

**BRISTOL BAY SUBSISTENCE REGIONAL ADVISORY COUNCIL
PUBLIC MEETING**

February 22, 1994
Dillingham City Hall
Dillingham, Alaska

COUNCIL MEMBERS PRESENT:

Daniel O'Hara, Chairman
Robert Heyano, Vice Chairman
Sam G. Stepanoff, Secretary
Timothy J. LaPorte, Member
Peter M. Abraham, Member
Roy S. Matsuno, Member
Harold Robin Samuelsen, Jr., Member
Helga Eakon, Coordinator

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P R O C E E D I N G S

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2 MR. O'HARA: Call the meeting of this Bristol Bay
Subsistence Regional Council Meeting to order. I have about 10
After 7:00. Too bad we're 10 minutes late, I think we're ready
50 go. I'd like to welcome you here tonight. For a while I
6thought maybe the bureaucrats had outnumbered the locals, but
When you boil it down it looks like it's tipping in our favor,
8that's pretty good. That's a big improvement. I hope the
9press picked that up.

10 Just before we do roll call in the way of -- well,
We'll do roll call first. Sam, you're the secretary, it looks
12like everybody is here, 100 percent

13
14 MR. STEPANOFF: Um-hum (Affirmative)
15

16 MR. O'HARA: on the roll call, so it looks fine.
Under the welcome and introduction before we have -- if the
Council Members don't mind, we'll have everybody in the room
18introduce themselves tonight, we can go quickly through the
Audience. You might keep in mind that this Regional Advisory
Council has two purposes. One, you can testify on any public
22matter that pertains to subsistence. And secondly, you can
address any of the proposals. And, Helga, are there proposals
24or there on the table that people have access to or how are
25we working that?

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27 MS. EAKON: Yes, there are.
28

29 MR. O'HARA: All right, good, that's the blue one.
Thank you. And maybe we'll just start off here with Peter and
31let's introduce ourselves and right around the room tonight, if
32you wouldn't mind and everybody tell us your name and who you
might be representing if you want.

34
35 MR. ABRAHAM: Peter Abraham, Togiak.
36

37 MR. STEPANOFF: Sam Stepanoff from Chignik Lake.
38

39 MR. SAMUELSEN: Robin Samuelson, Bristol Bay Native
Association.
41

42 MR. O'HARA: Dan O'Hara, Naknek.
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44 MR. HEYANO: Robert Heyano, Dillingham, Nushagak
Advisory Committee.
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47 MR. MATSUNO: Roy Matsuno from Ugashik.
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1 MR. LaPORTE: Tim LaPorte, Illiamna.
2 MS. EAKON: Helga Eakon, Coordinator.
3
4 MR. KRIEG: Ted Krieg, Bristol Bay Native Association.
5
6 MR. NELSON: Russell Nelson, Bristol Bay Native
7 Association.
8
9 MR. DIRKS: Moses Dirks, Fish and Wildlife.
10
11 MR. HINKES: Mike Hinkes, Fish and Wildlife, Togiak
12 Refuge.
13
14 MR. VAN DAELE: Larry Van Daele, ADF&G Wildlife,
15 Dillingham.
16
17 MR. LIND: Orville Lind the Alaska Peninsula, Becharof
18 Refuge at King Salmon.
19
20 MR. FISHER: Dave Fisher, Fish and Wildlife Service,
21 Anchorage.
22
23 MR. FRY: Eric Fry, Bay Times.
24
25 MS. Powel: Donna Powel for (indiscernible).
26
27 MR. TOYUKAK: Moses Toyukak from Manokatok.
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29 MR. CHYTHLOOK: Joe Chythlook, Dillingham.
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31 MS. CHYTHLOOK: Molly Chythlook, Dillingham, ADF&G
32 Subsistence.
33
34 MR. KNAUER: Bill Knauer, Fish and Wildlife Service,
35 Anchorage.
36
37 MR. Benn: John Benn, Dillingham and Native Village
38 Council.
39
40 MR. DYASUK: Jon Dyasuk.
41
42 MR. HOOD: Ron Hood, Alaska Peninsula, Becharof Refuge,
43 King Salmon.
44
45 MR. DIRKS: Moses Dirks.
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47 JOHN: John (indiscernible) Fish and Wildlife, Regional
48 Coordinator, Bethel area.
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1 MR. PIERCE: Bill Pierce, Superintendent Katmai
National Park.

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4 (Others were inaudible from the back of the room. Some
were not on the list but names on the sign in sheet include:
Dan Dunaway, Richard K. Armstrong, Terry Hogfile, Lou Waller,
Taylor Brelsford, Gail Baker, Lee Fink, Steve Perkins, Pippa
Coiley, Mike Roboch, Heather Johnson, Alan Bennet, John W.
Andrew, Mark Lisac)

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11 MR. O'HARA: Okay, everyone been introduced this
evening and thank you -- oh, excuse me, I'm sorry, Joe.

13
14 COURT REPORTER: Joe Kolasinski, Court Reporter and I
would appreciate it if everybody who didn't would sign the
sign-in sheet so I can get the spelling of your names correct.
Thank you.

18
19 MR. O'HARA: Okay. I hope you understood that you can
address public matters here and proposals. At this time we'd
like to take agenda item number four, additions or changes to
and adoption of the agenda. I know that we have some additions
to the agenda tonight, so, Helga, would you like to lead off on
the additional things that need to be added.

25
26 MS. EAKON: Okay. Under Item H, any other new business
please add Judge Holland's preliminary order and litigation
update. And under Item 2, please add Taylor Brelsford
regarding Proposal Number 31. H (3) Naknek/Kvichak Fish and
Game Advisory Committee letter.

31
32 MR. O'HARA: That's Number 3?

33
34 MS. EAKON: Yes.

35
36 MR. O'HARA: Okay. Anything else?

37
38 MS. EAKON: No.

39
40 MR. O'HARA: Any Advisory Board Member have any other
are there any other agenda items that you think need to be
added to this?

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44 MR. HEYANO: Mr. Chairman.

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46 MR. O'HARA: Robert.

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48 MR. HEYANO: I've got a couple of items I'd like us to

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discuss at this meeting. One, is the closing of the same-day-airborne on refuge lands. I don't exactly -- under new Business, maybe.

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4 MR. O'HARA: Okay. Same-day-airborne?

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6 MR. SAMUELSEN: List that as Number 4?

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8 MR. HEYANO: Yes.

9

10 MR. O'HARA: Okay. And that's from the State Advisory Committees?

12

13 MR. HEYANO: No, that's -- I think that we as a Regional Subsistence Council should discuss that issue, same-day-airborne taking and the rules on refuge lands which is a proposal at this date, I think.

17

18 MR. O'HARA: All right. Any other items under the agenda that need to be addressed by this Advisory Council?

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21 MR. HEYANO: I'd like for us to take a look at Proposal 22, Unit 19.

23

24 MR. O'HARA: Okay.

25

26 MR. HEYANO: And the other thing I think we need to take a look at, or at least discuss to some extent, is the selling or leasing of Native allotments to sports fishing and hunting operations and how that affect subsistence.

30

31 MR. O'HARA: Anything else? We are not -- you know, at the end of the meeting if we do need to add more items, we certainly can, but this gives us an idea and the audience on what we'll be addressing as time goes on. If we don't have any other items I'd like ask at this time for a motion that we adopt the agenda that we have in front of us today. Ask for a motion.

