.  
4  
5 Bill.  
6  
7 MR. STOCKWELL: Thank you, Mr.  
8 Chairman. Just a point of clarification. If we do  
9 pass the C&T and it passes the Federal Subsistence  
10 Board, then Ninilchik will have the same ways, means  
11 and bag limits that are specified for Cooper Landing  
12 and Hope; is that correct?  
13  
14 CHAIRMAN LOHSE: Right.  
15  
16 MR. STOCKWELL: So those would go into  
17 effect?  
18  
19 CHAIRMAN LOHSE: Right. Yeah. Did you  
20 have your hand up, Mr. Henrichs.  
21  
22 MR. HENRICHS: Yeah, I did before him  
23 but that's okay.  
24  
25 (Laughter)  
26  
27 CHAIRMAN LOHSE: No, I was going to you  
28 next.  
29  
30 MR. HENRICHS: Sure. So you're talking  
31 about catching and releasing over 100,000 fish and  
32 they're worried about a subsistence fishery, that is  
33 sick, you know, and I'll tell you right now it is.  
34  
35 And tribes do not take all their food  
36 right next to where they live, they save the food there  
37 for when times are tough and when the weather's good  
38 they go distances away. And in our region they go out  
39 on the Outer Continental Shelf and fish and we proved  
40 it in courts, you don't clean out the fish that are  
41 right in front of your village, you go somewhere else  
42 when the weather is good and you save the ones at home  
43 for when times are tough. That's common sense.  
44  
45 CHAIRMAN LOHSE: James.  
46  
47 MR. SHOWALTER: Yes, I had a comment,  
48 and no reflection on you.  
49  
50 But anyway this is a sportsfishing,

1 sportsfishing is hook and release, Kenai River world  
2 wide advertisement, halibut fishing and he said that  
3 they go down to Ninilchik, sure they go down to Homer  
4 and other places too. But this is subsistence and it's  
5 got priority over all sportfishing. So as was  
6 indicated, while they're hunting they have other  
7 fisheries, freshwater fish they use while they're in  
8 camps, not only one family goes but maybe that family  
9 may not go a next time but there's other families that  
10 will go to the hunting area or camp area. You know I  
11 don't have it now but I used to have it in Kenai, we've  
12 done that where we used to go up the river and have our  
13 subsistence, same thing within the mouth of the river  
14 with our nets, but we don't have it anymore, we're  
15 regulated out of the usage and this was prior to '50  
16 and I'm sure -- they indicated records, well, I'm sure  
17 at the time, too, it was all records by word of mouth.

18

19 Thank you.

20

21 CHAIRMAN LOHSE: Thank you, James. Any  
22 other questions for Mike.

23

24 (No comments)

25

26 CHAIRMAN LOHSE: And, Mike, we didn't  
27 need to keep you up there and I hope you don't feel  
28 like what we were doing was railing on you.

29

30 MR. CRAWFORD: I'm fine with that.

31

32 CHAIRMAN LOHSE: And I know I put you  
33 on the spot with that question, but that's the question  
34 I have to ask myself. Because we've had evidence that  
35 they did travel all over the Kenai, that they did those  
36 kind of things. Now the question would be if I lived  
37 there, if I was part of that community at that time, if  
38 you were part of that community at that time, would you  
39 have taken part in those kind of activities, and for  
40 myself I have to answer yes and just like you were  
41 honest, you know, if you were doing the same thing  
42 you'd do yes too.

43

44 Now, whether or not how that's going to  
45 affect methods and means and bag limits in the future,  
46 that we have to work on. But did the people do that,  
47 and that's the question.

48

49 Thank you.

50

1                   You got any more comments, you want to  
2 add anything.

3  
4                   MR. CRAWFORD: No.

5  
6                   CHAIRMAN LOHSE: Since I kept you so  
7 long you got a chance to say something else.

8  
9                   MR. CRAWFORD: No, I think we covered  
10 it all.

11  
12                   CHAIRMAN LOHSE: Okay, thank you.  
13 Okay, with that summary of written public comments, do  
14 we have any.

15  
16                   MS. CLARK: Yes, Mr. Chairman, we have  
17 one.

18  
19                   CHAIRMAN LOHSE: Okay. Could you read  
20 it.

21  
22                   MS. CLARK: Based on the prior analysis  
23 of the historic pattern of use and the eight criteria  
24 that are required under ANILCA and the decision not to  
25 grant C&T for freshwater species to residents of  
26 Ninilchik, Kenai River Sportfishing Association  
27 strongly opposes this expansion of subsistence  
28 opportunity.

29  
30                   As is the case in this situation, we  
31 cannot simply afford additional opportunity to a  
32 community that cannot demonstrate a pattern of use of  
33 those resources present within the Federally-managed  
34 waters.

35  
36                   Adoption of this proposal will  
37 detrimentally impact other users and other uses of  
38 these resources.

39  
40                   Subsistence opportunities for residents  
41 of Ninilchik exist under State regulations. This  
42 proposal revisits decisions already made by the Federal  
43 Subsistence Board in November 2006 and would grant  
44 residents of Ninilchik a Federal subsistence priority  
45 for freshwater species occurring in the Kenai River  
46 within the Kenai National Wildlife Refuge and the  
47 Chugach National Forest. Central to those earlier  
48 decisions was the fact that C&T could not be  
49 demonstrated for freshwater species within the  
50 Federally-managed waters. The justification provided

1 for this proposal recognizes this activity did not  
2 occur on the allowable Federal property but asks that  
3 it be allowed anyway because the Federal boundaries are  
4 not consistent with their historic patterns areas of  
5 use.

6

7

CHAIRMAN LOHSE: Is that it?

8

9

MS. CLARK: Yes.

10

11

CHAIRMAN LOHSE: Thank you. We have  
12 one request for public testimony. Wilson Justin.  
13 Thank you, Wilson, go ahead.

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

42

43

44

45

46

47

48

49

50

MR. JUSTIN: Good afternoon. Thank  
you, Mr. Chairman and Council members.

Actually this is more of a tribal  
testimony. I wanted to speak on the Ninilchik proposal  
for a couple of reasons. First I should clarify that  
both Mt. Sanford and Chisana have supported Ninilchik  
from the start in this process way, way, way back when.  
We don't always go on record, we're not always very  
vocal but we have always been supportive and I have  
mentioned it a number of times in testimonies before  
the Federal Subsistence Board and other locations that  
we're in favor of Ninilchik, for a number of reasons.  
Several of those reasons have crossed over into the  
Chistochina case in terms of the wording of the  
decision.

There's a couple of points I did want  
to make in terms of some of the discussion here,  
particularly in regards to evidence. Now, those of you  
who have been a part of the Fish and Game meetings that  
I've testified at probably remember how careful I  
worded my testimony in terms of the terminology.

Terminology in a legal sense can do  
many things, it's always a double-edged sword. But I  
had the added confidence of knowing in advance of how  
the Federal system works in terms of Native Americans  
and evidence.

In 1977 there was a court case decided  
called Pensee v. Kleppe (ph), it was on Native  
allotment issues. And in that particular court case  
there was a tremendous amount of discussion regarding  
use, occupancy, evidence, practice and patterns. All  
of the very same terminology you'll find in subsistence

1 issues today were also part of the Native allotment  
2 court cases in the '70s and '80s. In the Kleppe case  
3 the judge noted that there was a very clear and  
4 distinctive terminology difference between use, between  
5 practice, between occupancy and evidence or proof. In  
6 those particular proceedings with Native allotment  
7 activity preponderance of evidence was dispensed with,  
8 oral history became part of the way the court made  
9 decisions.

10

11                   So it was no accident that myself, as a  
12 subsistence advocate for Chisana began my testimony  
13 trail in these proceedings here and elsewhere couching  
14 my terminology used in the way I did.

15

16                   It was very clear to me that Ninilchik,  
17 on the basis of principle, could not produce the kind  
18 of evidence required in a legal construct to satisfy  
19 the law in terms of the state of Alaska, it was clear  
20 to me then, and everybody should know the reason why  
21 Ninilchik could not do that. I knew the reason why.  
22 My step-father was very close friends with the  
23 descendants of the original Native inhabitants of  
24 Ninilchik, he knew those people down there from the  
25 1920s so I knew why Ninilchik had these issues.

26

27                   My point among these discussions over  
28 the years was that when you utilize the English  
29 construct, best evidence or evidence only you cripple  
30 subsistence activities. Now, the State knows that and  
31 so does the Feds. In the Chistochina case, the  
32 proceedings began to -- for the first time that I can  
33 remember delineate between use, practice, patterns,  
34 occupancy and evidence. For the first time I see in  
35 legal language where evidence is separated out in a  
36 court decision and made a part of use. In other words,  
37 you don't need evidence of use. You don't need  
38 evidence of occupancy. You prescribe to the theory  
39 that you were here, in short, Ninilchik doesn't have to  
40 prove that it requires C&T for all of the fish in that  
41 particularly locality, it's up to the people who oppose  
42 Ninilchik to prove that they don't have or can't get  
43 C&T, and in my estimation that's never been done. All  
44 the records show is that Ninilchik for a lot of  
45 reasons, not what you'd call legal or traditional or  
46 historical was never allowed to practice, that's  
47 distinctly different than not having any evidence of  
48 use or occupancy. Ninilchik is a very unique  
49 community, and those same questions that affect the  
50 Ninilchik case were questions we contended with in the

1 Chistochina case. Well, the judge or the court did not  
2 answer those questions, but he implied in the decision  
3 are a number of principles that you can take out and  
4 look at in clear light.

5  
6           One of them, and the best one of the  
7 bunch that I saw in the case was the issue of whether  
8 or not a terminology can or should be used  
9 interchangeably in a sense that it's going to impact  
10 negatively subsistence. Implied in the Chistochina  
11 case, is if the terminology is hostile to subsistence  
12 issues and uses, then you can drop it or not use it.  
13 It's very clear in that particular case that the judge  
14 is saying, at least to me, if the English language  
15 doesn't fit the doggone thing and it's hostile to the  
16 doggone thing then we're going to have to figure out a  
17 way to make it not hostile.

18  
19           If you read the discussion by the court  
20 in the particular case that's at hand, Chistochina,  
21 you'll find a number of principles he implied within  
22 the jurisdictional issues that they have not approached  
23 but they clearly show the way.

24  
25           The last point I want to make, one of  
26 those clearly guiding sentences or paragraphs is  
27 threshold, there is no threshold.

28  
29           And that is where the Federal  
30 Subsistence Board really started to get a hang up. I  
31 was there throughout the entire proceedings when  
32 Ninilchik's question stalled out, I was there the  
33 entire time, that's how much interest we took in  
34 Ninilchik. Mt. Sanford Tribal Consortium paid my way  
35 there and I stayed there and I listened and I watched  
36 and this threshold issue was on everybody's mind and  
37 the Chistochina case said there's no particular reason  
38 to think about threshold issues, not in a C&T  
39 determination. It's the issue of use, practice and  
40 pattern and use, practice and pattern can be applied on  
41 a community basis. Most likely there'll be a lot of  
42 opposition from individuals because individual -- when  
43 you deal with individuals on these kind of issues they  
44 have to prove evidence of use because evidentiary on a  
45 individual basis are required. So if I was born in  
46 1950 it's not possible that I could do any hunting  
47 before 1950, but on a community basis where it's use,  
48 it's practice and it's pattern, all of those issues are  
49 irrelevant, so the property right discussion that the  
50 State is so fond of bringing into discussions in the

1 legal sense in subsistence was dispensed in the  
2 Chistochina case. And it's a very good precedent  
3 setting case in many ways but there's a lot of work to  
4 be done yet, it left open a lot of questions, including  
5 the species questions including the species questions,  
6 customary use.

7  
8 Now, remember in the Chistochina case,  
9 the issue of customary use and the eight criteria was  
10 reflected on but not utilized in terms of making the  
11 ruling. There's a lot of things there that's left open  
12 and on the table.

13  
14 So in summary, yes, we say that  
15 Ninilchik has C&T and it's up to the State or whoever  
16 else to prove that they don't have C&T.

17  
18 Thank you.

19  
20 CHAIRMAN LOHSE: Any questions for  
21 Justin Wilson.

22  
23 (No comments)

24  
25 MR. WILSON: Thank you, very much.

26  
27 CHAIRMAN LOHSE: Thank you. Okay, with  
28 that we are on to Regional Council deliberations,  
29 recommendations and justifications. A motion to put  
30 FP09-07 is in order.

31  
32 MR. HENRICHS: I'll make that motion  
33 that we support this.

34  
35 REPORTER: Bob. Bob.

36  
37 MR. HENRICHS; Oh, excuse me. I'll  
38 make the motion that we support this proposal.

39  
40 CHAIRMAN LOHSE: A motion's been made  
41 to support FP09-07, do I hear a second.

42  
43 MR. WILSON: Second.

44  
45 MR. LAMB: Second.

46  
47 CHAIRMAN LOHSE: It's been seconded.  
48 It's been moved and seconded, we have two seconds.

49  
50 Okay, discussion, deliberations,

1 recommendations, amendments, modifications, anything  
2 that anybody would like to put in, let's get something  
3 on the table.

