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FEDERAL SUBSISTENCE BOARD

WORK SESSION

VOLUME I

Gordon Watson Conference Room
USFWS Building
Anchorage, Alaska

July 28, 2015
8:30 o'clock a.m.

MEMBERS PRESENT:

- Tim Towarak, Chairman
- Charles Brower
- Anthony Christianson
- Bud Cribley, Bureau of Land Management
- Geoff Haskett, U.S. Fish and Wildlife Service
- Bert Frost, National Park Service
- Bruce Loudermilk, Bureau of Indian Affairs
- Beth Pendleton, U.S. Forest Service

Ken Lord, Solicitor's Office

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P R O C E E D I N G S

(Anchorage, Alaska - 7/28/2015)

(On record)

CHAIRMAN TOWARAK: Right now it's 8:33 a.m. Operator, we're ready to start our meeting.

OPERATOR: Thank you, sir. Welcome, and thank you for standing by. I would like to remind all telephone participants that your lines will be on listen only until the question and answer segments of today's conference. At that time if you're wishing to ask a question, please press star-one on your touchtone phone and please be sure your telephone is unmuted and clearly record your name at the prompt so that your question may be introduced.

At this time it is my pleasure to turn the call over to Mr. Tim Toward. Thank you, sir, you may begin.

CHAIRMAN TOWARAK: Thank you, Operator.

I will call the work session to order. The first item on our agenda is to review the agenda.

(Pause)

CHAIRMAN TOWARAK: Recently the Board received several requests from Ninilchik Traditional Council asking the Board to address several issues in regards to the Kenai River subsistence gillnet fishery. As a result we are going to add this topic for discussion under, other business, number 6 on the agenda. So please add Ninil -- Kenai River subsistence gillnet fishery under other business.

Are there any other changes to the agenda anyone would like to make.

(No comments)

CHAIRMAN TOWARAK: If there are no other corrections to the -- or additions to the agenda, if there's no objections we will proceed then with our modified agenda.

(No objections)

1 CHAIRMAN TOWARAK: I'd like to begin
2 with having introductions of the Board members starting
3 with Mr. Cribley and going around the table and ending
4 with the Commissioner. And if you've got anything,
5 Commissioner, for the Board, you could, at that time,
6 make a comment to the full Board.

7
8 Bud.

9
10 MR. CRIBLEY: Good morning. This is
11 Bud Cribley -- or I am Bud Cribley, the State Director
12 for BLM-Alaska.

13
14 MS. PENDLETON: Good morning. My name
15 is Beth Pendleton. I'm the Regional Forester for the
16 US Forest Service located in Juneau, Alaska and
17 responsibilities for the Tongass National Forest in
18 Southeast and Chugach National Forest in Southcentral.

19
20 MR. CHRISTIANSON: Anthony
21 Christianson. I'm from Hydaburg, I'm the rural member
22 on the Federal Board.

23
24 MR. BROWER: (In Inupiat)

25
26 Good morning. I'll translate.

27
28 (Laughter)

29
30 MR. BROWER: Good morning. My name is
31 Charles Brower. I'm from Barrow, rural representative
32 for the Federal Subsistence Board.

33
34 Good morning.

35
36 MR. LORD: Good morning. My name is
37 Ken Lord. I'm with the Solicitor's Office of the
38 Department of the Interior. Also, if I may, Mr. Chair,
39 I'd like to introduce Vanessa Sisto, who is interning
40 in our office. She's a student at Cardozo Law School
41 and just arrived in Alaska for the first time on
42 Saturday, so, please welcome her.

43
44 CHAIRMAN TOWARAK: Thank you. Welcome
45 aboard. My name is Tim Towarak. I'm from Unalakleet.
46 I'm the Chairman of the Board, been the Chair for about
47 five years, I think.

48
49 MR. PELTOLA: Good morning, all. My
50 name is Gene Peltola, Jr. I'm not a Board member, but

1 I'm the Assistant Regional Director for the Office of
2 Subsistence Management.

3

4 (In Yup'ik)

5

6 Thank you for coming.

7

8 MR. HASKETT: Good morning. Geoff
9 Haskett. Regional Director, US Fish and Wildlife
10 Service here in Alaska.

11

12 MR. FROST: Good morning. My name is
13 Bert Frost. I'm the Regional Director for the National
14 Park Service here in Alaska.

15

16 MR. LOUDERMILK: Good morning. My
17 name's Bruce Loudermilk. I'm the Regional Director for
18 the Bureau of Indian Affairs, Alaska Region, here in
19 Anchorage.

20

21 COMMISSIONER COTTEN: Good morning.
22 Sam Cotten. Commissioner of the Alaska Department of
23 Fish and Game. And, today, with me, is Deputy
24 Commissioner Charlie Swanton, and Subsistence Division
25 Director, Hazel Nelson, and Deputy Director Lisa Olsen,
26 and Drew Crawford, who is on our Staff as well.