38

39 MR. SAMUELSEN: So moved.

40

41 MR. O'HARA: Robin moved that we accept the agenda as presented.

43

44 MR. ABRAHAM: Second.

45

46 MR. O'HARA: Second by Peter. Any further discussion? All those in favor say aye.

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(Ayes respond)

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2 MR. O'HARA: Opposed>

3
4 (No opposing votes)

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6 MR. O'HARA: Okay. We'll take the October minutes from
the October 1 meeting. And I don't necessarily want to read
them, but if you want to you can. Are there any questions or
deletions, whichever way you'd like to do it. You have the
minutes here before you and they're a very thorough set of
minutes.

12
13 MR. ABRAHAM: I make a motion to accept the October 1
minutes as they are.

15
16 MR. O'HARA: Second?

17
18 MR. SAMUELSEN: Second.

19
20 MR. O'HARA: Okay, Peter and Robin. Any discussion on
the motion?

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23 MR. ABRAHAM: Question.

24
25 MR. O'HARA: All those in favor say aye.

26
27 (Ayes respond)

28
29 MR. O'HARA: Opposed.

30
31 (No opposing votes)

32
33 MR. O'HARA: Minutes show that it's unanimous. We'll
go down to old business. At this time I'll call upon Helga to
take us through the first item of business and that will be the
Draft Operation Manual, comments, revisions and approval.

37
38 MS. EAKON: Please look in your pile for the light
green colored booklet, it's entitled Federal Draft of the
Operations Manual. And for those in the audience there are
extra copies of the manual if you would like to look at one for
reference.

43 Immediately after you open the cover you will notice
that there is a summary of changes that led to the final draft
of the Operations Manual. And unless you want me to,
Chair, I won't bother to go through the various changes,
unless you want me to.

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MR. O'HARA: Okay. What's the wishes of the Council?
Do you want to go through the changes or? Robert.

MR. HEYANO: Mr. Chairman, are we looking for an
Adoption of this thing at this meeting?

MS. EAKON: Yes, it would be good for the Council to,
at least, approve it.

MR. O'HARA: It's just the working order in which this
organization will be carrying out its program.

MS. EAKON: Yes.

MR. O'HARA: And unless there's something in it that
you'd like to take a few minutes and glance through it, we
certainly can do so.

MR. SAMUELSEN: Mr. Chairman, I know we're not going to
make it through the whole agenda tonight. Maybe we could put
off this vote till tomorrow, so one of the tasks that'll we'll
have when we go home is read this manual. I kind of hate to
pass something that I haven't had a chance to read.

MR. O'HARA: Okay.

MR. SAMUELSEN: I'd move that -- not table, but we
postpone action on this till tomorrow.

MR. O'HARA: Okay. Is there a second to that?

MR. HEYANO: I second it.

MR. O'HARA: All right. The motion is that we would
take this manual home and look at it over the evening and then
tomorrow, at some place on the agenda, since it is going to the
regulations by which we will conduct our meetings and so on,
our procedure, that we'll have to adopt it and live by it. Any
further discussion? All those in favor say aye.

(Ayes respond)

MR. O'HARA: Opposed.

(No opposing votes)

MR. O'HARA: Okay, that's tomorrow. The next item we
have is under old business is to Aniakchak Subsistence Resource
Commission, response to Council letter regarding Ugashik and

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Pilot Point. Comments, action, if any. And we do have a couple of people here tonight that probably could help us out on this, Orville Lind is here and Susan Savage. Orville, you're here and Susan, I saw here earlier. Okay. What's the items that we need to take care on this, Helga?

5
6 MS. EAKON: There was a letter sent to the Aniakchak Subsistence Resource Commission regarding Ugashik and Pilot Point. Do they wish to be considered as resident zone communities? I know, Orville, you had called me, I think, like, a month ago. Could you, please, brief the Council on what you stated?

12
13 MR. LIND: Yeah, this is, again, to the question whether the village of Ugashik and the village of Pilot Point wanted to be included in the zoning communities for the Aniakchak Commission -- or the Aniakchak Monument. And I did receive a letter from Ugashik from Mr. Matsuno giving some facts and some documentation that some elder have used some areas of the monument and the letter I sent to Helga.

20 I haven't got any answer from Pilot Point. Talking with the village chairman there, Jimmy. And, again, to the village -- Andrew Aguyuk (ph), haven't got any response from them at all and this is where we stand right now.

24
25 MS. EAKON: For the record, Mr. Chair, in this very light blue folder you do have a copy of the letter that was sent to Orville Lind from Roy Matsuno regarding this subject.

28
29 MR. O'HARA: It's the handwritten one here?

30
31 MS. EAKON: Yes.

32
33 MR. O'HARA: Okay. Would you like to read that to us, if you would, please? It's not a very long letter.

35
36 MS. EAKON: Okay, this is from Ugashik Traditional Village Council, P.O. Box 651, Dillingham, Alaska, 99576. Dear Orville,

39 Hello, are you doing? I have talked to Arthur Conodary, Sr. and to Sassa A. Matsuno, who are our elders from Ugashik, about traditional use of the Aniakchak area.

42 They both said that some of the people who have passed away, such as Elmer Blandon, Moses Tanogunak, Tom Riley and some others did trap and hunt down in that area some time in the past.

46 On that accord, I would like to request that our people or Ugashik Traditional Council or Village be allowed to use the Aniakchak area for subsistence hunting and trapping. Sincerely

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ANCHORAGE, ALASKA 99501

Roy Matsuno, President, Ugashik Traditional Village Council.

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2 MR. O'HARA: I think the issue that we need to address
3 tonight on this agenda item, and we do have Orville here and
4 Susan Savage, too, to help us on this matter. What is the time
5 frame for handling this, Helga? Do we need to handle it at
6 this meeting; do we have more time? Give us a little direction
7 on, maybe, what we should do. And Roy, too, if you have some
8 thoughts on what we should do, we'd sure like to hear that.

9

10 MS. EAKON: Well, I guess the main concern would be to
11 get feelings from those communities to back up -- to ascertain
12 if they truly want to be considered resident zone communities.
13 So, Roy, could you help us out here?

14

15 MR. MATSUNO: Yeah, I can get some more letters from,
16 you know, some of the other people down there. I know John
17 Rule (ph) does a little hunting down in that area. Trapping
18 and there's a few others that still do. And, you know, if you
19 want some more letters I'd gladly talk to them and be able to
20 get some.

21

22 MS. EAKON: Are we on the right track, Susan, in this
23 regard?

24

25 MS. SAVAGE: I'm Susan Savage from Katmai and Aniakchak
26 National Parks and Monuments. There is an administrative
27 procedure that individuals from the village can go through that
28 does not really require the action of this board. And what I
29 would recommend that they might want to do is address our
30 superintendent and request what is called a 14 -- the number
31 slipped my mind, but it is a formal permit system that they can
32 request to use the monument for subsistence. And as long as
33 they show a personal or family history of doing so then there
34 would not be a reason for them to be denied a permit.

35

36 And once a substantial number of people in your
37 village, a substantial proportion of the village has requested
38 this permit system, that throws the Park Service into looking
39 into rule making to change the status of your village to become
40 a resident zone community. So I'm not really sure what action
41 this Board needs to take in light of the fact that we already
42 have an administrative procedure to do that.

42

43 MR. O'HARA: Any questions of Susan? Yeah, Robin.

44

45 MR. SAMUELSEN: What kind of proof do you need? A
46 signed affidavit?

47

48 MS. SAVAGE: Usually we ask people to fill out a permit

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application form so their word and usually a recommendation from someone else in the village. It's a matter of record, really, it's not a big formal thing.