4

5 Dean.

6

7 MR. WILSON: I'll dive into this one  
8 real quick.

9

10 I guess much like the last time or two  
11 we were involved in this our RAC came out in support of  
12 it, I can't see any reason why we can't support it as  
13 well this time. All the criteria don't seem to change,  
14 in fact, if I remember right the last time we dove into  
15 this one we had a whole list of all eight criteria that  
16 we were walking through and we seemed to feel that it  
17 met the criteria then enough to grant C&T, so I'll out  
18 in support of it again.

19

20 CHAIRMAN LOHSE: So basically, Dean,  
21 what you're saying is that you haven't seen anything  
22 that would change your past decision?

23

24 MR. WILSON: That's correct.

25

26 CHAIRMAN LOHSE: Any other discussion,  
27 any questions. Doug.

28

29 MR. BLOSSOM: Mr. Chair. I am going to  
30 support that we take this position again.

31

32 When I look through, what, Pages 63 to  
33 86 or somewhere like that, I think it clearly says  
34 there that Ninilchik proved their C&T for resident  
35 species as well as salmon. And I find it hard to  
36 believe that if they were there catching salmon that  
37 they didn't catch trout or something also. So I just  
38 -- you know we ran through this, we did the criteria,  
39 we unanimously agreed that it was a C&T for Ninilchik  
40 and half the Board did also.

41

42 So I think I would respectfully ask the  
43 Board to reconsider this because they were divided on  
44 it and look at these pages that I have recommended here  
45 and I think it's clear to me that C&T should be given.

46

47 CHAIRMAN LOHSE: James.

48

49 MR. SHOWALTER: Yes, I also support 09-  
50 07 for all species, fresh and saltwater for because for

1 me to -- because I believe that due to areas that they  
2 use they aren't just looking for, say, salmon to eat  
3 because there's other fish within those waters and when  
4 they're hunting they're in the freshwater areas so  
5 they're using any and all freshwater species of that  
6 area so, therefore, I have to support it.

7

8 MR. ENCELEWSKI: Do you want to hear  
9 feel?

10

11 CHAIRMAN LOHSE: Yes, I'd like to hear  
12 how you feel, Greg.

13

14 MR. ENCELEWSKI: Mr. Chair. As you  
15 know, I mean we've heard a lot of testimony here and to  
16 me there's absolutely no doubt that I'm going to  
17 support it. I have no doubt in my mind that people  
18 used it historically, for myself, back to my  
19 grandfathers and people in the community and you guys,  
20 a lot of you heard the testimony. So I have -- I mean  
21 it's a no-brainer for me. I mean I'm a living  
22 testimony to the fact, I wasn't born until 1948 but  
23 there are many people in my family that have used this  
24 so I'm definitely supporting it.

25

26 Thank you.

27

28 CHAIRMAN LOHSE: I think, Greg, that  
29 you hit the nail on the head for me. I've sat and  
30 listened in these meetings, I've listened to you, I've  
31 listened to young people and old people from Ninilchik,  
32 I've listened to -- I've read some of the stories that  
33 have been mentioned in our thing right here and I have  
34 no problem and I would have a harder problem thinking  
35 of people who traveled around like that not making use  
36 of it than I would of them making use of it.

37

38 And when it comes to all freshwater  
39 species, statutes of limitations have ran out so I'll  
40 tell you a story and you can make your own decision  
41 from that.

42

43 1966 I'm out teaching on the Peninsula,  
44 well, we went on a caribou hunt, we went across the  
45 Peninsula to the other side where we don't normally  
46 hunt because other people hunted over there but there  
47 wasn't anything on ours, we hiked across the Aleutian  
48 Peninsula out there, and when it came time for supper  
49 we took a T-shirt, we made a little weir in one of the  
50 creeks and we held the T-shirt open with a couple rocks

1 and a bunch of us went up stream and we came beating  
2 down this little creek with our sticks chasing all of  
3 the fish in front of us, most of which weren't over six  
4 inches long, and there was pink salmon smolt and coho  
5 smolt and Dolly Vardens and I'm not sure what else in  
6 there and we chased them downstream until they ran into  
7 the T-shirt where somebody was standing and when the T-  
8 shirt got full he grabbed the T-shirt and closed the T-  
9 shirt up and we took them to camp and we fried up pans  
10 full of these little fish, they were little fish (In  
11 Native), is the proper Aleutian name for it, it means  
12 little fish, in other words they weren't salmon, salmon  
13 were (In Native) there was only one fish in the  
14 Aleutians out there, that was salmon. So we fried up  
15 whole pans full of (In Native) little fish, we didn't  
16 care wither they were cohos or Dollys or pink salmon or  
17 rainbow trout or anything like that, that's what we ate  
18 for supper that night and we went caribou hunting the  
19 next day. And I can't imagine the people from  
20 Ninilchik or the traveler from Ninilchik not doing the  
21 same thing. And I doubt if he went to the Kenai River  
22 and used a fly rod, he probably found the nearest  
23 little tributary, built himself a weir, drove the fish  
24 down into the weir and scooped out what he needed to  
25 eat and took the weir apart and let them go, which is  
26 exactly what we did.

27

28                   And that's the way people would have  
29 done it back then. Now, this was 1966 so like I said  
30 I'm sure it's beyond the statute of limitations, but I  
31 was dealing with people who still led a subsistence  
32 lifestyle, you know, the mail plane stopped once a week  
33 maybe, and that's where we were.

34

35                   And that's the way it was on the Kenai  
36 Peninsula. That's the kind of people we've heard come  
37 here and testify to us. That's the kind of people  
38 we're dealing with when we're looking at the historical  
39 record. And that's the kind of thing those kind of  
40 people would have done in my estimation, which is why I  
41 have to support a C&T.

42

43                   Now, how we're going to implement it,  
44 that, I agree, is a complicated problem. But whether  
45 or not people who lived there, that long ago, that  
46 traveled around the Kenai Peninsula, made use of the  
47 resource on the Kenai Peninsula, I cannot, like Justin  
48 said, I could not find against them, I would have to  
49 have proof against them more than for them just because  
50 that's the way people are, and so I'm going to support

1 this like we've supported it before and I hope the  
2 Board looks at it carefully and looks at it from in the  
3 standpoint of some of these decisions and some of these  
4 other things that have been brought to their attention.

5  
6 But I'm open for any modifications or  
7 amendments or anything that anybody would like to put  
8 on the table.

9  
10 Bill.

11  
12 MR. STOCKWELL: Thank you, Mr.  
13 Chairman. I will be supporting the proposal.

14  
15 It was brought up to us that maybe we  
16 should specify species and I don't know whether that's  
17 something we really want to do or not.

18  
19 Also I'll be on record that I do have  
20 conservation concerns about this and when that time  
21 comes, I'm sure it will be a very interesting meeting.

22  
23 If we so desire to look at species, the  
24 ones that are listed in the present regulations are  
25 Dolly Varden/Arctic char, lake trout and  
26 rainbow/steelhead. I'll throw a motion out that we  
27 specify those species as our findings to the Federal  
28 Subsistence Board.

29  
30 Thank you.

31  
32 CHAIRMAN LOHSE: Thank you, Bill. Do I  
33 have a second on that amendment.

34  
35 MR. BLOSSOM: Second.

36  
37 CHAIRMAN LOHSE: It's been moved and  
38 seconded to limit the species to the species that were  
39 historically present that are mentioned in that  
40 regulation that you have right there, Dolly Varden,  
41 Arctic Char, rainbow trout, lake trout, and it's been  
42 moved and seconded, any discussion on the amendment.

43  
44 MR. STOCKWELL: I was just going to say  
45 there's a couple others that are listed, pike's one and  
46 they're not Native but it would be anybody that wants  
47 those they're more than welcome to them, and, of  
48 course, the other is grayling, which are an introduced  
49 species and I think they, by definition, should be left  
50 out because they weren't there when the Feds cut off

1 the thing in the 1950s, and so I think this covers the  
2 species that probably were harvested for subsistence  
3 use in the times when subsistence was available.

4  
5 Thank you.

6  
7 CHAIRMAN LOHSE: Any other discussion  
8 on the amendment.

9  
10 (No comments)

11  
12 CHAIRMAN LOHSE: Doug.

13  
14 MR. BLOSSOM: Question.

15  
16 CHAIRMAN LOHSE: The question's been  
17 called on the amendment, all in favor signify by saying  
18 aye.

19  
20 IN UNISON: Aye.

21  
22 CHAIRMAN LOHSE: All opposed signify by  
23 saying nay.

24  
25 MR. SHOWALTER: Nay.

26  
27 MR. HENRICHS: Nay.

28  
29 MR. ENCELEWSKI: Nay.

30  
31 CHAIRMAN LOHSE: Let's have a show of  
32 hands. All in favor signify by saying aye.

33  
34 (3 hands raised - Showalter, Henrichs,  
35 Encelewski)

36  
37 CHAIRMAN LOHSE: All opposed signify by  
38 saying nay.

39  
40 (5 Hands raised - Lamb, Stickwan,  
41 Lohse, Blossom, Wilson)

42  
43 CHAIRMAN LOHSE: Three opposed, five  
44 for, the amendment carries. So we'll limit it to the  
45 historical species that were present prior to 1952 and  
46 now we have an amended motion in front of us. Is there  
47 any more discussion on the motion.

48  
49 (No comments)

50

1 CHAIRMAN LOHSE: Question's in order.  
2  
3 MR. STOCKWELL: Question.  
4  
5 CHAIRMAN LOHSE: All in favor of FP09-  
6 07 as amended signify by saying aye.  
7  
8 IN UNISON: Aye.  
9  
10 CHAIRMAN LOHSE: All opposed signify by  
11 saying nay.  
12  
13 (No opposing votes)  
14  
15 CHAIRMAN LOHSE: Motion carries. Let's  
16 take a break, 10 minutes.  
17  
18 (Off record)  
19  
20 (On record)  
21  
22 CHAIRMAN LOHSE: We'll call this fall  
23 meeting of Southcentral Federal Subsistence Regional  
24 Advisory Council back into session. We just finished  
25 FP09-07, and it was brought to my attention that when I  
26 repeated Bill's motion I didn't say rainbow and  
27 steelhead but part of that is the fact that I consider  
28 the two the same fish, but the second to the motion was  
29 seconding what Bill did, which was rainbow and  
30 steelhead.  
31  
32 With that we're going to go on to FP09-  
33 08 submitted by the Ninilchik Traditional Council, and  
34 we have Steve presenting it to us.  
35  
36 MR. FRIED: Good afternoon. For the  
37 record I'm Steve Fried. I work as a fisheries  
38 biologist for Office of Subsistence Management. And  
39 I'll try to summarize the draft Staff analysis for  
40 regulatory Proposal FP09-08 that was submitted by  
41 Ninilchik Traditional Council and can be found on Page  
42 89 of the Council book.  
43  
44 This proposal seeks to allow salmon  
45 dipnet fishing from shore as well as from boats within  
46 the Moose Range Meadows area of the Kenai River. You  
47 can find the existing Federal regulations relevant to  
48 the proposal on Page 89 of the Council books, the  
49 proposed changes to these Federal Kenai River on Page  
50 89 also and existing State regulations relevant to the

1 proposal on Page 91, I believe. There's a map showing  
2 the extent of Federal public waters in the Moose Range  
3 Meadows on Page 90.

4

5                   And customary and traditional use  
6 determination for the Kenai Peninsula district waters  
7 that we're discussing now is the communities of Cooper  
8 Landing and Hope, which have a positive customary and  
9 traditional use determination for all fish and  
10 residents of Ninilchik, who currently have a positive  
11 customary and traditional use determination for salmon  
12 only.

13

14                   The Council and the Board previously  
15 considered this same issue both in 2007 and 2008. And  
16 in 2007 the Board discussed this allowing fishing from  
17 shore in this area during their deliberations on a  
18 whole suite of proposals concerning Kenai River salmon  
19 fishing. They adopted regulations that allowed  
20 dipnetting only from boats in this area due to concerns  
21 about habitat damage and access issues. In 2008 the  
22 Board also had a proposal requesting that dipnet  
23 fishing be allowed from shore in the Moose Range  
24 Meadows, it was FP08-08 and this time it failed by a  
25 tied vote.

26

27                   The Board members all agreed that  
28 riparian habitat protection was an important concern  
29 but they could not agree on whether adopting the  
30 proposal would result in habitat damage. They also  
31 discussed other alternatives but none of these were  
32 adopted. This was allowing dipnet use from the fishing  
33 platform that was located at the site and actually the  
34 platform was not there at the time, it was damaged by  
35 ice, it's currently been rebuilt. The general  
36 consensus seemed to be that this would pose a problem  
37 with gear competition and also social conflicts between  
38 people trying to use rod and reel and with people using  
39 a dipnet. They discussed the possibility of building  
40 another platform to accommodate just subsistence users  
41 but, of course, you know, there's problems with  
42 obtaining the necessary funding to do this. There was  
43 some discussion about allowing dipnet use from the  
44 shore prior to and after the bank closure period that  
45 extends from July 1 through August 15th, and there was  
46 still some concern with some people about habitat  
47 damage, also there's still some masses problems and  
48 also on these dates there wouldn't be a lot of sockeye  
49 present and neither chinook earlier in the season or  
50 coho later in the season necessarily is bank oriented

1 and easy to -- it's easy to dipnet from shore as  
2 sockeye would be.