27

28 Mr. Chairman, appreciate being here and
29 looking forward to collaboration with the Federal
30 Subsistence Board.

31

32 CHAIRMAN TOWARAK: Thank you for
33 attending our meeting.

34

35 Item No. 2 is information exchange. Is
36 there any general information that Board members would
37 like to pass on.

38

39 MS. PENDLETON: Beth Pendleton. Just
40 would like to note that we've had some new leadership
41 on the Tongass National Forest, so Southeast Alaska,
42 and I think important to the Regional Advisory Council,
43 new Forest Supervisor Earl Stewart. He's been on board
44 now for about two months. Came up from the Coconino
45 National Forest in Flagstaff, Arizona, so he's really
46 getting his -- literally getting his feet wet, but
47 already getting out quite a bit to the communities and
48 getting very engaged in issues.

49

50 And then also a new Deputy Forest

1 Supervisor, Tawnya Brummett, from Montana. So they
2 have both started.

3

4 The other thing I would just mention to
5 the Board, I believe I saw it yesterday, that the new
6 Forest Supervisor, Earl Stewart, did submit to the
7 Board a request for special action with regard to the
8 Alexander Archipelago wolf on Prince of Wales Island
9 and a recommendation to close on the Federal lands, the
10 hunting and trapping of wolves for the 2015/16 season
11 due to the drastic decline. We've been working with
12 Fish and Game, Fish and Wildlife Service for a number
13 of years, extensive survey work on there, and we've
14 seen numbers drop within two years from about 220 to
15 80-plus animals. So that special action will be
16 coming, pending some further analysis, to the Board,
17 for consideration.

18

19 That's it for me, thank you.

20

21 CHAIRMAN TOWARAK: Go ahead, Mr.
22 Haskett.

23

24 MR. HASKETT: I just want to let you
25 all know I have to be on a plane to D.C. About mid-
26 afternoon I'll be leaving, so Karen Clark will be
27 taking over for me at that point for the rest of the
28 session.

29

30 CHAIRMAN TOWARAK: Mr. Cribley.

31

32 MR. CRIBLEY: Mr. Chairman. In light
33 of Beth's enlightenment on new leadership, the Bureau
34 of Land Management also has two new -- or have just
35 filled two key positions in Alaska within the last
36 month. We have a new district manager for our
37 Fairbanks District up in Fairbanks. His name is Geoff
38 Byersdorf. He was a Fish and Wildlife Service
39 biologist here in Alaska for about 19 years. He's also
40 been a Federal Subsistence biologist for BLM in our
41 Anchorage Field Office and has a very strong
42 subsistence background. We're very happy with his
43 selection up there and he's in place and helping out.

44

45 Also our Anchorage District, we just
46 filled our district manager position, and that
47 gentleman's name is Mark Spencer. He comes to us from
48 Las Vegas, Nevada, Bureau of Land Management Office
49 down in Las Vegas. We're teaching him how to spell
50 subsistence right now.....

1 (Laughter)

2

3 MR. CRIBLEY:but he's getting on
4 board rather quickly and looking forward to his
5 leadership out of the Anchorage office.

6

7 And then one other thing, I would like
8 to mention, BLM is kind of going through different
9 various levels of transition, trying to adapt to all
10 our new workload priorities, particularly in the Arctic
11 region. And the Arctic Field Office, which, right now
12 is a sub-unit of the Fairbanks District, we're in the
13 process of pushing paperwork through -- we're
14 introducing paperwork to our headquarters office to
15 make that a separate district, as opposed to being a
16 part of the Fairbanks District, so that office and all
17 of the resources and personnel in the deal with North
18 Slope will report directly to the State Director in the
19 State Office.

20

21 So things are changing very quickly and
22 we're trying to adapt to it right now.

23

24 CHAIRMAN TOWARAK: Mr. Loudermilk.

25

26 MR. LOUDERMILK: I guess we follow suit
27 here.

28

29 Bureau of Indian Affairs has had some
30 change in its leadership, too. I've hired two new
31 Deputy Regional Directors. One for Trust Services,
32 which is national resources, Federal Subsistence falls
33 under that with us, his name is Lynn Polacca. He's
34 been on board for a couple of months now. He comes to
35 us out of Western Region, Arizona. He's got a
36 forestry/fish background so he's been hitting the
37 ground running.

38

39 And then we have Ms. Cathy Kline, who
40 is a superintendent for us up at Fairbanks, will be on
41 board next week for our Native Services, which are our
42 administrative, tribal, those types of programs.

43

44 So just that change in leadership.

45

46 Thank you.

47

48 CHAIRMAN TOWARAK: Go ahead.

49

50 MR. PELTOLA: And, Mr. Chair, if I may,

1 I'd like to point out two new members of leadership
2 team, at the Office of Subsistence Management.

3

4 First we have Jennifer Harden, she is
5 our supervisor for Anthropology Division. She recently
6 came on board, earlier on this winter.