3

4 MR. SAMUELSEN: Okay.

5

6 MR. ABRAHAM: Mr. Chairman, why do they need a permit if the people from that area has been living there for all time, for centuries of their life? Why do they need a permit if it's their lifestyle?

10

11 MS. SAVAGE: When Aniakchak -- the Monument was created in 1980 they set up certain resident zone communities and public output was asked for at that time and apparently all the villages didn't know about the out -- the way of doing that or whatever, that certain villages like Port Heiden, Meshik, Chignik Lake, Chignik Lagoon and Chignik Bay were made resident zone communities so they didn't have to go through a permit system.

19

If the village goes to the permit system and then become a resident zone community -- once they become a resident zone community they won't need a permit any more after the village is made a resident zone community. It was overlooked not enough support came forward from those villages at that time so that enough interest was shown that they wanted to become a resident zone community.

26

27 MR. ABRAHAM: Can you -- yeah, go ahead.

28

29 MR. LIND: I'd just like to -- Orville Lind, Alaska Peninsula, Becharof Refuge. The purpose of the Aniakchak Commission Committee, one of the goals was to collect as much information for Pilot Point and Ugashik. Since we did not get any cooperation in the beginning when we first started the zoning communities, they've been kind of in the back shelf, we're still gathering information now. And the stage we are at now is just getting letters and documentation like Roy has submitted.

38

And what Susan actually saying, they can still subsist through a permit system which makes it legal for them to do now. Like she said, as soon as they become a zone community they won't have to go through that Federal permit system.

42

43 MR. O'HARA: Susan, when they request a permit, they ask to go into Aniakchak area and do subsistence? And they get permit, do they have to go in show use of that permit or just apply for the permit?

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48 MS. SAVAGE: They just can apply for the permit. I

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think -- I don't think that there's a formal report system on that particular permit other than the normal, you know, reporting that's required for Fish and Game use tags and so forth.

4

5 MR. O'HARA: In other words, when tags have been issued and you send your report in it show what animals have been taken and if you hunted and if you got anything?

8

9 MS. SAVAGE: Yeah, and that's actually through Fish and Game, not through us.

11

12 MR. O'HARA: Yeah, ADF&G. Who's the superintendent of that Federal

14

15 MS. SAVAGE: It's also Bill Pierce.

16

17 MR. O'HARA: Bill Pierce. Is he here tonight?

18

19 MS. SAVAGE: Yes, he is.

20

21 MR. O'HARA: Where's he at?

22

23 (Mr. Pierce raises his hand)

24

25 MR. O'HARA: Okay. Did you have anything to add to that, Mr. Pierce?

27

28 MR. PIERCE: No, not at this time.

29

30 MR. O'HARA: Okay. All right, good. Thank you, Susan. Roy, are you satisfied on that now that you're going to have some additional letters from your people in Pilot Point and Ugashik, the permitting system will go through. I mean, is that up to your satisfaction on being able to use that Adiakchak area as a subsistence?

36

37 MR. MATSUNO: Yeah, I'll get some letters written on that from some people in Pilot Point, too, and I can talk to a few people in Ugashik to get some letters sent out.

40

41 MR. O'HARA: You'll be surprised of the geographical area up at Pilot Point and Ugashik is just as much of a circumference almost as Port Heiden and Meshik and probably even more so than Chignik's. I think that's really a reasonable thing to do. And it may not be within our jurisdiction to handle this, I don't know, but we can certainly lend support if you need to do some more beefing up on that.

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MS. EAKON: Mr. Chair, for tracking the record, Roy, could you please copy me on those letters?

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3 MR. MATSUNO: Okay.

4

5 MS. EAKON: Thank you.

6

7 MR. O'HARA: All right, everybody satisfied. Okay, we have a fun one coming up here, this is Council recommendations and that is a Katmai spawned out redfish, discussion on action by Federal Subsistence Board. Action, if any, by this committee, so we'll open this up, first of all, to our Council Members and Helga and then we'll go from there.

13

14 MS. EAKON: Yes, on November 9 the Chair signed a letter to the Federal Subsistence Board requesting action by the Board on this issue. And on December 1, 1993 Mr. Ron McCoy, the Interim Chair of the Federal Subsistence Board forward this Council recommendation to the Regional Director of the National Park Service. You do have a transmittal memo in your correspondence folder and for the record I will read it.

21 It says: "I am forwarding the attached Subsistence Regional Advisory Council recommendations for your information and action as appropriate. Please keep me informed of any actions relative to these recommendations and provide a copy of any correspondence to the U.S. Fish and Wildlife Service, Office of Subsistence Management."

27 Mr. Chair, to this date we have not received acknowledgement by the Regional Director of National Park Service acknowledging receipt of this Council's recommendation on this subject.

31

32 MR. O'HARA: Advisory Board Members, I think we do have the Superintendent of the Katmai National Park here tonight. Would you like to come up and sit down in a chair up here?

35

36 MR. PIERCE: You bet.

37

38 MR. O'HARA: If you would like to respond to what we said so far, you certainly can, or else we can continue on with some of the concerns that we have because this has become quite an issue.

42

43 MR. PIERCE: I can give you a little background maybe and then I'll see what you have.

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46 MR. O'HARA: Okay.

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48 MR. PIERCE: Bill Pierce, new Superintendent of Katmai

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National Park. I do know the Regional Director does have a response coming to you. Lou Waller, his representative, is coming in tonight and he'll probably have that for you tomorrow. But I've talked to Jack a little bit, everybody in the Park Service is in agreement that we need to solve this situation and meet the needs of this local population.

6 And it's number one on my plate, I'm almost positive that I have within my authority the ability to find a short term solution and implement something by the time the fall rolls around. It's working through the legalities of it because Katmai National Park in the legislation -- this gentleman probably has in hand, maybe, the correspondence.

12

13 MR. WALLER: Actually, I do.

14

15 MR. PIERCE: I haven't even met you yet. But from the short term approach to it, I think that there's ways that we can get this implemented and then in the long term it gets a little more complicated and Lou may have something on that.

19

20 MR. WALLER: Actually, Mr. Chair, my name is Lou Waller, I just came in from Anchorage, the regional office here. Bill is

23

24 MR. O'HARA: What is --

25

26 MR. WALLER: Pardon me?

27

28 MR. O'HARA: what is your position in the

29

30 MR. WALLER: We have a Division of Subsistence within the regional office and I work in that division.

32

33 MR. O'HARA: Okay.

34

35 MR. WALLER: And Bill and I have not met, nice to meet you, Bill. But I do have a letter here that does respond. Basically, the letter says that -- just what Bill was relaying, but I'll give this to Helga.

39

40 MS. EAKON: Mr. Chair, do you wish me to read it for the record?

42

43 MR. O'HARA: Yeah, it would be kind of nice to figure out what they're sending us here, so we can all be surprised at the same time, go ahead.

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47 MS. EAKON: This is addressed to Mr. Dan O'Hara of this Council, this letter is dated February 22nd, 1994 and this

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letter is signed by John M. Morehead, Regional Director,
National Park Service, Alaska Regional Office, Anchorage.

Dear Mr. O'Hara,

3 We are writing to you and the Council in response to
4 your letter of November 9 regarding the taking of spawned out
5 Sockeye salmon ("redfish") within Katmai National Park (KATM).
6 We commend the Council on its understanding of the laws and
7 regulations guiding the responsibilities of the National Park
8 Service (NPS) on this issue. We wish to emphasize that we are
9 sensitive to the significance of the redfish fishery to the
10 local populations. We are committed to seeking a mutually
11 agreeable solution to this issue that also protects the
12 purposes, values, and resources of the park.