3  
4 In general salmon populations in the  
5 Kenai River are healthy. Harvests have been kept  
6 within sustainable limits and really this proposal  
7 doesn't request changes to harvest limits, just to  
8 where they're -- they were allowed to fish in this  
9 area.

10  
11 I think before you now you have some  
12 statistics about the harvest during this last season,  
13 2008, 2007 so you can get an idea of what the harvests  
14 have been.

15  
16 I believe in the Staff analysis in 2007  
17 the figures were 692 sockeye salmon were harvested from  
18 the Kenai River and 16 of these were taken in the Moose  
19 Range Meadows, 12 were taken by dipnet and four by rod  
20 and reel. In 2008 the figure I had to work with at the  
21 time was 1,176 sockeye salmon that were taken from the  
22 Kenai River and of these, 120 were taken from the Moose  
23 Range Meadows, I think these were all on the salmon rod  
24 and reel fishery and there were also five coho salmon  
25 at that point taken in the rod and reel fishery also.

26  
27 If this proposal were adopted, it would  
28 provide some additional fishing opportunity for  
29 Federally-qualified subsistence users, not all users  
30 have boats, but there are access problems and there's  
31 probably few locations suitable for dipnetting and  
32 there is still quite a bit of concern that even low  
33 levels of use could be detrimental to riparian habitat  
34 over time.

35  
36 The preliminary OSM recommendation is  
37 to oppose this proposal for the following reasons:

38  
39 Much of the riparian zone in the Moose  
40 Range Meadows site provides important rearing habitat  
41 for juvenile salmonies and can be degraded through  
42 continued use and this is particularly true for chinook  
43 salmon and there's several studies that actually  
44 highlight this area as some of the best juvenile  
45 rearing conditions in the Kenai River drainage. There  
46 are conservation easements on the Federal lands on this  
47 site so it's not possible to build trails or walkways  
48 or fishing platforms on these lands.

49  
50 To avoid damaging habitat during the

1 period of greatest sportfishing activity which occur  
2 from July 1 through August 15th, the Kenai National  
3 Wildlife Refuge closes public easements on private  
4 lands to stop public access to the shoreline and the  
5 riverbed and they also recognize the existing Alaska  
6 Department of Fish and Game's sportfishing closure on  
7 the river banks on Federal public lands also.

8  
9                   And as I mentioned before, restricting  
10 dipnetting at this site the boats -- does make it  
11 difficult or impossible for some subsistence users to  
12 fish this site with dipnets, however, we feel taken as  
13 a whole the existing Federal subsistence salmon  
14 fisheries do provide a meaningful preference for  
15 Federally-qualified users while also conserving healthy  
16 fish populations and critical riparian fish habitat.  
17 Existing regulations allow Federally-qualified users to  
18 dipnet from a boat at the Moose Range Meadows site, to  
19 dipnet while standing in the river or from a boat at  
20 the Kenai River Mile 48 site, to dipnet from the bank  
21 or while standing in the river at the Russian River  
22 Falls site. They can use a rod and reel in addition to  
23 dipnets at all three of these sites to fill their  
24 annual household salmon limits. Federally-qualified  
25 users can participate in a salmon rod and reel fishery  
26 and this occurs throughout a large portion of the Kenai  
27 River drainage in Federal public waters. It has a  
28 greater daily and annual harvest limit than those  
29 allowed for the State sportfishery and Federal users  
30 can also use existing fishing platforms to access  
31 Federal public waters when they're using rod and reel  
32 gear.

33  
34                   Mr. Chair, this concludes my  
35 presentation and I'd be happy to answer any questions.

36  
37                   CHAIRMAN LOHSE: Thank you, Steve.  
38 Does anybody have any questions for Steve.

39  
40                   (No comments)

41  
42                   CHAIRMAN LOHSE: Thank you, Steve.  
43 Okay, Alaska Department of Fish and Game.

44  
45                   MR. PAPPAS: Mr. Chair. George Pappas,  
46 Department of Fish and Game.

47  
48                   Without going into too much detail, Mr.  
49 Fried pretty much read my script here. The issue is  
50 the habitat -- the riparian habitat with a closure

1 there which is defined does include 10 feet into the  
2 water and 10 feet upland as measured from the waterline  
3 is closed to protect the habitat during the most  
4 sensitive time for growth.

5  
6                   Additionally, the mixed gear types and  
7 user groups would likely -- if this proposal is adopted  
8 would cause elevated social conflicts, enforcement  
9 issues and current user displacement.

10  
11                   And that's all we have.

12  
13                   The Department at this time opposes  
14 this proposal.

15  
16                   Thank you, Mr. Chair.

17  
18                   Alaska Department of Fish and Game

19  
20                   Preliminary Comments to Regional Advisory Council

21  
22                   FP09-08 Allow Shore-Based Dip Nets and  
23 Rod and Reel at Moose Range Meadows

24  
25                   Introduction:

26  
27                   FP09-08 proposes to allow federally-  
28 qualified subsistence users to fish from the bank in  
29 addition to fishing from a boat in the waters that flow  
30 through Moose Range Meadows area while fishing with dip  
31 nets and rod and reel. Current federal regulations  
32 only authorize fishing from boats in this area for  
33 reasons discussed at the May 2007 and December 2007  
34 Federal Subsistence Board (Federal Board) meetings,  
35 including:

- 36  
37                   1.           The entire shore of federal  
38                   land identified as the Moose  
39                   Range Meadows area is closed to  
40                   all fishing within 10 feet of  
41                   the waterline from July 1  
42                   August 15.
- 43  
44                   2.           Lands in which there is a  
45                   federal interest, including  
46                   trails, banks, and catwalks,  
47                   have legal easements that  
48                   preclude these shore-based  
49                   activities to protect riparian  
50                   habitat; participants in these

1 shore-based activities could be  
2 cited under both state and  
3 federal law.

4  
5 3. Private lands in the area are  
6 not subject to federal  
7 subsistence fishery  
8 jurisdiction.

9  
10 4. Adoption of a proposal allowing  
11 shore-based federal subsistence  
12 fishing would create  
13 conservation, enforcement, and  
14 confusion issues among all  
15 users.

16  
17 Opportunity Provided by State:

18  
19 The Kenai River is located in the  
20 Anchorage-MatSu-Kenai Non-subsistence area designation  
21 under state law. The State provides a broad array of  
22 personal use, recreational, and educational fisheries  
23 to meet needs for personal and family consumption as  
24 well as cultural purposes. The personal use and  
25 educational fisheries provide opportunities to harvest  
26 salmon more efficiently and closer to home, although  
27 these opportunities are frequently not used or are used  
28 at very low levels. Due to accessibility and high use  
29 of the Kenai harvest of rainbow/steelhead trout, lake  
30 trout, and Arctic char/Dolly Varden, regulations must  
31 be conservative while preserving significant  
32 opportunity on the Kenai. More liberal regulations  
33 apply in many nearby waters that provide opportunities  
34 for harvest of rainbow/steelhead trout, lake trout, and  
35 Arctic char/Dolly Varden under State sport fishing  
36 regulations.

37  
38 Conservation Issues:

39  
40 Adoption of this proposal would result  
41 in impacts on fish and their habitat. Allowing fishing  
42 from shore will significantly impact the riparian  
43 habitat closure areas. From July 1 August 15, the  
44 shoreline which is defined to extend 10 feet into the  
45 water and include uplands measured from the river  
46 waterline is closed to any fishing activity in order  
47 to protect riparian habitat. These dates were selected  
48 to protect the shore from human impact during the  
49 majority of the sockeye salmon return to the Kenai  
50 River and during the late Chinook salmon run. This

1 time period may be the most important part of the  
2 vegetation growing season. Fishing-related activities,  
3 which include walking, running, stomping, standing, and  
4 storage of equipment that a person carries and uses to  
5 fish, have significant impact on vegetation. The  
6 riparian habitat zone is important to the productivity  
7 and health of the anadromous river ecosystem.  
8 Regulations were developed to protect this fragile zone  
9 from trampling and long-term damage due to concentrated  
10 and repetitive impacts to the vegetation and soils. An  
11 assessment of fish habitat in the Kenai River was  
12 conducted by the Alaska Department of Fish and Game  
13 (Department) in 1994 (Liepitz; 1994). This study  
14 identified and evaluated a variety of Kenai River  
15 habitat types and conditions. The study concluded that  
16 the riparian habitat zone from river miles 17.5 39.5,  
17 which includes the Moose Range Meadows area, contains  
18 the greatest amount (42.3% of total mainstem) of  
19 overhanging vegetation and under-cut banks of the Kenai  
20 River. The study further concluded the river substrate  
21 between river miles 17.5-39.5 contains the greatest  
22 amount of gravel and cobble material within the entire  
23 mainstem, which supports the greatest opportunity for  
24 spawning and provides important cover habitat in the  
25 crevices between the cobbles for juveniles to rest,  
26 feed, and rear. Testimony given by the Office of  
27 Subsistence Management and Fish and Wildlife Service at  
28 the October 2007 meeting of the Southcentral Regional  
29 Advisory Council indicated the riparian habitat within  
30 the Moose Range Meadows area is significant and is of  
31 the highest quality for the rearing of juvenile Chinook  
32 and coho salmon in the Kenai River watershed.

33

34 Jurisdiction Issues:

35

36 All of the shoreline on both sides of  
37 the Kenai River in the area of the federal dip net and  
38 rod and reel fishery is either closed to fishing within  
39 10 feet of shore from July 1 August 15 (including  
40 standing in the water) or is not federal land. The  
41 areas in which there is federal interest that are not  
42 closed to fishing within 10 feet of shore consist of  
43 public easements which do not allow fishing activities.  
44 No fishing is allowed from a 17(b) easement on private  
45 land granted for public access, and fishing under  
46 federal regulations cannot occur while the user is  
47 standing on State or private land. Federal subsistence  
48 users can access the river through Kenai Borough  
49 Property Parcel # 13526401 upriver of the boat launch  
50 but cannot legally fish while standing on the easement

1 and cannot store tackle or equipment used to fish on  
2 the easement. The Kenai River shoreline from River  
3 Mile 28-29 is private property and downstream of refuge  
4 lands, so no claim to federal reserved water rights  
5 exists in this stretch, and no such claim can be made  
6 unless the Secretaries take the extraordinary step of  
7 seeking to impose extraterritorial jurisdiction.

8

9

Other Comments:

10

11 The mixing of gear types and user  
12 groups that would result from adoption of this proposal  
13 would likely cause elevated social conflicts,  
14 enforcement issues, and displacement of current users.  
15 There are two small sections of shoreline in the Moose  
16 Range Meadows area, identified in the Federal Board  
17 meeting material book (page 278) in the FP08-08 Federal  
18 Staff Analysis, which could be used to conduct a  
19 Federal subsistence fishery from shore. These two  
20 sites are also currently used by thousands of anglers  
21 annually.

22

23

Recommendation: Oppose.

24

25

CHAIRMAN LOHSE: Thank you, George.

26 Can I ask you a few questions that I just thought about  
27 -- I will ask you a few questions I guess just to start  
28 things off.

29

30

MR. PAPPAS: Yes, Mr. Chair.

31

32

CHAIRMAN LOHSE: So basically right now

33

34

35

MR. PAPPAS: That is correct, Mr.

36

37

38

CHAIRMAN LOHSE: What takes place on

39

40

41

42

MR. PAPPAS: Mr. Chair. As I'm aware

43

44

45

46

47

48

49

50

coho fishermen trying to fish from shore but the mass

1 effort has -- do follow the sockeye in the Kenai River  
2 and they have passed by that time, Mr. Chair. And also  
3 less than one percent of the -- like the chinook salmon  
4 are caught from shore on the Kenai so I would doubt  
5 there's a fair amount -- really much measurable number  
6 of chinook salmon fishermen fishing from the shoreline  
7 at that time.

8

9 Mr. Chair.

10

11 CHAIRMAN LOHSE: Okay. I was just  
12 wondering what kind of impact was on that shoreline  
13 prior to July 1st and after August 15th. So basically  
14 the coho fishery is not that big of a deal down there,  
15 it's not like in other places where you've got a lot of  
16 people -- I mean there's better places to fish so you  
17 don't have a lot of people fishing in Moose Meadows  
18 area on the bank from shore.

19

20 MR. PAPPAS: Mr. Chair, that is  
21 correct. And let me correct myself, the king season is  
22 closed after August 1st there so people wouldn't be  
23 fishing for chinooks from shore.

24

25 CHAIRMAN LOHSE: I guess I was just  
26 trying to get some perspective on how much use is made  
27 of the bank habitat during the rest of the season  
28 versus how much use might be made if you had a  
29 subsistence fishery on it with the current  
30 participation level in the subsistence fishery and I  
31 can understand it being closed, you know, during that  
32 time period when you have the immense amount of people  
33 that you have on the Kenai Peninsula down there looking  
34 for red salmon. But I was just wondering how vital  
35 that area is the rest of the time of the year, what  
36 kind of impact is made on it and you don't have any  
37 idea on that then?