13 As we have stated in the past, the National Park
14 Service position regarding subsistence use of the Katmai
15 National Park is based upon the Alaska National Interest Lands
16 Conservation Act (ANILCA) and the National Park Service Organic
17 Act and its amendments. ANILCA does not authorize subsistence
18 use of Katmai National Park. Subsistence uses are not
19 specifically permitted in section 202 (2) of ANILCA, which
20 expanded the previously existing Katmai National Monument and
21 redesignated the area as Katmai National Park, but ANILCA
22 sections establishing other national parks do contain language
23 specifically permitting the subsistence uses. The legislative
24 history of ANILCA clearly demonstrates that subsistence use of
25 Katmai National Park resources was not intended. In regard to
26 the establishment of Katmai National Park, Senate Report 96-413
27 states: "Existing subsistence uses will continue in the
28 preserve but will not be allowed in the park."

29 Neither National Park Service regulations nor federal
30 subsistence management regulations authorize subsistence
31 activities in Katmai National Park. The temporary federal
32 subsistence regulations of 1990 state specifically that
33 subsistence is not permitted in Katmai National Park (50 CFR
34 100.3) National Park Service regulations applicable to Katmai
35 National Park prohibit all fishing with the exception of
36 fishing by rod, hook, and line (36 CFR 2.3(d)).

37 Park and regional staff have recently met to reexamine
38 possible alternatives for some accommodations of local requests
39 for the taking of redfish. The issue is complex, involving
40 questions of land ownership, comparison of potential redfish
41 harvest to National Park Service allowances for sport fishing
42 from a resource protection standpoint, and other factors. The
43 park and the regional office will be working on resolution of
44 this issue, and feel a mutually agreeable solution may be
45 possible. We will keep the Regional Council and other
46 interested parties informed of progress on this project.

47 Sincerely, John M. Morehead, Copy to Chair of the
48 Federal Subsistence Board and Helga Eakon, Regional Advisory
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Council Coordinator.

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2 MR. O'HARA: Thank you. Any comments from the Council
 Members since we have these two gentlemen here dealing with
 this redfish issue in the Katmai National Park?

5

6 MR. SAMUELSEN: Did I understand the letter to say that
 the sports take of redfish is happening in the park, preserve
 and that National Park Service is worried that is a subsistence
 fishery does occur up there that it might impact it.

10

11 MS. SAVAGE: Can I answer that, Bill?

12

13 MR. PIERCE: Sure.

14

15 MS. SAVAGE: No, the letter just says that we
 understand that people that are subsistence users know that we
 allow sport fishing but we don't allow subsistence fishing and
 they don't understand this potential resource use conflict.
 And then why can we allow sport fishing, and that includes for
 rod salmon, and we can't allow subsistence.

21

22 MR. SAMUELSEN: Oh, okay.

23

24 MS. SAVAGE: So that's what that statement means.

25

26 MR. O'HARA: Who doesn't understand that; is it the
 people that make the laws or the local people that want to use
 the redfish?

29

30 MS. SAVAGE: I think the local people that want to use
 the redfish can't understand why we can allow sport fishing
 when we can't allow subsistence fishing.

33

34 MR. O'HARA: Because the letter said rod and reel
 fishing of sport fish?

36

37 MS. SAVAGE: (indiscernible)

38

39 MR. O'HARA: Okay. We had a letter from you, Robin, in
 regard to this item, too, didn't we and the procedure that
 we're going through on the fish.

42

43 MR. SAMUELSEN: Um-hum. (Affirmative)

44

45 MR. O'HARA: Okay. Any other questions?

46

47 MR. SAMUELSEN: Yeah, when do you think your plan will
 be revealed; defined? By July 1st?

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1 MR. PIERCE: Well, the short term solution, what I'd
 2 like to is -- I'm new in the area there and I need to learn who
 3 the local contacts are, and you may be able to help me with
 4 some of those. I'd like to meet with them as soon as possible
 5 and see if we can't come up with a short term solution to allow
 6 that taking. I think, you know, we may not use the word
 7 subsistence, we may find another avenue to allow that taking.

8 But I think there should be some ways that we can, at
 9 least, meet that -- because it's a need that's very specific to
 10 that area and I can see where the Native population, the local
 11 population, needs access to the redfish at location. And there
 12 is no other alternative, so there's got to be a way that we can
 13 allow that without impacting the resource and it doesn't look
 14 like me that it would adversely impact it, depending on numbers
 15 and that type of thing.

16

17 MR. ABRAHAM: Mr. Chairman.

18

19 MR. O'HARA: Yeah.

20

21 MR. ABRAHAM: Why can't you use the subsistence wording
 22 that? Is it because it's a park or

23

24 MR. PIERCE: As I understand the current law, Katmai
 25 National Park, we're not authorized to allow subsistence usage.

26

27 MR. ABRAHAM: So, in other words, the local people
 28 there -- as I remember there was a kid in Naknek saying, you
 29 know, he was a criminal because he was taking the redfish under
 30 cover of the storms and everything else, as I remember.

31

32 MR. O'HARA: We have it in the minutes.

33

34 MR. ABRAHAM: Yeah. And it seems to me the local
 35 people should have rights to subsists where they are living. I
 36 mean, I'm not just talking about Katmai Park, I'm talking
 37 about entire Alaska. Because it is their lifestyle, you know.

38

39 MR. PIERCE: It's beyond my purview, but I will say
 40 that I hope to come up with a solution that will meet the needs
 41 of the local people for that particular item.

42

43 MR. ABRAHAM: Yeah, you should 'cause you said, it's a
 44 very important for the local people there. It seems to me it's
 45 not fair when you allow the sportsman and not allowing the
 46 local people. You know, if you could solve the problem with
 47 the people there, it would work for you as sportsman and the
 48 local there. Thank you.

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1 MR. O'HARA: Okay. We're going to go on with this
 matter, but in case some of you out there want to address it,
 you can request public testimony and there's forms over there,
 I believe, you can fill out to address this body here on this
 issue.

6 And Bill and Lou, are there any other questions from
 Members here today? Robert.

8
 9 MR. HEYANO: Just one question I guess. It was
 Congress's intent not to allow subsistence use in Katmai, is
 that right?

12
 13 MR. WALLER: Basically the National Park Service
 mandate is to preserve and protect the resources, that's
 nationwide, unless Congress specifically authorizes a
 particular consumptive use to occur in a particular park. In
 this case when Congress expanded the park or expanded the
 monument and created the park in ANILCA, it did not allow for
 consumptive use to occur. In other words some parks around the
 state it did say specifically subsistence uses can occur.

21 Because it was silent and because of the overriding
 mandates of previous laws we cannot allow the subsistence use
 to occur. Just mention also that sport fishing can occur
 because ANILCA does say that sport fishing can occur in the
 parks. So we really, you know, it's not Bill saying that you
 can't subsistence fish, or you can't do this. We have to go
 back to the law and the law says -- what the law says is what
 we have to try to do. But like Bill said, there may be some
 things we have to work out, but there may be possibilities of
 some alternative ways to allow the harvest to occur.

31 Does that help?

32
 33 MR. STEPANOFF: Mr. Chairman.

34
 35 MR. O'HARA: Yeah.

36
 37 MR. STEPANOFF: There is a lot of difference on sport
 fishing and subsist because look how many thousands of people
 are coming from the stateside and getting what they want and
 there are very few locals in the areas. Just imagine how many
 thousands of people get in here from stateside.