38

39 MR. PAPPAS: Mr. Chair. I'm not aware  
40 of any krill surveys that document that information.  
41 The one study, I believe, or two studies that were  
42 done, it's in our comments here 1994 related to how  
43 much impact there was prior to the establishment of the  
44 riparian closures, and, once again, before say July 1  
45 the river is lower, there is more gravel you can get on  
46 to instead of actually standing on the riparian habitat  
47 and after the -- when it reopens up a lot of that  
48 vegetation is established, maybe -- yeah, it could  
49 still be damaged but it's less susceptible to trampling  
50 as small plants grow.

1 Mr. Chair.  
2  
3 CHAIRMAN LOHSE: Yeah. Well, maybe  
4 somebody else that's from that area will have some  
5 information on that too.  
6  
7 Bill, you got a question for George.  
8  
9 MR. STOCKWELL: Yeah, once again I  
10 don't know whether I'm asking the right person or not  
11 but I was -- I attended the Board of Fisheries when  
12 this issue came up and they had pretty pictures and so  
13 on and the bank was in pretty terrible shape and I was  
14 wondering if somebody has some information on how well  
15 that's rejuvenated itself and what it looks like now  
16 and how much the closure has helped out the riparian  
17 habitat.  
18  
19 CHAIRMAN LOHSE: George.  
20  
21 MR. PAPPAS: Mr. Chair. I would assume  
22 Mr. Robin West could probably testify about the Federal  
23 sections there with the boardwalks and how much  
24 vegetation's growing there but we also have a member  
25 from the AC that lives across the street from there and  
26 knows about the habitat.  
27  
28 CHAIRMAN LOHSE: Okay.  
29  
30 MR. PAPPAS: And I've walked up and  
31 down there a few times and it's fairly chest high in  
32 some spots.  
33  
34 Mr. Chair.  
35  
36 MR. STOCKWELL: Good. Maybe as this  
37 come along, somebody else will come up and.....  
38  
39 CHAIRMAN LOHSE: Yes, that's what I was  
40 hoping we could do is get some information that  
41 actually goes down there Bill.  
42  
43 MR. STOCKWELL: Thank you.  
44  
45 CHAIRMAN LOHSE: Thank you. Any other  
46 questions for George. James.  
47  
48 MR. SHOWALTER: Yes. This is a comment  
49 about that particular area. I was down there about  
50 three weeks ago and as you indicated the grass area has

1 almost chest high there and there was -- it looked like  
2 one trail back from the river, a good 50 to 100 feet  
3 going up river, but that was the only thing I seen.  
4 But right along the river bank it looked great.

5  
6 CHAIRMAN LOHSE: Any other questions  
7 for George.

8  
9 (No comments)

10  
11 CHAIRMAN LOHSE: George.

12  
13 MR. PAPPAS: One other point off to the  
14 side, as you had mentioned at the last meeting or was  
15 it the Board meeting, this does not prohibit folks from  
16 berrypicking and walking in enjoying themselves in the  
17 area. I'm not sure what all that has to do with it,  
18 but that may have been part of the trail you'd seen up  
19 and away from the river that people are enjoying.

20  
21 Mr. Chair.

22  
23 CHAIRMAN LOHSE: Uh-huh, it just limits  
24 fishing. Okay, no other questions.

25  
26 (No comments)

27  
28 CHAIRMAN LOHSE: We'll go on to  
29 Federal, tribal and State agency comments. Tribal  
30 agencies, okay.

31  
32 MR. I. ENCELEWSKI: Okay. Mr.  
33 Chairman. Members of the Council. Again, my name is  
34 Ivan Encelewski, executive director of the Ninilchik  
35 Traditional Council and Federally-qualified subsistence  
36 user from Ninilchik.

37  
38 Again, we speak in favor of the  
39 proposal, and we stand on the previous record, because  
40 this issue has been previously addressed by this  
41 Regional Advisory Council, still we want to reference  
42 our previous record as well.

43  
44 Obviously this issue was a difficult  
45 issue because we all know that the process, how our  
46 subsistence developed, whether it was through the work  
47 group and then through working with the agencies to try  
48 and find areas. Obviously areas, one, where there are  
49 Federal areas, areas where there's fish. So once again  
50 and I won't kind of reiterate my previous testimony

1 there was a lot of capitulation, ask for a mile get an  
2 inch.

3

4                   And so one of the things, obviously,  
5 that's very troublesome about the area for dipnetting  
6 is obviously you have to have a boat. Well, the people  
7 -- the number of subsistence users that have a boat  
8 that's river ready and prepared and able to deal with  
9 that area is kind of very minute so it creates a huge  
10 problem in whether it's a real meaningful preference.

11

12                   And I know when we talk about  
13 meaningful preference, we all have a different vision  
14 of that.

15

16                   Obviously when we originally proposed,  
17 you know, putting a net in there and getting some fish  
18 and getting out, well, it kind of got down to where  
19 we'd get some extra hook and some boat, and if you got  
20 a boat you can go here, and so, you know, obviously  
21 there's going to be some disagreement whether we think  
22 that's -- you know, we really have a meaningful  
23 preference, you know, and I know that was mentioned  
24 here, there's other areas, yeah, you can hike in, you  
25 know, to the Russian River Falls, you know, Long area,  
26 so what we're really talking about, and even under  
27 ANILCA, you know, providing an economical and  
28 meaningful preference and so we simply don't feel that,  
29 although we appreciate the opportunity, we don't feel  
30 that this is necessarily a meaningful preference for  
31 most people.

32

33                   And we also have some other issues.

34

35                   You know, one is just a comment, you  
36 know, it's kind of -- I think our ancestors would kind  
37 of rollover in their grave if they were told, well, you  
38 know, you can't walk down to the river and get your  
39 fish but tens of thousands of powerboats can run up and  
40 down the river and that gets into another issue; what's  
41 worse on the -- you know the erosion for the stream  
42 bank in this area. Obviously we know it's a critical  
43 habitat, we're the ultimate -- you know, I believe that  
44 subsistence users are the ultimate conservationists. I  
45 mean obviously our ancestors, if they were to over-  
46 utilize a resource or degrade the habitat, they  
47 obviously wouldn't be able to feed, and have food and  
48 for all their cultural, spiritual, nutritional needs.

49

50                   So, again, and even though I'm not the

1 exact scientist on this, you know, you look at the  
2 statistics here 36 permits issued for, say for -- I  
3 believe for 2008, okay, so you might have, you know,  
4 half or even all of those people walk down to the bank,  
5 get their fish, we already heard you can go down there  
6 and pick berries and do whatever, and we don't know the  
7 scientific data on, you know, the powerboats and the up  
8 and down activity that has necessarily on the stream  
9 banks, but I contend a few or a handful of people  
10 walking down the bank to go get their fish is certainly  
11 a lot less than powerboats running up and down through  
12 the river through those areas that they would have on  
13 the actual stream bank there.

14  
15 I think if you look at, you know, the  
16 Board would -- the Federal Subsistence Board, when they  
17 took up this issue at their level, really, obviously  
18 struggled with this one as well. I don't know whether  
19 you'd call it a grey area but there was obviously  
20 disagreement and a 3-3 tie on whether the users fishing  
21 from there, from the bank would result in any actual  
22 habitat changes. And, again, we're talking about a  
23 handful of people.

24  
25 And one of the things that Chairman  
26 Fleagle noted, and I really respect him for, is that,  
27 we had previously testified and we testified here again  
28 and again that the subsistence -- and we seen it in the  
29 last proposal, just to put it in perspective, the  
30 minute amount of fish that subsistence users actually  
31 take versus sportfishing in other areas, I mean we were  
32 talking about 130,000 fish versus 200 fish, and so I  
33 think it's pretty relevant -- but when -- but when  
34 Chairman Fleagle voted on this proposal, he said, you  
35 know, I'm starting to believe and I understand the  
36 testimony of the actual users, that there's not going  
37 to be all the usage that is forecasted and we could all  
38 say if it's and but's were candy and nuts, we'd all  
39 have a Merry Christmas. Well, we could talk about, you  
40 know, well, we could -- one person could go get 200  
41 fish, yeah, and a meteorite could fall from the sky,  
42 but we have to be realistic and provide for that  
43 meaningful preference in ANILCA. And so I think this  
44 does allow it and I think that the worry about this  
45 escalating population, I mean we're talking about  
46 thousands, tens of thousands of people that come to  
47 this river, fish from around the world, that can walk  
48 down there, walk on the bank, but we can't let 36  
49 subsistence fishermen whose ancestors, how did you get  
50 to the bank, you walked, you didn't drive your

1 powerboat up the river, and so we have to put this in  
2 perspective of what it really is, it's a handful of  
3 people, providing them for a meaningful way to go get  
4 their fish.

5  
6 And with that I will defer to Darrel.

7  
8 CHAIRMAN LOHSE: Darrel.

9  
10 MR. WILLIAMS: Mr. Chairman. Members  
11 of the Board. That was a lot of it.

12  
13 A couple things I would like to add,  
14 there have been some issues that's been discussed  
15 through the public process about, one, the social  
16 conflicts, and then we had a State Trooper come into  
17 the Federal Subsistence Board and inform all the  
18 subsistence people that they were going to be cited  
19 whether they were following subsistence regulations or  
20 not, they work for the State. That was something that  
21 was addressed and it was not really okay, but that is  
22 where we're at. And I guess when it says the social  
23 conflicts being an issue of concern over the priority  
24 for rural residents to utilize subsistence resources,  
25 that's a real tough one and I'm not really sure if  
26 that's something that should be up to the subsistence  
27 users to have to resolve.

28  
29 The other comment I had, beyond what  
30 Ivan said was how much impact is too much when it comes  
31 to the effect of the riparian areas. If you look at  
32 the Kenai River there's been -- or the Kenai River  
33 watershed for that matter, there's been extensive work  
34 done on the value of habitat, what habitat has how much  
35 value. And I think some of the questions we should be  
36 asking is how much value does Moose Range Meadows have,  
37 and it is not a super high value habitat area. Yes,  
38 you know, conservation concerns can be a real thing  
39 when they are proven to be a real conservation concern.  
40 But having 30 people walk down to the bank to go  
41 fishing when 3,000 people can walk down to the bank and  
42 go pick berries is an unrealistic expectation.

43  
44 And I think Ivan summarized it real  
45 well with the boats for example, you know, gosh, I  
46 don't have a boat, I like to go fishing, the fishwheel  
47 didn't happen this year so I wasn't able to go fishing,  
48 but if somebody wants a boat, I like the Willie  
49 Predator, and I'd like a jet boat, but it's the same  
50 thing, then you go right back to the same kind of

1 erosion problems that are -- that are -- from the  
2 traffic on the river that are affecting the habitat in  
3 the exact same way. We're picking and choosing and  
4 pointing fingers just arbitrarily.

5  
6 So I think those are some things that  
7 really need to be considered and it may even need to be  
8 addressed in a way that it may take a little bit of  
9 work to study what areas can be accessed, you could  
10 have legal access so a person could get down there  
11 without getting in trouble. And what areas are going  
12 to have low impacts to be able to provide a subsistence  
13 opportunity.

14  
15 That's all I had, thank you, Mr.  
16 Chairman.

17  
18 CHAIRMAN LOHSE: Thank you, Darrel.  
19 Bill.

20  
21 MR. STOCKWELL: I don't think my  
22 question's really for Darrel but, anyhow, there has  
23 been a bunch of studies done on the Kenai River on boat  
24 wakes and maybe somebody can enlighten us on what the  
25 boat wakes -- what the results of those studies are. I  
26 think it would be interesting to add it to this  
27 discussion, for all of us, including you and me.

28  
29 Thank you.

30  
31 CHAIRMAN LOHSE: Chuck.

32  
33 MR. LAMB: You're talking about 30  
34 permitholders, do you have any idea how many days or  
35 trips each permitholder would make there, would it be  
36 like one or they'd go out 10 days or what?

37  
38 MR. I. ENCELEWSKI: You know I can't  
39 really speak for everyone, you know, I believe it  
40 varies, you know, by household. Generally I think what  
41 you're going to find out is a subsistence user is a lot  
42 like the personal use fishermen, you know, they're not  
43 down there -- well, it depends, I guess, on the  
44 individual but a lot of the subsistence users, okay,  
45 they're going up there, you know, they might go a day,  
46 if it's not too good, they might come back a day, but  
47 no subsistence user that I have talked to simply goes  
48 up there day after day after day. So it's kind of  
49 impossible to judge based on household because it's  
50 going to vary by the individual but I think generally,

1 you know, a lot of times you find people -- and I've  
2 talked to people even with personal use who go up and  
3 dipnet, you know, they had a good day, or even if they  
4 didn't they might try and go back one more time but  
5 then you might find a family that's very persistent and  
6 needs their fish, they might go up there multiple  
7 times, but I don't envision or know of any of the  
8 subsistence users that are going to be going repeatedly  
9 back and back and back, you know, you're going up to  
10 Soldotna so, you know, obviously gas is an issue now  
11 too, so.....