42
 43 MR. O'HARA: Fifty thousand, that's that number that's
 been thrown out.

45
 46 MR. PIERCE: That's pretty close, Mr. Chairman.

47
 48 MR. O'HARA: Yeah, okay. Compared to the four or five
 49

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people who might want to -- use a subsistence net (ph).

1 MR. PIERCE: They're probably not all fishermen, a
number of them are

3

4 MR. O'HARA: That's true. Any other questions from the
Council? Robin.

6

7 MR. SAMUELSEN: Yeah, I got to congratulate Bill, I
think this interim solution that he's working on will satisfy
9- hopefully satisfy the needs that subsistence users have
expressed of King Salmon, Naknek and South Naknek. The real
fix has got to come out of Congress and we're working with the
Alaska Congressional Delegation on getting some amendments
pushed through that will allow the taking of redfish for
subsistence. I want to congratulate the people here though.

15

16 MR. O'HARA: Yeah, we appreciate that. Bill and Lou,
whichever one want to -- I don't know if you want to respond to
Robin's comments about what's happening with the legislation on
this particular issue, the redfish issue, but we're working on
it.

21

22 MR. PIERCE: I don't have anything on that at the time.
My commitment, and the proof is in the pudding, of course, you
know, you want to hold my feet to the fire, my commitment is if
you'll give me the right contact locally and get with me and
help me work with them that before the fall redfish harvest
season comes around I would like to be able to have a short
term solution that will, at least, meet those needs.

29

30 MR. O'HARA: You know -- yeah, go ahead, Roy.

31

32 MR. MATSUNO: Mr. Chairman, I don't see why they can't
allow subsistence fishing in the new part of the park that was
added on 'cause like people are saying over in Naknek they were
subsistence fishing up there before it was a park and, you
know, that's part of the park area, you know, that they would
use. You know, they're allowing -- they're taking about future
parks, they're allowing subsistence in them and, you know, that
wasn't there before, so I don't know why they can't allow
subsistence fishing there.

41

42 MR. WALLER: Mr. Chairman, basically it comes back to
the same thing. That actually was done for the additions to
Denali National Park. The new additions Congress authorized
subsistence uses to occur, but not in the old McKinley portion
of Denali National Park, so there is subsistence in that park
does occur, but, again, going back to what Congress said or
didn't say in this particular case they do not authorize any

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consumptive use to occur within the park.

1 So that's kind of the box that we're in, but there is
2 some land ownership things and some other things there that
3 we're, you know, Bill and I and some others are going to try to
4 work on over the next few weeks to see if we can't put some
5 alternative plan together.

6
7 MR. O'HARA: Okay, thank you. Before you leave, I
8 think there's several things. Are you satisfied with that,
9 Roy?

10
11 MR. MATSUNO: (Nods in the affirmative)

12
13 MR. O'HARA: At the last meeting I ask Susan if you had
14 an inventory of the resource of Katmai National Park,
15 specifically Naknek Lake and it's drainages, because I think
16 this is very important to the use of spawned out reds. And I
17 don't believe you -- maybe you have that, maybe you'll have it
18 yet.

19
20 MS. SAVAGE: You want just the fisheries?

21
22 MR. O'HARA: Yeah, in other words, what's the
23 population of rainbows -- you have rainbows there, don't you?
24 Yeah, you have rainbows there because of Naknek River. You've
25 got some pinks that run in there and you got chums that go in
26 there and you oodles of reds, a big spawning area for reds,
27 there's a massive amount of spawning area for reds.

28
29 MS. SAVAGE: We have to get that data from ADF&G
30 because we don't have fisheries data.

31
32 MR. O'HARA: Okay. They would have it? The Alaska
33 Department of Fish and Game, of course, would have that
34 information, okay, so it's available.

35 And then the other thing, you know, look at Tim LaPorte
36 sitting here from the Illiamna Lake, they have a couple of
37 areas from Lake Illiamna where the spawn off reds go to in big
38 numbers and they go up to Knutsen Bay. And people have to go
39 from all the different areas, of course, that's not a park to
40 do that. We don't really have one area unless the refuge
41 allows netting of spawned out reds and I guess Hood could tell
42 that, is he here?

43
44 MR. HOOD: Ron Hood, Becharof Lake is navigable waters
45 and is not under our management.

46
47 MR. O'HARA: That takes care of that, doesn't it?
48 Okay. I guess the point being that the mesh size of net is

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going to be important, the time of the year when it's going to be done, I mean, that's why I asked for the resource information. Are there going to be a lot of rainbow trout that are 14-15 pounds moving through the area? Most of the time we're only going to catch the males because they're the biggest. The mesh size, we addressed that. Whether or not we allow them all the way up into the old system or not, that's not the issue I'd debating tonight, although it's important to Roy.

9 So I think some of these think and then we have used, you know, in growing up I haven't had a redfish since I moved to Naknek. And yet after the park extension had come about for many years, unless I'm wrong, Bill, they did use nets in that area to do subsistence. And then they said lets make this compatible with Colorado and it went away. Is that right? Is that a correct assumption?

16

17 MS. SAVAGE: I have records from ADF&G subsistence permits that were issued through the mid '70's, at least, that document people asking to take spawned outs up into the western end of Naknek Lake.

21

22 MR. O'HARA: If I understand correctly, they fished in the new extension up to a point and then the Park Service said no.

25

26 MS. SAVAGE: That may be, I don't have any official records that document that, but from what I can tell, hearsay, that's probably true.

29

30 MR. O'HARA: Yeah. Somebody decided it wasn't -- and it just off of what Congress had done in parks, I understand that. We appreciate the fact that you try to make some adjustment and what we want to do is make sure the resource is not hurt otherwise. But if it is a fish that is not being used then we can use it.

36

And then in a last ditch effort, that's what Robin talked about, where there's a pretty big constituent of people that are working on a Congressional Act pushing and have already passed resolutions and so on to try to ease this situation. Any other comments from Members of the Council?

41

42 MR. NELSON: I have a question.

43

44 MR. O'HARA: Yeah, you bet.

45

46 MR. NELSON: I'm a little confused on the status of the Naknek Lake waters, are those State waters or are those Federal waters?

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1 MR. O'HARA: Bill or Lou, can you answer that?

2
3 MR. PIERCE: As far as I know they're Federal waters.
4

5 MR. WALLER: Yes and no. That is a little bit of a
6 question and that has to do with the ownership that I mentioned
7 earlier, I think. The State has filed what's called some
8 quiet (ph) title claims to some water bodies around the state
9 and it gets very legal very quick when you get into
10 navigability issues there, but it's a good point the gentleman
11 raises here and that's one of the things that we need to do a
12 little bit more research on and if, in fact, that were the case
13 that it's -- that it can be termed navigable waters then State
14 fishing regulations could apply.

15
16 MR. O'HARA: In other words, you would be in the same
17 boat that Ron Hood in as far as navigable waters go?

18
19 MR. WALLER: Right.
20

21 MR. O'HARA: How is this issue being addressed; are you
22 doing research on it; or some judge going to decide who owns
23 the waters or what?

24
25 MR. WALLER: Well, that's another little wrinkle there
26 because the issue before Judge Holland right now, I'm sure
27 you're aware, he's issued a preliminary -- what do you call it,
28 preliminary ruling or opinion which indicates that he's, at
29 least, strongly considering ruling to make even though the
30 waters are navigable and state owned, to make them part of the
31 public land definition in the eyes of ANILCA, which would mean
32 that Federal Subsistence fishing regulations would apply.