12  
13 MR. LAMB: Yeah, that's what I was kind  
14 of getting at just, you know, if they're just making  
15 one or two trips up there as opposed to 50, that would  
16 be like, you know, that many more permitholders.

17  
18 MR.I. ENCELEWSKI: Yeah. If you're  
19 talking about individual trips, you know, if you have  
20 36, it is impossible to judge from the 36 permits that  
21 were issued how many of those actually went and fished  
22 in that specific area, they might have went up in the  
23 Russian River Falls, so you take a number, you know,  
24 times it by how many trips you can get the number of  
25 trips to the river, but.....

26  
27 CHAIRMAN LOHSE: Gloria.

28  
29 MS. STICKWAN: Have you seen damage to  
30 the banks?

31  
32 MR. I. ENCELEWSKI: I'll defer that to  
33 Darrel, I haven't personally been up there here  
34 recently.

35  
36 MR. WILLIAMS: Mr. Chairman. Ms.  
37 Stickwan. I have not, personally, seen this damage to  
38 the bank. I think Mr. Showalter described it very  
39 well, when the grass is chest high and the bank is  
40 truly undercut for riparian habitat, that promotes good  
41 deposition into the streams, which promotes, well, fish  
42 habitat and growth and on and on.

43  
44 In my opinion, I thought it looked very  
45 well developed as far as morphology and riparian area.

46  
47 And these are some of the things where  
48 I struggle and I have questions because I have other  
49 people, I'm hearing these stories about how bad the  
50 banks are, I don't see the damage myself.

1 Mr. Chairman.

2

3 CHAIRMAN LOHSE: Thank you, Darrel.  
4 Darrel, are you talking just about the Moose Range  
5 Meadows or are you just talking about the Kenai River  
6 in general?

7

8 MR. WILLIAMS: Mr. Chairman. I was  
9 actually talking about the Moose Range Meadows.

10

11 CHAIRMAN LOHSE: Okay. Because I was  
12 under the impression that the Moose Range Meadows had  
13 had lots of damage but that had been put -- had been  
14 set aside this way and that that damage is pretty well  
15 repaired or under repair in the Moose Range Meadows at  
16 this point in time but I think we'll have our Refuge  
17 manager give us some information on that too.

18

19 MR. WILLIAMS: Mr. Chairman. Just a  
20 comment. And I think it's also important to note that  
21 I don't think we should comparing damage to riparian  
22 habitat from flooding events either. We had some  
23 significant flooding events on the Kenai River and we  
24 also have to understand that is a process of the river.  
25 It is something that the river does within the flood  
26 plain and a lot of times it's beneficial for habitat.  
27 I'm not sure who all may remember, but 20 years ago  
28 there was a huge project where people had made this  
29 conclusion that debris in the river were bad for fish  
30 and they spent millions of dollars hauling all these  
31 wooded debris out of the rivers and then they realized,  
32 oh, wow, those fish need that and they spent millions  
33 of dollars putting it back in. And it's the same kind  
34 of thing, it's this knee-jerk reaction of not really  
35 putting it in perspective and looking at it for what it  
36 is.

37

38 Thank you, Mr. Chairman.

39

40 CHAIRMAN LOHSE: Thank you, Darrel.  
41 James.

42

43 MR. SHOWALTER: Yes, Darrel, the way  
44 this looks that's only about a half mile section we're  
45 talking about and, you know, I'm sure that's an  
46 important portion of the Kenai River but it sounds like  
47 all other reports, that's the only section they're  
48 concerned about and I'm sure within the other mileage  
49 of the Kenai River there's areas for your fry to rear  
50 instead of just saying, no, I'm going Moose Range

1 Meadows, so with your knowledge or whatever, what do  
2 you think?

3

4 MR. WILLIAMS: Mr. Chairman. Mr.  
5 Showalter. I think that is a wonderful point. You  
6 know I'm going to go out on a limb here and exercise my  
7 better judgment, one of the things that I've heard  
8 today, that I heard and raised an eyebrow about, is  
9 that, a 20 plus inch trout will only spawn in the large  
10 stream. And it gives me a lot of questions about,  
11 okay, what about events that happen such as flooding,  
12 and scour, and morphology processes in the river that  
13 change those spawning beds, my understanding is that  
14 most of the rearing areas, the small tributaries that  
15 come off the major streams are more important to the  
16 habitat than necessarily the stream itself.

17

18 So there's actually a trade off of what  
19 is more important, what has value within the habitat.

20

21 A personal opinion, I would much rather  
22 consider that maybe putting all my eggs in one basket  
23 and betting on one fish to spawn may not be as  
24 beneficial as betting that 20 smaller fish may be able  
25 to spawn in a tributary which may have a better  
26 survival rate. And that's something that we really  
27 haven't addressed here and I'm not really sure how  
28 everybody feels about it and it takes a little bit of  
29 effort and time to look at it and get the clear  
30 picture.

31

32 I mean as a simple perspective to help  
33 people understand, how many people have seen a 20 plus  
34 inch trout in three inches of waters spawning.

35

36 One.

37

38 (Laughter)

39

40 MR. WILLIAMS: Okay, well, I never  
41 have. And so that's one of the questions I've always  
42 had, I've seen smaller fish do that. So there are some  
43 concerns about that and I'm really glad to hear that  
44 folks are taking a look at it objectively.

45

46 Thank you, Mr. Chairman.

47

48 CHAIRMAN LOHSE: That's kind of  
49 interesting because the only place I've seen big  
50 steelhead spawn have been in small shallow water and I

1 know they spawn in deep water you just don't see them,  
2 but that's the only reason you know they're around,  
3 they're up in these little creeks. That's the big  
4 worry that they have down on Admiralty Island, and  
5 we've dealt with that a lot of the time when we're  
6 dealing with the steelhead issue down in Southeastern,  
7 you know, in front of the Board, you know, they're  
8 talking all the time about the thing that they have to  
9 protect down there are all of these little streams that  
10 you can step across that have steelhead spawning in  
11 them, you know. They spawn in small water just as much  
12 as they spawn in big water.

13

14                   And so, yeah, but I see what you're  
15 getting at right there. What I would like to know is  
16 how many miles long is the Kenai River. Anybody know  
17 the answer to that one.

18

19                   MR. STOCKWELL: 84 miles.

20

21                   CHAIRMAN LOHSE: Just 84 miles.

22

23                   MR. STOCKWELL: 84 miles.

24

25                   CHAIRMAN LOHSE: 84 miles. So we have  
26 at least 160 miles bank. How much of that bank is  
27 accessible to, you know, to people trampling.

28

29                   MR. ENCELEWSKI: It depends on how many  
30 times they go up and down it.

31

32                   CHAIRMAN LOHSE: Yeah.

33

34                   MR. WILLIAMS: Mr. Chairman. Just my  
35 knowledge of it, there's an awful lot of the river  
36 that's accessible by road access, boat access, trails.  
37 On a personal note I'm thinking just down of Skilak  
38 Lake there used to be just tremendous amounts of  
39 diamond willow and stuff that were right there along  
40 the bank and it's really interesting because people  
41 found that and you go there now and there is no willow  
42 left there, you know, and when I think about impacts to  
43 the area I would look at the people who went and  
44 harvested things that are really important to the  
45 riparian area like that and to me that's a much more  
46 significant impact than taking a walk through it.

47

48                   CHAIRMAN LOHSE: Bill you were going to  
49 say something.

50

1 MR. STOCKWELL: Yeah, I've got a  
2 question. Ivan, when you were testifying, you were  
3 talking about 30 people going fishing and I assume  
4 that's the 30 from Ninilchik that got permits, is that  
5 correct, because -- well, there's also 84 from Cooper  
6 Landing and 20 from Hope who could drop down in there  
7 and go fishing when they were on their way to Soldotna  
8 to go grocery shopping or this kind of thing so your 30  
9 might be a little misleading in the number of people,  
10 one. And, two, is if you had better access, is  
11 Ninilchik going to have more people that are going to  
12 want to use the area than 30.

13  
14 MR. I. ENCELEWSKI: That's a good  
15 question there. Yeah, and, you know, obviously we're  
16 testifying on behalf of our proposal so, you know,  
17 we're referencing Ninilchik stuff. But, yeah, you do  
18 make a good point there's definitely the potential with  
19 the other areas, Cooper Landing, obviously -- Cooper  
20 Landing and Hope who have the current C&T and obviously  
21 if we do get the C&T through the Federal Subsistence  
22 Board or this proposal then there would be those  
23 additional people.

24  
25 But I still think, you know, in the  
26 grand scheme of things when you talk about the tens of  
27 thousands of people that come down here -- go down to  
28 the rivers, all the camp sites along the rivers, you  
29 know, you know, and I think that was just a good point,  
30 talking about all the areas along the river that are  
31 either accessible, you know, Russian River, I mean look  
32 at that area where all the -- you know, and we could  
33 talk about rearing habitats or wherever the best, you  
34 know, areas are for spawning and, yeah, this may be one  
35 of them but I think that, you know, all along the  
36 rivers there's certainly -- you know, the river banks,  
37 obviously, play an important in habitat for the fish,  
38 more so in other places obviously, but still, you know,  
39 if you double, triple that number, maybe it becomes a  
40 little more accessible, you know, 100 people versus,  
41 you know, thousands and thousands. Riverboats, we  
42 don't know, I think you'll probably hear differing -- I  
43 know there's conflicting -- very much conflicting  
44 information on how wake affects the stream banks and  
45 potential habitat. I think you'll find, just like a  
46 lawyer -- two different lawyers, you know, you'll hear  
47 two different things. You'll hear some that say  
48 there's no problems, everything's hunky-dory, others,  
49 oh, it has a devastating effect so, you know, science  
50 isn't always a science in some respects.

1                   But, yeah, to answer your question,  
2 yeah, we're specifically talking in relation to  
3 Ninilchik, you might see a few more but, really, when  
4 you put it in the whole picture it's so minute, to me  
5 it's the 130,000 versus 200.

6  
7                   MR. STOCKWELL: Thank you. One other  
8 thing on habitat, there is a study, I don't know how  
9 current it is that the Department of Fish and Game did  
10 a few years back, it's the inventory of the riparian  
11 habitat for the entire 84 miles of the Kenai River, and  
12 I don't know whether somebody can give us a run down on  
13 that or not.

14  
15                   Thank you.

16  
17                   CHAIRMAN LOHSE: Thank you. Any other  
18 questions. Dean.

19  
20  
21                   MR. WILSON: Just a clarification here.  
22 Now, when this was pushed through a couple years ago,  
23 whenever it went through the first time, it didn't  
24 define between bank and boat, right, at that time it  
25 was pushed through it was strictly for dipnetting in  
26 that short section and then the Federal Board got it  
27 and they divvied up boat; is that correct? Just for a  
28 clarification.

29  
30                   MR. I. ENCELEWSKI: My recollection  
31 originally was that the proposal we had originally  
32 submitted -- or -- and it wasn't really a proposal, a  
33 lot of this, like I said, and the original testimony,  
34 was this kind of trickle down from some original  
35 proposals or some original requests and we went through  
36 a work group and then we worked with actually US Fish  
37 and Wildlife and some of the other organizations,  
38 started looking at areas, possible areas and then  
39 started proposing these things and I think they -- and  
40 they can correct me if I'm wrong, I don't think they  
41 ever initially supported, you know, the dipping from  
42 the bank, but we had thought as we developed that  
43 proposal, you know, and they worked on it that we  
44 thought, well, hey, you know, why can't we dip from the  
45 bank, and I think they've always held that position,  
46 that they don't want to dip from the bank but we  
47 thought it was a meaningful preference that should be  
48 supported to the subsistence users and we disagreed  
49 that it was a habitat concern and felt that it -- and  
50 so I think that's kind of how it developed and they can

1 correct me if I'm wrong.

2

3 MR. WILLIAMS: Mr. Chairman. Mr.  
4 Wilson. I remember, yeah, we had come forth with a  
5 proposal for dipnetting and rod and reel and I remember  
6 Edma Wayne (ph) introduced the theory of power gliding  
7 or power netting with a boat, holding the dipnet off  
8 the bow of the boat and trolling with the boat to catch  
9 fish and it seems like that's probably where the  
10 original idea had come from, it didn't come from us.  
11 If that helps Mr. Chairman.

12

13 CHAIRMAN LOHSE: Thank you. Thank you,  
14 Ivan. I really liked your illustration right there  
15 that you can have one lawyer arguing how good it is for  
16 something and one lawyer arguing how bad it is for  
17 something and it seems like we run into that all the  
18 time, even in scientific and medical circles, you know,  
19 there's one group of scientists who will say this is  
20 good and one group of scientists will say this is bad  
21 and I guess it depends on which side you are on, which  
22 ones you wanted to listen to then.

23

24 Thank you.

25

26 MR. I. ENCELEWSKI: Thank you, Mr.  
27 Chairman.

28

29 CHAIRMAN LOHSE: Okay. We now go to  
30 Federal -- no, oops, George, do you have something for  
31 us right there -- George, was it in answer to something  
32 that was just brought up?