33 But that hasn't happened yet, so

34
35 MR. O'HARA: Apply to the navigational?
36

37 MR. WALLER: To navigable waters, yes. And off shore
38 waters to a three mile limit. So that's why I say it gets very
39 complicated real quick and until we've had more time to really
40 talk to people that -- on the legal side, it would be very
41 premature to say -- answer the question yes or no.

42
43 MR. O'HARA: Okay. Any other questions?
44

45 MR. NELSON: So the answer right now is it's still
46 unknown whether it's State or Federal waters?

47
48 MR. WALLER: Well, I'm sure if you ask someone from
49

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State they would say they're state owned, if you ask somebody the Federal side right now, they're going to say they're Federal owned. The question has not been resolved yet and it may be some time before it, but we may be able to craft some solution to this immediate problem irregardless of all of that.

5

6 MR. PIERCE: I think, Mr. Chairman, the bottom line for me is that, as you stated, I want to protect the resource and I want to provide for a bonafide local need. and that's where I'm headed.

10

11 MR. O'HARA: And we really appreciate that. I agree with Robin. Yes, Helga.

13

14 MS. EAKON: Mr. Chair, I have a question for the Park Service personnel here, in particular, Mr. Pierce. In your efforts to work out mutually agreeable solution, have you already started making you local contacts? Is there anyway that this Council could help you -- are you asking for some help from the Council in your local contact regarding this issue?

21

22 MR. PIERCE: Yes, both of us. Yes, I'm started making local contacts, but yes, I would welcome the Commission's help who are the right people, how do I get with them and we make this happen.

26

27 MR. O'HARA: I'm sure we can do that. Well, if there's no further questions. We appreciate you coming before us tonight, thank you for the letter and if the Council has no more questions we'd like take a 10 minute break, come back and address some issues and if you do have to leave tonight we want to make sure that you get to testify on the proposals, okay, before you leave tonight. And we'll give you a chance to do that later on tonight. Ten minutes and we'll be back.

35

36 (Off record)

37

38 (On record)

39

40 MR. O'HARA: Okay, we are going to come back into session and I would like to remind you again if for some reason you can't stick around tomorrow or if we go through Thursday, now there's no need to go through Thursday unless somebody just can't make it in and they're planning on being here. When we're finished with our business, as far as I understand, we're going to go home.

47

But if you would like to testify tonight before we go home and I think we'll probably finish about 9:00 o'clock

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tonight, we're moving right along on our agenda. We'll certainly give you an opportunity to testify on any concerns you have and any proposals in this book right here, that's your's to comment on. There'll be opportunity tomorrow to handle that also.

5 I overlooked an item and if we have time at the tail end of our Advisory Council session to perhaps to have some parts Unit 9 be compatible with 17 on any August hunt in the Refuge and up through the Naknek area for subsistence only, like the Nushagak drainage has. We might think about that, but I didn't get that in time, but if we get a chance we'd like to look at that also.

12 So we'll give you an opportunity a little later on, before we go home tonight, we don't have to be here all night long. Unless there's any objection by the Council, we'd like to finish 9:00 o'clock tonight and come back tomorrow 9:00 o'clock here. Okay? Everybody satisfied on the redfish?

17 Okay, the next agenda item is request for customary and additional use eligibility for freshwater finfish, discussion of whatever action we can take on that agenda item, that's 20(2). Helga, did you have any leads on that; what we need to do on that finfish freshwater?

22

23 MS. EAKON: At their first meeting the Council had recommended a letter be sent to the Federal Subsistence Board asking for a customary and traditional use determination for freshwater fish in the Bristol Bay drainages.

27 In your folder you do have a copy of a letter of response from Ronald McCoy, Interim Chair of Federal Subsistence Board. The letter dated December 1, 1993 in which he stated that he forwarded the letter to Mr. Richard Bospahala, the Assistant Regional Director of Subsistence Management for the Fish and Wildlife Service. And he said that your request for a customary and traditional determination review will be included with the others we have received. We anticipate that this review process will take several years to complete.

37 Mr. Chair, with your indulgence I would like to ask Taylor Brelsford, who is the Chief of the Social Sciences Branch within the Office of Subsistence Management to talk to you about the schedule. Taylor.

41

42 MR. BRELSFORD: Thank you, Helga. Good evening everybody. I think we reviewed some of the basic events and policy guidelines last time in Naknek, but let me just touch on those again, so we're all kind of going forward from the same set of understandings.

47 The general perspective was that the Federal Subsistence Board in 1990 and 1992 incorporated existing

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customary and traditional use determinations from the State of Alaska. So for the most part all of the C&T determinations in the Federal Subsistence program date from decisions made by the Alaska Joint Boards of Fisheries and Game.

4 The Federal Board set about reviewing and improving on each of those in sequence in a systematic review and I think what's pertinent here is that they didn't just want to take one species in an area at time, they instead wanted to look at an area around -- one area after another throughout the state and each time they looked at an area to look at all of the species at once. To try and look comprehensively at subsistence uses and subsistence eligibility in one area after another.

12 Now that requires a fair bit of staff resource, Council time for reviews, consultation with villages, it can't all be done at once. And basically we've got something on the order of 25 review areas, little clusters, several GMU's at a time that are related in their subsistence use practices. So that process stands to take many years.

18 There were something on the order 200 requests for individual changes in customary and traditional use determinations. One community wanted to be in on the determination for moose or one community wanted to be included in an additional GMU for a particular species. So there's something on the order of 200 of these individual requests and what the Board has asked the staff to do is to sort out which regions have the most significant problems and to try to address those regions first.

27 And, as you may realize, the Kenai Peninsula was one of the regions with a high profile, a high controversy rating based on the fact that under the State program the Kenai Peninsula was non-rural and therefore not even in the subsistence question. However, by the time the Federal program came into existence the court had made a change in the criteria for rural and non-rural areas, so there are communities on the Kenai Peninsula who are now rural, but had never been eligible, never been considered, never had a full examination of their subsistence uses. So that was the first priority for the Fish and Wildlife Service. That's been the main one that we've worked on over the past six or eight months.

39 Another area where there was a high level of concern about the accuracy of the State's determinations was in the Upper Tanana Valley and the Park Service has been very active in compiling existing information and now conducting some consultations with communities, the Western Regional Council, our counterparts, in a Fairbanks meeting, and so on.

45 So those determinations, the background research has been done and there's discussion consultation about the final decision making. It may still be a matter of months, perhaps as much as six months before those are finished with Board

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action. Then the staffs will start to look at the next most critical areas around the state.

2 Our guidance so far is probably the Yukon Delta and the
3 Yukon Flats are areas in which there are significant resource
4 controversies that we need to get involved with quickly. So
5 that the region by region approach and that's how far we're
6 planning ahead at the present time. There is a Federal
7 Register notice that will go out requesting public comment on
8 this region by region approach. And additional input, for want
9 of a better word, from the public about the priorities that
10 ought to be set among those ongoing regions for consideration.
11 That Federal Register notice should be published in about the
12 next month or six weeks and the councils would have an
13 opportunity to put this specific request or any others from the
14 Bristol Bay region into the consideration.

15 Let me conclude by mentioning that once or twice the
16 Board has recognized that there's a problem that can't wait for
17 the region by region approach and they have suspended the
18 priorities or suspended the sequence and considered an
19 individual request. This was the case in the Yukon Delta, for
20 example, with regard to rainbow trout. This was a species that
21 under the State system had not been recognized as a subsistence
22 species at all. And so there was no existing State
23 determination and waited many years to think about that and
24 make a decision was the Board recognized would be a hardship
25 for some of the communities, so they did agree to a one species
26 review, an analysis, that was prepared and brought before the
27 Board in a kind of hurry up fashion.