33

34 MR. PAPPAS: Mr. Chair, yes, answer to  
35 Mr. Stockwell's questions on Page 98, the Department's  
36 comments, first full paragraph discusses the 1994 study  
37 in that area indicating that the Moose Range Meadows  
38 area contains 42 percent of the total mainstem quality  
39 overhanging habitat, so it's a very valuable, if not  
40 one of the most valuable, and I believe the Federal  
41 Staff has testified to how important this is before.

42

43 Thank you, Mr. Chair.

44

45 CHAIRMAN LOHSE: Thank you. Doug, you  
46 have a question for George.

47

48 MR. BLOSSOM: Yeah, Mr. Chair. George,  
49 while we got you back up here, I didn't notice earlier  
50 this map on Page 90 was produced by you folks.

1 MR. PAPPAS: Mr. Chair. Mr. Blossom.  
2 That river mile data, I'm not sure, yeah, if we  
3 actually helped -- I don't remember this map or how  
4 they.....

5  
6 MR. BLOSSOM: It says courtesy of  
7 ADF&G. So I guess I have a couple questions, or  
8 several questions for you.

9  
10 The area that says public easement in  
11 it, now, both sides of the river are fished there?

12  
13 MR. PAPPAS: Mr. Chair. I believe both  
14 sides -- okay, Mr. West has better information about  
15 the closures there, sir.

16  
17 CHAIRMAN LOHSE: Okay.

18  
19 MR. BLOSSOM: Okay. I just wanted the  
20 map explained and if Robin can do it better that's  
21 good.

22  
23 CHAIRMAN LOHSE: Robin.

24  
25 MR. WEST: Mr. Chair. Council.

26  
27 CHAIRMAN LOHSE: Thank you, George.

28  
29 MR. WEST: Robin West. Kenai National  
30 Wildlife Refuge. And I don't know if I can do it  
31 better, but I'll try and do it in a comprehensive  
32 fashion. For good or for bad I've had nearly 15 years  
33 experience dealing with Moose Range Meadows management  
34 issues with tens and thousands of people and  
35 regulations and environmental assessments and lots of  
36 controversy over the years so I have a pretty good  
37 history understanding it.

38  
39 And it's correct, what's been conveyed  
40 so far this afternoon, is that the Fish and Wildlife  
41 Service has never supported shore-based dipping, and  
42 there's a number of issues that I want to get to with  
43 the proposal so I think we can kind of understand maybe  
44 what it will allow and what it wouldn't allow and the  
45 concerns that we have.

46  
47 But as was pointed out, when we were  
48 looking for trying to provide meaningful opportunities  
49 for subsistence fisheries and entertaining where we had  
50 Federal public lands and waters and Moose Range Meadows

1 came up, we weren't comfortable with shore-based  
2 dipping, we were comfortable if folks wanted to try and  
3 dip from a boat. Frankly, I think it would be  
4 difficult from a boat or from the shore to be very  
5 successful in this area, it's deep and fast and it's a  
6 difficult place probably to fish either way.

7  
8 But our concerns for the bank go back  
9 to really 1993 and there was a flood event that washed  
10 out the bank but the reason the bank washed out was  
11 because of the trampling from anglers and it was a wet  
12 year too leading up to that 100 year flood. And the  
13 vegetation along the bank that people see out there now  
14 is in pretty good shape, but we did lose bank habitat  
15 and lots of it until we closed the area. It's in  
16 pretty good shape in probably 95 to 98 percent of the  
17 area and it's because it's closed.

18  
19 Can people pick berries and do that  
20 kind of thing out there, they can on the State fishing  
21 closure areas, they can't on the Refuge closure areas,  
22 it says closed to public access during that period of  
23 time. But the fact of the matter is they don't.  
24 People, you know, theoretically -- the regulations are  
25 only restricted on what the issues were and not  
26 everything that might have been a problem. People  
27 don't picnic and pick berries and things on there so  
28 that's kind of a moot point.

29  
30 But I'd like to step back, if I might,  
31 and look at the proposal, and I'm happy to answer  
32 questions about studies and impacts and so forth, but I  
33 want folks to kind of look at the proposal and then I  
34 have a concern the way it's worded, that it really  
35 doesn't provide any opportunity unless it's modified  
36 and there's a couple of reasons for that.

37  
38 So on Page 89, when we look at this,  
39 and it has the river miles on here and then you look at  
40 your map on Page 90 and maybe this will get to Mr.  
41 Blossom's question, there's a long history of this  
42 section of river when it was removed from the Moose  
43 Range and conveyed to Salamatof Native Corporation  
44 under general authority of the Native Claims Settlement  
45 Act and the boundaries of the Refuge remained the same  
46 but the property became private with some retention by  
47 the United States of public access easement, the bed of  
48 the river and islands. And so the lower section where  
49 you see the hatched marks, it looks like little  
50 eyelashes there from Mile 25 up, those areas are

1 privately owned, even though they're within the Refuge  
2 and so while we have the easements there, they're not  
3 fee title lands and all that really means to us here is  
4 they're not Federal public lands or waters, and any  
5 regulation that we pass doesn't provide anything there.  
6 So although there are Federal interests there and we're  
7 managing it to protect the habitats because easements  
8 were retained by the United States, we can't pass a  
9 regulation that provides for shoreline access there  
10 because they're private property and they're not  
11 Federal public lands or waters.

12

13                   Okay.

14

15                   So then you go up river to where you  
16 just see the shaded area and those are non-accessible  
17 in terms of road, that's at the end of the road. Those  
18 are lands that were conveyed to Salamatof Native  
19 Corporation but then were purchased back with Exxon  
20 Valdez Oil Spill money when Salamatof was a willing  
21 seller. So they came back to the Refuge. Now, they  
22 are Federal lands and waters, they're protected by  
23 conservation easement in the acquisition that requires  
24 us to protect them in a pristine fashion, not to allow  
25 damage to them or develop them, build trails and that  
26 kind of thing. So the habitat needs to remain  
27 preserved. But in reference to that if you also look  
28 at the proposal as written, at the bottom here, it says  
29 seasonal river bank closures and motorboat restrictions  
30 are the same as those listed in State fishing  
31 regulations, well, those lands are protected under the  
32 State fishing regulations and don't allow you to fish  
33 within 10 feet of the bank.

34

35                   So if you implement the proposal as  
36 it's written, you basically haven't provided any place  
37 anybody can fish from the shore. The only exception is  
38 the boardwalks which you could define as shoreline  
39 fishing, they're perched over the water, and that's  
40 where -- however you want to look at the social  
41 conflict part of it, the reality of is there's about  
42 30,00 anglers trying to fish there each year. My  
43 concern isn't so much people arguing with each other or  
44 why are you here or what are you doing, it's just basic  
45 safety. And with long handled dipnets and people  
46 trying to use that kind of gear type on a narrow  
47 walkway with kids out there and families trying to  
48 stand and fish with rod and reel, somebody's going to  
49 end up in the river and it's fast and we do have life  
50 jackets right there but this is -- this is not a good

1 thing, is try to mix gear types there.

2

3

4 As it is right now qualified  
5 subsistence users can use rod and reel with double bag  
6 limits and we saw 170 some fish caught there last year  
7 from -- in Moose Range Meadows from -- people from  
8 Ninilchik so they're successful using that gear type  
9 whether it's the most successful or not, you know, I'm  
10 not going to argue. But they are successful. And one  
11 thing that folks may not understand is they don't only  
12 have double bag limits, they can also fill their  
13 household limits there if you look at the Federal  
14 subsistence regulations. So if folks can go and get  
15 their 25 fish there using the rod and reel and -- and  
16 get another five per family member while they're there,  
17 they don't have to go back and forth to Ninilchik, and  
18 I don't know if people understand that or not. It  
19 sounds like the people who have been coming from  
20 Ninilchik have been getting their double bag limits  
21 fairly easily when the sockeyes are in but are only  
22 reporting six a day and not 25 or 30 or 35 and 40, so  
23 that's an opportunity that's maybe not being fully  
24 used.

24

25 Is it a great opportunity? No. But,  
26 you know, double bag limit or household limit there  
27 where everyone else is only limited to three is a  
28 priority, whether it's meaningful or not you can  
29 challenge. We're limited in what we can do here in a  
30 reasonable fashion in terms of providing some sort of  
31 other fishery, and that's always been our position and  
32 it really hasn't changed.

33

34 And I know I've missed some questions  
35 about boat wakes and other things here, so anything  
36 that you brought up that skipped over please throw back  
37 out at me and I'd be happy to answer it.

38

39 (Pause)

40

41 CHAIRMAN LOHSE: You got a question.

42

43 MR. ENCELEWSKI: Sure.

44

45 CHAIRMAN LOHSE: Greg.

46

47 MR. ENCELEWSKI: Through the Chair.  
48 Robin, I got a question for you, obviously this just  
49 ain't seemed to work out too well, but, you know, we  
50 had discussed the possibility of another area or some

1 other access in your management of that area, the whole  
2 kit and caboodle, is there any other possibility that  
3 you foresee that we might explore?

4

5 MR. WEST: Well, Mr. Chair. Mr.  
6 Encelewski. You know I've passed this on in the past  
7 as we were brainstorming and also last year when we  
8 kind of went around and around on this issue and the  
9 best, I think potential for developing a new fishery  
10 and I would view it as an exclusive use fishery for  
11 qualified subsistence users is to acquire a parcel  
12 there and develop it in whatever fashion makes sense  
13 for whatever gear type makes sense, whether that's a  
14 fishwheel or rod and reel or, you know, a dipnet out on  
15 a platform that goes way over the river and it's  
16 seasonally removed or whatever, is something that would  
17 be dedicated to that. And the only way that could work  
18 is if Salamatof or another property owner was willing  
19 to, you know, provide the property and donate it to the  
20 Refuge so that it would be, you know, fee title  
21 ownership, and -- and dedicate it with provisions that  
22 it's to be utilized as a subsistence fishery. And then  
23 it could be, you know, it's yours. Now, that's kind of  
24 pie in the sky a little bit because the property's  
25 expensive there, but that is the best solution. You  
26 know it's a new fishery and it could be dedicated to  
27 you, no crowding, and designed in a way that over time  
28 might, you know, provide a variety of species over the  
29 year and protecting the habitat and all that, too.

30

31 So it's not impossible, it just isn't  
32 -- it just isn't, you know, something we can just go  
33 do.

34

35 CHAIRMAN LOHSE: Thank you. I have a  
36 question. I needed some clarification back here, let's  
37 go back and take a look at the map for a second.

38

39 If I understood you correct, from 25 to  
40 26.2 probably on the south bank, I guess that's the  
41 south bank, where's your -- yeah, on the south bank,  
42 let's just say the right-hand bank looking up stream of  
43 the river, that's all private property, so you couldn't  
44 have access on that.

45

46 MR. WEST: (Nods affirmatively)

47

48 CHAIRMAN LOHSE: Then from 26.2 to Mile  
49 28, that's currently in the Refuge and is closed for  
50 other reasons so that you couldn't have any access on

1 that, right?

2

3 MR. WEST: Correct. I mean that's where  
4 the conservation easements are, that's the undeveloped  
5 portion, correct.

6

7 CHAIRMAN LOHSE: That's the undeveloped  
8 portion of the conservation easement, right?

9

10 MR. WEST: (Nods affirmatively)

11

12 CHAIRMAN LOHSE: Okay. And then on the  
13 other bank, for the part that's available, it's already  
14 got a boardwalk on it.

15

16 MR. WEST: That's correct. And the map  
17 here, Mr. Chair, I think was done in between -- the ice  
18 took out two years ago both fishing platforms. You can  
19 see one of them rebuilt last year that has a little  
20 asterisk on it, and then as you go to the right and you  
21 see the little bend in the river there and you see a  
22 parking area but there's no asterisk, that one was not  
23 functional last year, but was rebuilt this season.

24

25 CHAIRMAN LOHSE: It was rebuilt this  
26 season.

27

28 MR. WEST: So there are two fishing  
29 platforms there and then at the end of the road there's  
30 a boat launch and parking area.

31

32 CHAIRMAN LOHSE: Okay. And then how  
33 about from there to Mile 28, what is the status of that  
34 chunk of bank right there?

35

36 MR. WEST: It's the same as the  
37 darkened area on the south side, it's all the Exxon  
38 Valdez reacquisitioned area, undeveloped, yeah.

39

40 CHAIRMAN LOHSE: Exxon Valdez  
41 reacquisitioned area so it can't be opened even if we  
42 wanted to.

43

44 MR. WEST: No, I wouldn't -- excuse me,  
45 I wouldn't say that. The points that I would make is  
46 one, is the proposal as written it is not open, it's  
47 closed.

48

49 CHAIRMAN LOHSE: Okay.

50

1 MR. WEST: Okay. And, two, is that  
2 that was an area that we have conservation easements on  
3 that we can't allow to be developed, if you will, and  
4 damaged. It's to be protected in its natural state and  
5 that was the reacquisition agreement, yeah.