28 And determinations were made, 14 villages were
29 identified as having customary and traditional uses of rainbow
30 trout. So I think the bottom -- to sort of tie these threads
31 together, the Board is pretty committed to this region by
32 region approach and trying to do thing comprehensively to
33 really improve on the quality of decisions not just, you know,
34 through the motions of reviewing it without any new data or
35 any new level of care.

36 However, they have been prepared to recognize hardships
37 and to jump out of sequence to review particular species. So
38 that's kind of the status and how the Board -- I wouldn't want
39 to predict how they might respond to the Bristol Bay request
40 for urgent attention out of sequence attention to the
41 freshwater species question. They may very well be convinced
42 by your reasoning, but as you raise your concerns in discussion
43 with the Board in April, if there's an exchange and ask
44 questions and so on, it would be helpful for you to realize
45 that they're working against this idea of the region by region
46 approach. And we would have to provide a convincing reason to
47 jump out of sequence for this particular individual species,
48 actually groups of species, the freshwater species in Bristol

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Bay.

1 So, I think, maybe that gives you an idea of the status
2 so far and what the side boards in requesting additional action
3 by the Board and if there were any other questions I'd be happy
4 to try and answer them.

5

6 MR. O'HARA: Any questions of the Council? Yes, Tim.

7

8 MR. LaPORTE: Where approximately does Bristol Bay area
9 stand in this sequence, are we last on the list or do you know
10 approximately where?

11

12 MR. BRELSFORD: Tim, we've gone back and forth. In the
13 first year of trying to think out this whole process there was
14 all kinds of evaluations of the 200 requests and how many
15 requests were from one area and where were there hardships. No
16 existing determinations so the people were actually left out
17 the activity. And the end result of that was we could pretty
18 well settle on the first five or so and two of those are in
19 place right now. Two more of those we know where we're going
20 to start next and one or two of the other agencies have their
21 first and second priorities in line.

22 All the rest have been lumped together. We sort of, at
23 this point, said we're not sure how to sort out the remainders.
24 So Bristol Bay would have been about intermediate in the
25 sequence under those early efforts to lay it all out. But at
26 the present time that preliminary of evaluation of priorities
27 has been set aside and it starts on a fresh slate. So when the
28 Federal Register notice comes out or in your conversations with
29 the Board, I think you need not assume that there's any slot
30 already designated for Bristol Bay. I think the concerns the
31 Board will have are things like if the State determinations fit
32 poorly in a particular region, if there's a hardship created,
33 those are the kinds of things that they're going to make their
34 decisions on the basis of.

35

36 MR. O'HARA: That's a long explanation on how you go
37 through the process.

38

39 MR. BRELSFORD: Sorry.

40

41 MR. O'HARA: It's not your fault, it just that until
42 you brought it up, I just say, hey, you write a proposal going
43 to have finfish in freshwater, let's go out and catch a trout,
44 you know? And it just doesn't work like that.

45

46 MR. BRELSFORD: No, it really doesn't. The staff
47 committee and the Board have really struggled a great deal.
48 And, as you all know, the State Boards before them have

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struggled a great deal with how to make well informed and careful decisions about subsistence eligibility. There's been a lot of controversy over these things and so people have gotten very careful about it.

4

5 MR. O'HARA: If I understand correctly, this proposal
6 come up in October. We brought it up in October, you did,
7 Robin? I mean, you brought it to the floor and we started it
8 then so were just into the early stages of it really. So to
9 even get into the middle of it would be very good on our part
10 if we could.

11

The question I have, of course, is how does this tie
12 to the -- you know, like (indiscernible) where you only have
13 fly fishery and then in the winter time you can do a
14 subsistence fishery. Is that right, you had a former board
15 member on the Alaska Department of Fish and Game who dealt with
16 that? Finfish. That's State waters, however, and so is the
17 Nehalem where they designated pretty much a sports fishing now
18 without subsistence. And I could be wrong, if that's -- pretty
19 strong move (ph). Interesting, we're getting into Federal
20 systems now.

21

22 MR. BRELSFORD: And perhaps I should clarify that, you
23 know, we do have this whole problem of navigable and
24 non-navigable waters and Federal jurisdiction is recognized
25 only in the non-navigable waters. So when I said that the
26 board moved out of sequence to consider rainbow trout in the
27 Yukon Delta they were, in fact, only dealing with the uses of
28 rainbow trout in the non-navigable waters, not in the main
29 stems of the main rivers and their tributaries. So as you're
30 aware there's a lot litigation in a fairly advanced state,
31 we may have decisions from the court within the next months,
32 within the next six months, most likely, that could
33 dramatically change the layout of jurisdictions or if the court
34 rules another way that these jurisdictions would stay the same
35 and we'd all have a third answer and go on.

36

But the fact is the Federal subsistence programs deals
37 only, at this point, with the non-navigable waters and so many
38 of the waters that are most available to villages would not be
39 under the jurisdiction of a Federal subsistence program given
40 the current laws.

41

42 MR. O'HARA: Well, maybe you could just tell the
43 Advisory Board what are the non-navigable areas of the area
44 that we're dealing with, starting with Good News all the way
45 down through the Chigniks.

46

47 MR. BRELSFORD: Well, I -- there's a sort of layman's
48 appreciation of it and then there's a very specific technical

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determination process. And so I'm going to maybe be a little foolish and lay out what I think is a useful rule of thumb, the 2ayman's version. And then please realize that the technical 3staff takes lawyers and adjudicators and people -- those are 4very complex process for the final determinations to be made.

5 But generally speaking the courts over the period of 6the 1970's were liberal in their view of navigability. And 7they said, basically, that if these are waters which are 8capable of supporting transportation for commerce and -- I've 9forgotten all of the other phases, then they are navigable and 10they went on to argue that the kinds of water craft that were 11required were -- the courts structured this -- defined the 12appropriate water craft also very liberally, so it didn't have 13to be prop driven wooden boats that had been used at the time 14of the 1950's or '60's, instead jet boats and even rafts were 15considered appropriate, they were considered adequate to 16establish navigability.

17 So the bottom line, at this point, is that most of the 18water that can be floated in pretty near any kind of water 19craft is navigable. The interpretation in the courts recently 20has been to include almost all of the waters in the definition 21of navigability. It's not an absolute standard, but generally 22speaking if people are traveling by water craft, by boats with 23props or jets, there's a pretty good prospect that this is 24navigable waters.

25

26 MR. O'HARA: Let me give you an example then. Say, up 27Lake Illiamna, you have Illiamna River, that's a 28non-navigable river, you can go up it, but you can't touch the 29bottom or get off on the mainland because of the trespass 30sue. Now, that is State and non-navigable. Is the Togiak 31River non-navigable?

32

33 MR. ABRAHAM: Uhn-uhn. (Negative)

34

35 MR. O'HARA: Okay, so that's navigable. So, you know, 36we're really narrowing this thing down if we're talking about 37fish in freshwater in non-navigable streams. I'd like to 38know what area they're talking about region.

39

40 MR. BRELSFORD: Well, I'm not sure the status 41throughout Bristol Bay of navigability determinations. I don't 42know if

43

44 MR. O'HARA: Who would know that then, Taylor?

45

46 MR. BRELSFORD: Well, the BLM makes many of the 47determinations -- the initial determinations and sometimes 48those are subject to challenge and appeal, basically, and a

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closer adjudication. But normally that comes as a matter of transferring title that when conveyance out of the public domain occurs there is a navigability determination along side.