6  
7 CHAIRMAN LOHSE: I see, okay.

8  
9 MR. WEST: Yeah.

10  
11 CHAIRMAN LOHSE: Well, that's what I  
12 was wondering because I was looking at this on Page 98  
13 where we talked about how much -- well, starting at --  
14 the riparian habitat zone from the River Mile 17.5 to  
15 39.5, which includes the Moose Range Meadows area  
16 contains approximately 42.3 percent of the overhanging  
17 vegetation, in other words, 42.3 percent of that type  
18 of riparian habitat. Which, if you sit down and figure  
19 it out comes to about two percent per mile. So if you  
20 had a half a mile you'd be impacting about one percent  
21 of the riparian habitat on the Kenai River. If you  
22 impacted it seriously, I mean if you destroyed it,  
23 you'd be impacting one percent. And if you went from  
24 that boat launch to the end right there, you've got  
25 about a half a mile sitting right there, which, you  
26 know, it's too easy to get caught up with a number, you  
27 see, oh, my gosh, 42 percent of it's in the Moose Range  
28 Meadows but 42 percent is not in the Moose Range  
29 Meadows, 42 percent is in the 22 miles from 17.5 to  
30 39.5, which means that the Moose Range Meadows area  
31 runs about two percent per mile, so a half mile of it  
32 is about one percent, so, again, you know, again we're  
33 dealing in a worst case scenario. If you totally  
34 impacted and destroyed that half mile right there,  
35 you'd be destroying one percent. But as we've done in  
36 the past and as we talked about when we first discussed  
37 this, if we were going to allow something like this, or  
38 set up something like this, the first thing you'd have  
39 to do is put some safeguards in so you wouldn't destroy  
40 the riparian habitat or if you saw the destruction of  
41 it you could close it down. And I think that we're  
42 capable of doing that.

43  
44 I think what -- you know, I think when  
45 I look at this, I think that poss -- and I don't know,  
46 that's what I was trying to get at, could that area --  
47 under current management, could that area be allowed to  
48 have a walking trail along the bank right there, yes or  
49 no?  
50

1 MR. WEST: I certainly wouldn't support  
2 it and let me tell you why.

3  
4 CHAIRMAN LOHSE: I'm not asking you if  
5 you support it.

6  
7 MR. WEST: Yeah.

8  
9 CHAIRMAN LOHSE: I'm just asking is it  
10 available, could it have a walking trail on the bank,  
11 by law?

12  
13 MR. WEST: I don't know. That's a good  
14 question and -- I mean -- it's a good question. I -- I  
15 would think -- because no one's proposed developing  
16 this property before and, sure, we would have to concur  
17 with it and the State actually holds the easement so  
18 they're the ones that are going to decide whether we've  
19 crossed the line on developing it or not but I would  
20 guess that if we put no facilities in at all, no  
21 structures at all you could legally say you didn't  
22 cross the line, that, you know, but -- but the problem  
23 is not really whether -- not really the semantics of  
24 it, is it's the draw. It's at the end of the road and  
25 it's being paved, as we speak, which will only increase  
26 traffic out there, it is the -- the place where people  
27 come to look for a place to fish on the Kenai, and if  
28 they find a place to fish, they -- they fill it until  
29 it's full and if they don't they turn around and go  
30 somewhere else. If there's a trail.....

31  
32 CHAIRMAN LOHSE: It's going to get  
33 used.

34  
35 MR. WEST: If you'll excuse my  
36 language, we can probably expect that area of the river  
37 to be raped.

38  
39 CHAIRMAN LOHSE: Well, I'm not  
40 disagreeing with you there. I'm just -- that's why I  
41 was asking about the legality of it because, again,  
42 we're dealing not with -- we're not dealing with the 36  
43 or the 136 or 236 subsistence users that would end up  
44 using it, what we're dealing with is the fact that we  
45 have a public which would not recognize or respect a  
46 restricted trail but would make use of it.

47  
48 MR. WEST: And I would like to respond,  
49 too, Mr. Chair, it's two things.  
50

1                   One, it is the masses and to a certain  
2 degree the conditions, it's kind of a wet area anyway.  
3 It's spring fed along there, there's very few dry  
4 parcels and so it's really easily damaged. But beyond  
5 that, it's not really just the masses, in fact, in the  
6 15 years or so I've been working on this, most of it's  
7 been with individual property owners, with just one or  
8 two people that have been causing damage on their  
9 property.

10  
11                   And just as a bit of history, the state  
12 of Alaska proposed, as soon as the Board of Fish  
13 granted them the authority to close fishing to protect  
14 habitat, circa 1995, '96, something like that, maybe a  
15 year or two later, they were going to close the private  
16 property in Moose Range Meadows too, to fishing,  
17 because of the value of the habitat and the damage on  
18 individual's property. And it was very political and  
19 obviously people were paying hundreds of thousands of  
20 dollars for their homes primarily because they had  
21 river access there and we're talking one or two people  
22 going down and fishing, and they were pretty upset but  
23 it almost happened, and the only reason it didn't is  
24 because of the pressure placed upon the process and the  
25 hope that the Federal closure for the public would be  
26 enough to protect it. And since then we've issued many  
27 dozens of private walkway protection devices, if you  
28 will, seasonal boardwalks so individuals, not groups,  
29 not masses, can protect that river bank there. And  
30 there have been literally millions of dollars put into  
31 that on the private property.

32  
33                   What I had, almost daily, when we did  
34 the restrictions there, were people that would come in  
35 almost with tears in their eyes that had been fishing  
36 there for years and saying -- you know, some of them  
37 would be looking down at their feet and go, you're  
38 telling me these two feet are going to cause the harm,  
39 you know, I've fished here for a generation and my  
40 answer had to be yes, it's yours and his and theirs  
41 there, and we -- we see that on the private property,  
42 too, without the protection devices. So we can say,  
43 yeah there's 100,000 people fishing the Kenai, and only  
44 30 or 40 or 50 but we really -- we don't want to be in  
45 a place where we're suggesting, well, we can accept a  
46 little damage here, socially or in reality, it's not  
47 where we want to go.

48  
49                   We've fought those battles and it's the  
50 -- and without going back and quoting the study, this

1 habitat was the highest quality chinook salmon rearing  
2 habitat on the Kenai, not just here but this whole  
3 section, and we were losing it rapidly and we did  
4 something that was necessary to protect it and it's  
5 worked and to go in and try and tweak it a little bit,  
6 to provide a little more fishing opportunity that may  
7 or may not be successful is something we can't support.

8

9 CHAIRMAN LOHSE: Any other questions.

10

11 (No comments)

12

13 CHAIRMAN LOHSE: Thank you.

14

15 MR. WEST: Thanks.

16

17 CHAIRMAN LOHSE: Any other State or  
18 Federal agency comments.

19

20 (No comments)

21

22 CHAIRMAN LOHSE: InterAgency Staff  
23 comments.

24

25 MR. BERG: No.

26

27 CHAIRMAN LOHSE: Okay, no InterAgency  
28 Staff Committee comments. Fish and Game Advisory  
29 Committee comments.

30

31 MR. CRAWFORD: Mr. Chairman. Mike  
32 Crawford, Kenai/Soldotna AC. I live in Moose Range  
33 Meadows, I live on the poor side of the road, as I like  
34 to call it, not on the river, but -- and they're not  
35 paving it as we speak, they're cutting grass and  
36 they're supposed to pave it next summer. It's been an  
37 ongoing project.

38

39 The subject of the river bank closures  
40 came up a couple people ago, and in the sport  
41 regulations, do you guys have those, there's a map that  
42 shows those and there's 25 of them on the river that  
43 close bank for habitat restoration protection,  
44 whatever, and the thing to think about with -- you were  
45 talking about it's just a percent, or the numbers you  
46 were coming up with, is a large chunk of the lower  
47 Kenai River, the habitat is forever gone and  
48 development has been a major issue on the river. I  
49 don't know that we can afford to give up any habitat.

50

1                                   And that's our AC's main objection to  
2 this proposal is the habitat issues and where you could  
3 go with that. The only place to go would be at the end  
4 of the road where you were discussing, and that -- the  
5 habitat now is beautiful, you can't -- I don't want to  
6 say you can't walk through it, it's -- you know, it's  
7 chest high grass in July. And you were asking about  
8 activity before the easement closures, it's minimal,  
9 there's a -- some people go down and access the river  
10 to catch the early run sockeye that are going like up  
11 to the Russian River, but at that time, if you walk  
12 down to your access points on the river, you're going  
13 to walk down the easement or down to the boat ramp and  
14 you're going to walk onto gravel, you're going to be  
15 on, what in July is going to be three foot deep of fast  
16 moving current. And most of that bank along there,  
17 especially in July, you're either in three feet of  
18 water and one step backward you're in the grass, so  
19 it's -- it's kind of a -- well, you can see it's kind  
20 of a turn there where that area is you're talking about  
21 and that's pretty fast moving water in there.

22

23                                   So anyways, the main issue was the  
24 habitat issue there on the river. I think everybody's  
25 talked about that enough so I think that's it.

26

27                                   CHAIRMAN LOHSE: So the AC basically  
28 opposes it for habitat reasons.

29

30                                   MR. CRAWFORD: Correct.

31

32                                   CHAIRMAN LOHSE: Any questions.

33

34                                   (No comments)

35

36                                   CHAIRMAN LOHSE: Thank you for your  
37 perspective from being right there.

38

39                                   Okay, at this point in time we have a  
40 summary of written public comments.

41

42                                   MS. CLARK: Mr. Chair. We have one  
43 written public comment from the Kenai River  
44 Sportfishing Association and I can kind of try to  
45 summarize it's a little longer.

46

47                                   The Kenai River Sportfishing  
48 Association says both State and Federal managers have  
49 concluded that habitat within the riparian zone of the  
50 Moose Range Meadows area contains some of the most

1 important rearing habitat for juvenile and adult salmon  
2 within the Kenai River watershed. Trampling the  
3 currently protected riparian zones within this area  
4 will negatively affect salmon productivity that will  
5 lead to serious conservation issues.

6

7                   Passage of this proposal will negate  
8 the proactive regulatory efforts of State and Federal  
9 managers.

10

11                   It should be noted that these lands  
12 were originally selected by a local Native Village  
13 Corporation and removed from the boundaries of the  
14 Kenai National Wildlife Refuge, Exxon Valdez Oil Spill  
15 monies were used at a later date by the Federal  
16 government to repurchase a portion of this land  
17 selection back from the Native Village Corporation and  
18 place an additional conservation easement on riparian  
19 habitat in the remaining private properties.

20

21                   The Federal Subsistence Board was  
22 correct in its past action that placed conservation of  
23 this critical riparian habitat area utmost in its  
24 decision-making process when it enacted the existing  
25 subsistence priority opportunities in the Moose Range  
26 Meadows area.

27

28                   And the full comments are on Page 99 of  
29 your Council book.

30

31                   LETTER FROM RICKY GEASE REGARDING FP09-  
32 08

33

34                   Dear Chairman Lohse:

35

36                   Please accept my apology for being  
37 unable to attend the meeting, as I was called out of  
38 state on legal proceedings, which mandate attendance.

39

40                   While I would have liked to participate  
41 actively in all the discussions, there is one proposal  
42 where I would like my comments read into the record,  
43 specifically proposal FP09-08. I have a lot of  
44 experience on the Kenai River watershed involving  
45 habitat conservation issues, and have the following  
46 comment.

47

48                   I am opposed to opening this habitat  
49 conservation closure for bank fishing for subsistence  
50 users at the Moose Range Meadows. The issue has been

1 thoroughly discussed prior at both the RAC and FSB,  
2 with subsistence opportunities provided in the area for  
3 rod and reel bank fishing in a designated area and  
4 dipnetting from a boat, neither of which comprises  
5 [sic] the habitat conservation closures in this whole  
6 area. Reviewing the fish harvested in the subsistence  
7 fishery the past two years, almost all the fish  
8 harvested have been sockeye, an indication that there  
9 is readily available opportunity to harvest sockeyes  
10 for subsistence users, both on the Kenai and Kasilof  
11 Rivers.

12  
13           The Moose Range Meadows habitat area is  
14 one of the longest stretches of closed habitat to all  
15 bank fishing activities during July 1 through August 15  
16 -- the time of normal higher waters on the Kenai and  
17 the time for sockeye fishing. The bank closure is in  
18 effect because this area has been ranked as the highest  
19 priority rearing habitat for juvenile salmon. This  
20 area in the Kenai National Wildlife Refuge is an EVOS  
21 lands selection/purpose based upon the critical nature  
22 and function of the riparian habitat. The undisturbed  
23 banks provide vital cover and area for juvenile salmon  
24 during these periods of high waters. There is an  
25 important reason why there is the EVOS conservation  
26 covenant that there can be absolutely no improvements  
27 such as trails or infrastructure. No disturbance of  
28 the riparian habitat is the best conservation measure.

29  
30           Prior to July 1 and after August 15,  
31 the waters are generally lower and not right up next to  
32 the banks. Thus people who want to try fishing for  
33 early run chinook or late season coho can attempt to  
34 fish in these areas without disturbing the riparian  
35 bank habitat, when during lower water flows one can  
36 stand on the upper portion of exposed river bed below  
37 the overhanging banks. That said most successful  
38 chinook and coho fishing comes from boat fishing, where  
39 one can fish the holes where salmon are pooling up.  
40 Whereas successful sockeye fishing occurs along the  
41 banks, where the sockeye hug closely as they migrate up  
42 stream.

43  
44           Through many years of experience and  
45 debate, the Kenai River has many closures for habitat  
46 protection, both along its banks to protect the  
47 riparian integrity and also in river, with spawning  
48 closure areas, specifically for chinook. Bank closures  
49 are the most important and effective measure to protect  
50 intact riparian bank habitat. Even low levels of use

1 of bank fishing during July 1 to August 15 has been  
2 shown in the past to have negative impacts. To date  
3 the bank closures for fishing have been the single most  
4 effective measure in protecting this critical riparian  
5 habitat for juvenile salmon.

6  
7                   Whereas subsistence users have shown  
8 sockeyes can be harvested in this region without having  
9 to fish from these closed areas, and opportunity exists  
10 elsewhere (Russian River Falls) to dipnet sockeye, I  
11 would be voting no on this proposal and ask for your  
12 concurrence.

13  
14                   Again, my apologies for not being able  
15 to attend in person.

16  
17                   Respectfully,

18  
19                   Ricky Gease.

20  
21                   CHAIRMAN LOHSE: Thank you. Public  
22 testimony. Do we have any other public testimony at  
23 this point in time on this.

24  
25                   (No comments)

26  
27                   CHAIRMAN LOHSE: Hearing none, it's  
28 time for the Regional Council deliberations,  
29 recommendations, amendments, modifications,  
30 justifications, whatever. But a motion first to put  
31 WF09-09 [sic] on the table is in order.

32  
33                   REPORTER: FP09-08.

34  
35                   CHAIRMAN LOHSE: No, wait a second,  
36 FP09-08, my fault. FP09-08.

37  
38                   MR. WILSON: Mr. Chair. I vote.....

39  
40                   REPORTER: Dean. Dean.

41  
42                   MR. WILSON: I say we vote FP09-08 and  
43 bring it up for discussion.

44  
45                   CHAIRMAN LOHSE: You move to put it on  
46 the table.

47  
48                   MR. WILSON: I move to put it up on the  
49 table.

50

1 CHAIRMAN LOHSE: Is there a second.  
2  
3 MR. BLOSSOM: Second.  
4  
5 CHAIRMAN LOHSE: It's been moved and  
6 seconded to put FP09-08 on the table as written.  
7  
8 Okay, discussion, modification,  
9 amendments or whatever, and don't everybody speak at  
10 once.  
11  
12 (Pause)  
13  
14 CHAIRMAN LOHSE: Doug.  
15  
16 MR. BLOSSOM: Mr. Chair. I have a lot  
17 of confidence in Mr. West and his ability to manage the  
18 Federal land and so I have got to listen to him very  
19 carefully. I think it's a lot of bologna, actually  
20 worst than that, horse manure, that they're not ruining  
21 the riparian bank up and down just above and below  
22 this, but I can't do anything about that.  
23  
24 So I don't see a spot in here to get us  
25 no the bank, or get them on the bank without having a  
26 problem and I respect Mr. West for trying the extra  
27 mile on all the other proposals to accommodate the  
28 subsistence people.  
29  
30 CHAIRMAN LOHSE: Thank you, Doug. Any  
31 other comments. Greg.  
32  
33 MR. ENCELEWSKI: You're going to force  
34 me to comment.  
35  
36 CHAIRMAN LOHSE: I'm going to force you  
37 to comment.  
38  
39 MR. ENCELEWSKI: Well, you know, I  
40 listened to it and I truly don't want to damage any  
41 bank or anything else. But, I, unlike Doug here, I  
42 feel that it can be done, I feel there's a way it could  
43 be done. I don't know how many more extra miles we'd  
44 have to go to come up with a solution but I truly  
45 believe that there could be limited access to this some  
46 mile, shape or form or an area to make it more  
47 accessible for a fishery, and I don't have all the  
48 answers for that but, you know, I think it should be  
49 worked more.  
50

1 Thank you.

2

3 CHAIRMAN LOHSE: Bill.

4

5 MR. STOCKWELL: The problem is it  
6 appears that there's no Federal land available for bank  
7 fishing. It doesn't have some kind of a -- there's  
8 either Federal land, because most of that is not  
9 Federal land, and the part that is has a conservation  
10 easement on it that prevents it from being used. So I  
11 agree there should be some way but I don't see what it  
12 is, and I can't see any way that I can support the  
13 proposal as written.

14

15 Thank you.

16

17 CHAIRMAN LOHSE: James.

18

19 MR. SHOWALTER: I don't know what you'd  
20 call this but some kind of comment, but with those  
21 particularly ends, north and south side of the river,  
22 that was Exxon Valdez money that bought that, the  
23 understanding I have and they put the restrictions on  
24 there and my thought is were they looking at themself  
25 for damage, how they done damage, are they expecting  
26 the public to do that type of damage and why can't they  
27 just have one small designated, say, fishing platform  
28 from either north -- probably on the north side of  
29 there for Federal subsistence usage.

30

31 CHAIRMAN LOHSE: Thank you, James.

32

33 Robin, can I have you up and ask you a  
34 question again.

35

36 MR. WEST: Yes.

37

38 CHAIRMAN LOHSE: Robin, that current  
39 boardwalk and fishing platform, that's all on private  
40 property, isn't it?

41

42 MR. WEST: No, Mr. Chair, we've  
43 reacquired that property also from Salamatof and  
44 developed it specifically with a Congressional  
45 appropriation to mitigate the lost fishing opportunity  
46 when we closed everything to the public.

47

48 CHAIRMAN LOHSE: So basically that  
49 oxbow right there, whatever you want to call it, that  
50 is Federal land on the north bank of the river?

1 MR. WEST: Correct. There's a parking  
2 area and then a boardwalk that has river access right  
3 at the bend.

4  
5 CHAIRMAN LOHSE: But the part that's on  
6 the south bank that's private property?

7  
8 MR. WEST: Yeah, there's no developed  
9 sites on the south side.

10  
11 CHAIRMAN LOHSE: And that's all private  
12 property on that side then?

13  
14 MR. WEST: Where the hatch marks are up  
15 until the shaded areas, that's correct.

16  
17 CHAIRMAN LOHSE: Okay. And then from  
18 where the boardwalk ends and you have got a parking  
19 spot and the developed area, the last platform, that  
20 delineates the line, which then became property that  
21 was bought by the Exxon Valdez money and from there to  
22 Mile 28 is closed to easement while the rest of it  
23 wasn't?

24  
25 MR. WEST: That's correct. We only  
26 hold easements over private property, we don't hold  
27 easements over land that we own. And so when we  
28 reacquired through the Exxon Valdez acquisitions at the  
29 end of the road for that section of property there,  
30 there aren't any easements on that for public use. The  
31 restriction is a State angling restriction.

32  
33 CHAIRMAN LOHSE: So technically  
34 speaking if you were going to, and I don't mean you,  
35 but if the Federal government was going to build a  
36 fishing platform for dipnetting it would have to be  
37 between that fishing platform at the end right there  
38 and Mile 25, it would have to be along that boardwalk  
39 right there.

40  
41 MR. WEST: It would be the -- the  
42 walkway goes on the whole riverfront there. If you're  
43 talking about building a new one there really isn't any  
44 place on Federal land that we could, I guess that's one  
45 of the points.

46  
47 CHAIRMAN LOHSE: No, what I was  
48 thinking is if you wanted to go off that walkway and  
49 build a fishing platform.

50

1 MR. WEST: Off an existing walkway.

2

3 CHAIRMAN LOHSE: Off an existing  
4 walkway. Could you go off that existing walkway and  
5 build another fishing platform.

6

7 MR. WEST: Maybe over the river with  
8 some engineering, kind of like the view over the Grand  
9 Canyon or something. From a practical standpoint, not  
10 really, but, yeah, there's space to do something  
11 theoretically, yeah.

12

13 CHAIRMAN LOHSE: Okay. So what I'm  
14 coming up with is there is no space there that you  
15 could do anything reasonable that would provide  
16 opportunity for this on the bank dipnetting without  
17 picking the one spot that you would do a lot of  
18 riparian habitat damage to the wet area up at the end.

19

20 MR. WEST: That's correct. But beyond  
21 that I think that you really have to look and see  
22 what's going to be an effective dipping site anyway.  
23 These areas were picked -- for one, they were the only  
24 ones that were available for us to reacquire, but, two,  
25 we kind of sited them in engineering them in a way --  
26 in a way that you can use the flipping technique, if  
27 you will, to catch fish. It would be very difficult to  
28 up in this area without picking a place where you could  
29 get out in the river behind a, you know, a rock or  
30 something like that where the fish are -- or the  
31 current's slowed down a little bit and you can get out  
32 in the river off of the walkway a little bit. Just to  
33 go down with a dipnet and come home with any fish would  
34 be a challenge, I think. So siting would be really  
35 critical for folks to be successful as would a  
36 fishwheel. Some opportunity somewhere along that  
37 section, maybe, but it's not just go do it kind of  
38 thing and hope for success.

39

40 CHAIRMAN LOHSE: Okay. Any other  
41 questions or discussion for Robin -- questions for  
42 Robin.

43

44 (No comments)

45

46 CHAIRMAN LOHSE: Thanks again for your  
47 clarification.

48

49 If there is no further discussion or  
50 wishes to put amendments or modifications on then the

1 question is in order.  
2  
3 MR. STOCKWELL: Question.  
4  
5 CHAIRMAN LOHSE: Question's been  
6 called. Okay, all in favor of WP09-08 [sic] as written  
7 signify by saying aye.  
8  
9 (No aye votes)  
10  
11 MS. STICKWAN: If we say yes we're  
12 voting or what.....  
13  
14 CHAIRMAN LOHSE: Uh?  
15  
16 MS. STICKWAN: If we say yes we're how  
17 are we voting?  
18  
19 CHAIRMAN LOHSE: If you say yes you're  
20 voting for it, for the proposal as written. If  
21 you.....  
22  
23 MS. STICKWAN: For them to have a.....  
24  
25 CHAIRMAN LOHSE: Uh?  
26  
27 MS. STICKWAN: .....a dipnet.  
28  
29 CHAIRMAN LOHSE: Yeah.  
30  
31 MS. STICKWAN: Okay.  
32  
33 CHAIRMAN LOHSE: So do we understand  
34 that, we'll do it again then.  
35  
36 All in favor of WP09-08 [sic] signify  
37 by saying aye.  
38  
39 MR. ENCELEWSKI: Aye.  
40  
41 CHAIRMAN LOHSE: Okay. All opposed  
42 signify by saying nay.  
43  
44 IN UNISON: Nay.  
45  
46 CHAIRMAN LOHSE: Motion fails. Okay,  
47 we have quarter after 8:00 -- we're -- quarter after  
48 4:00, boy, I do need my glasses today.  
49  
50 (Laughter)

1                   CHAIRMAN LOHSE: Anyhow they have a  
2 function for us at the Park Service starting at 4:30.  
3 We've done a pretty good job today, if everybody is  
4 okay with it, I would like to suggest that we recess  
5 early today so that anybody that wants to can go to the  
6 Park Service down the road here for the snacks and for  
7 the movies that they have, and just to see it, it's  
8 worthwhile seeing the building they've built and all  
9 the things that are in it. And to give you a little  
10 bit of an idea, you're right on the edge of the biggest  
11 National Park in the United States, and I consider it  
12 the prettiest one in the United States, but that's  
13 personal prejudice on my part. I'm biased, yes.

14  
15                   And if it's okay with the rest of the  
16 Council, we'll recess, otherwise we can go on to  
17 another proposal.

18  
19                   MR. ENCELEWSKI: What time do we start  
20 in the morning?

21  
22                   CHAIRMAN LOHSE: We start at 8:30 in  
23 the morning.

24  
25                   James.

26  
27                   MR. SHOWALTER: Yeah, 8:30, I just had  
28 a question because the restaurant doesn't open until  
29 7:00.

30  
31                   MR. BLOSSOM: That gives us time. We  
32 made it this morning.

33  
34                   MR. SHOWALTER: Marginal time.

35  
36                   CHAIRMAN LOHSE: Well, maybe you'll  
37 just have to skip breakfast.

38  
39                   MR. SHOWALTER: No.

40  
41                   (Laughter)

42  
43                   CHAIRMAN LOHSE: Do you think you can  
44 -- would 15 minutes extra help everybody -- let's shoot  
45 for 8:30, if you can make it here by 8:30 James we'll  
46 start at 8:30, if you can't we'll -- okay, 8:30  
47 tomorrow morning.

48  
49                   MR. SHOWALTER: Okay.

50

1                           CHAIRMAN LOHSE:  Function at the Park  
2  Service at 4:30 this afternoon, if you get there a  
3  little early it probably won't hurt.

4  
5                           (Off record)

6  
7                           (PROCEEDINGS TO BE CONTINUED)