3 As I say, the courts got very much involved in this in the 1970's and '80's actually and a lot of initial determinations are now subject to reclassification or redetermination. I guess beyond those kinds of general principles I want -- I don't want to speculate or say where I'm not really trained. As far as the regional picture in Bristol Bay, so I don't know exactly how many of the rivers have the final determinations in and whether there's a sole source, an atlas or encyclopedia we could all turn to to get the precise definitions.

13 I'm certain that it's kind of a mixture in different parts of Bristol Bay and the end result is it's very difficult for the public, it's very difficult for the agencies to identify with certainty where navigable and non-navigable waters are. We had a terrible difficult time in the Yukon Delta where this discussion of uses of rainbow trout under the Federal subsistence program. We had an incredible time trying to sort out which waters we thought were non-navigable just to be able to give the public a general idea. So, I'm afraid, there's no very satisfying answer on that part at this point.

23

24 MR. O'HARA: Interesting. Any other questions, comments from the Council? Okay, thank you.

26

27 MS. EAKON: Mr. Chair.

28

29 MR. O'HARA: Excuse me. Helga.

30

31 MS. EAKON: While we are on the subject of C&T, I forgot to mention that Taylor's branch did write up a report on the Kenai Peninsula C&T and also the draft conclusion. The Southcentral Council did meet at the end of January to make their own recommendations on these conclusions. And I neglected to inform you that if you would like Taylor to brief you on this, briefly, on the conclusions, it's -- you know, he's available to that. I'm sorry that was my oversight. I had mentioned -- I had wanted to put it on the agenda, but that's your decision.

41

42 MR. O'HARA: Did you want him to do that now while he's here? Somebody? Would you like to go ahead and address the issue then, Taylor?

45

46 MR. BRELSFORD: Yeah, I can do a very short form of that and if there's other additional detail you're interested in we could make, maybe, another block of time available for

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it.

1 In the case of the Kenai Peninsula I think I've set up
 2 what priority schedule was and this general problem of no
 3 subsistence eligibility on the Kenai until the Kenai suit court
 4 decision, at which time there were some rural communities and
 5 they were all starting over. So the end result was in about a
 6 six month period of time three of us in the Social Sciences
 7 Branch tried to compile all the existing information. Much of
 8 it was in the form of community studies that were conducted by
 9 the Alaska Department of Game, Subsistence Division. They're
 10 similar to the community studies that you all would have seen
 11 around Bristol Bay.

12 We also consulted the census data, any socioeconomic
 13 data that been developed by the Kenai Peninsula Borough and we
 14 tried to review historic sources that talked about long
 15 standing traditions of resource use and migration and
 16 settlement around the Kenai Peninsula. So we were charged by
 17 the Board with compiling existing information on resource uses.
 18 That resulted in a documented -- a description of customary
 19 and traditional uses on the Kenai Peninsula that was about 400
 20 pages in length talking about nine communities, so each chapter
 21 was somewhere on the order of 40 to 50 pages. It was a very
 22 lengthy piece of work.

23 Separate from that we then put together a draft
 24 document with policy options and proposed conclusions and we
 25 provided for the Board some alternatives based on discussions
 26 they raised in previous meetings about what the legislative
 27 history or the standards in ANILCA say about eligibility.
 28 There are different interpretations in the Federal Subsistence
 29 Board at this point about what ANILCA requires, so we took
 30 options A, B, and C, we took three alternative based on Board
 31 discussions and then, in a sense, made a yardstick out of that
 32 and held it up against the resource use patterns.

33 And under yardstick A, so many communities qualified as
 34 having customary and traditional uses. Under yardstick B, an
 35 intermediate number of four communities qualified for several
 36 for many species. Under yardstick C, the one particular
 37 interpretation, none of the communities qualified for any
 38 subsistence species uses on the Kenai Peninsula.

39 Many of the councils throughout the state have said, if
 40 the Board is thinking about policies, about which yardstick is
 41 the best one then other areas in the state ought to have a
 42 chance to look at that to read a little bit of the background
 43 and have an idea and offer their recommendations to the Board
 44 about these policy problems.

45 So the other regions -- you're not being asked to go
 46 through the details, the 400 page report, and say, well, guys,
 47 you missed this historic document I know about. It's not on
 48 the content for the other regions, it's on the policy problems

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and what's the appropriate yardstick or policy standard for determining eligibility.

2 So without saying, maybe, too much more as a starting point the value of the other regions being involved, the Regional Councils involvement, is really on the policy Standard, not on the particular content and the details of the Kenai Peninsula. Maybe one example would show you what I mean by the differences in the policy alternatives.

8 The criteria in the regulations talk about long term and consistent uses of resources, but they don't say long term means 10 years, or long term means 30 years, or long terms means 50 years. Now, the Board has really struggled with this idea of how long do communities have to be there before they could establish a long term and a consistent use. So the policy alternatives A, B and C use different time depths -- different lengths of time to qualify for a long term and consistent pattern.

17 And there were some other differences between policy A, B and C, but, you know, without belaboring the point tonight, maybe if some on the Council or many of you would be more interested in it we could provide copies of the policy options document, it's about 30 pages in length and perhaps an opportunity for your discussion and review of that document at a later time.

24

25 MR. O'HARA: Okay, thank you. Any other questions that you might have, Council Members for Taylor?

27

28 MR. SAMUELSEN: Mr. Chairman.

29

30 MR. O'HARA: Robin.

31

32 MR. SAMUELSEN: The criteria that you used, was it a 12 step criteria, eight step criteria?

34

35 MR. BRELSFORD: Well, yes, of course, our regulations use eight factors to illustrate customary and traditional uses and those eight factors would be familiar to many of you. They are almost identical to the eight factors that -- the eight criteria that the State program used for many, many years. So long term consistent use is one, a pattern of sharing is another, reliance on a diversity of species for economic, nutritional, social and cultural purposes would be another example. Those would be familiar to you.

44

45 MR. O'HARA: Okay, anything else? Thank you, Taylor, we appreciate your time on that. All right, we've come to the end of the old business. I was wondering if there was anything else that needs to come before the Council under old business.

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Okay. This might be a good place to ask if there is anyone here tonight who would like to testify on any particular subject pertaining to subsistence or the proposals that are over there on the table.

4 Anyone who needs to testify tonight? Otherwise we'll be going through new business starting tomorrow at 9:00 and you can testify as each item comes up and there'll be a specific time in which you can address any proposals. There'll be a public hearing for you tomorrow on any of these proposals that you would like to address. If there is no one that needs to talk tonight then we will not go into -- if you want to leave off something and won't have a chance to come back tomorrow we want to give you the opportunity to talk to us tonight. Any other old business?

14 Okay, What's the wish of the Council; want to stop here and start new business tomorrow morning or what do you want?

16

17 MR. ABRAHAM: I move we start new business tomorrow.

18

19 MR. O'HARA: We recess until tomorrow at 9:00 o'clock?

20

21 MR. ABRAHAM: Um-hum. (Affirmative)

22

23 MR. ABRAHAM: Okay, is there a second?

24

25 MR. STEPANOFF: I'll second.

26

27 MR. O'HARA: Now, see we got a formal motion that we recess until tomorrow. That's okay. Everybody in favor say aye.

30

31 (Ayes respond)

32

33 MR. O'HARA: Nine o'clock tomorrow morning right here.

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35 (TO BE CONTINUED)

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