7

8 Then we have Amy Howard, who is our
9 policy coordinator at OSM. She is just arriving in
10 Anchorage to OSM.

11

12 Thank you.

13

14 CHAIRMAN TOWARAK: Thank you. Any
15 other further information.

16

17 (No comment)

18

19 CHAIRMAN TOWARAK: If not, then we will
20 continue on. And maybe before we get started, Gene, if
21 you could explain to everyone what the general agenda
22 plans to cover in the next two days.

23

24 MR. PELTOLA: Okay, thank you, Mr.
25 Chair.

26

27 I believe a majority of this day will
28 be taken up by the discussion RFR14-01 which is Red
29 Sheep/Cane Creek. We'll have a presentation by OSM
30 Staff, Chris McKee, who is the lead of the Wildlife
31 Division and then go into discussion by Board members
32 concerning that RFR.

33

34 And also we have the rural
35 determination process, the discussion from OSM Theo
36 will take the lead in talking it through a
37 recommendation from OSM for the Board.

38

39 That'll carry on until, most likely,
40 tomorrow, depending on how quickly you proceed through
41 items on the agenda, but then we have annual report
42 replies, and then we have a potential executive session
43 on agenda items concerning appointments to RACs and
44 such.

45

46 CHAIRMAN TOWARAK: Thank you, Gene. We
47 will proceed then. A lot of, I think, what we're
48 hoping to accomplish, in general, are a lot of in-house
49 reports and at the end the appointment of our Regional
50 Advisory Council members and updating those which

1 require that we do it in executive session. So
2 tomorrow's session will be executive session.

3

4 MR. PELTOLA: Mr. Chair.

5

6 CHAIRMAN TOWARAK: Go ahead.

7

8 MR. PELTOLA: Mr. Chair, if I may, I
9 apologize. And the one item you did add under other
10 business, the Kenai gillnet agenda item, and then any
11 other business may be brought before the Board if
12 time permits.

13

14 CHAIRMAN TOWARAK: Are there any
15 questions about the agenda of the Board.

16

17 (No comments)

18

19 CHAIRMAN TOWARAK: If not, then we will
20 proceed. We will go to Item No. 3, discussion and
21 action on RFR14-01 Red Sheep/Cane Creek.

22

23 Chris McKee.

24

25 MR. MCKEE: Good morning, Mr. Chair and
26 members of the Board. My name is Chris McKee. I'm the
27 Wildlife Division Chief at OSM. Along with me is
28 Jennifer Harden, the Chief of Anthropology, who will be
29 here to answer any anthropology specific related
30 questions on this.

31

32 So the RFR threshold analysis was a
33 rather large document so I've tried to distil it into a
34 rather short presentation so we can give the Board
35 plenty of time to deliberate and discuss this issue.

36

37 First of all, just to touch on the
38 issue itself. The State of Alaska submitted Wildlife
39 Proposal WP14-51, which sought to have the Arctic
40 Village Sheep Management area opened to non-Federally-
41 qualified users, to lift the closure the State proposed
42 requiring hunters to complete a State developed hunter
43 ethics and orientation course. The Federal Subsistence
44 Board rejected the State's proposal at its April 2014
45 public meeting. No specifics were given about this
46 orientation and ethics course. And the Board also
47 considered an alternative in WP14-51 to open the
48 Federal season 10 days prior to the State season but
49 determined that this was inadequate to resolve problems
50 related to limited subsistence opportunity for local

1 residents.

2

3

4 The State submitted a timely request
5 for reconsideration of the Board's action on 14-51 in
6 June of 2014 and the Federal Board will accept an RFR
7 if it meets one or more of the following criteria:

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1. That it provides information not
previously considered by the Board;

2. That it demonstrates that existing
information used by the Board was
incorrect; and

3. It demonstrates that the Board's
interpretation of information,
applicable law, or regulation is in
error or contrary to existing law.

I'll go over each one of these criteria
one by one along with the State's claims throughout my
presentation, but first a little bit of background on
this issue.

The Eastern Interior Regional Advisory
Council submitted Proposal WP12-76 in 2012 to close the
sheep management area to non-Federally-qualified users
citing that the area was culturally significant to the
residents of Arctic Village and that non-Federally-
qualified users coming into the area were interfering
with traditional uses by local residents.

The opening and closure of the sheep
management area has been before the Federal Subsistence
Board about a dozen times since 1991. Arctic Village
residents have repeatedly testified as to the
importance to the area to them and it's certainly been
a contentious issue over the last 20-odd years.

The sheep management area was
originally closed in 1995 to non-Federally-qualified
users to provide for the continued subsistence use of
sheep in the area. In 2006 the Fish and Wildlife
Service submitted a special action, WSA6-03, which
requested opening of the sheep management area to non-
Federally-qualified users. Surveys revealed that the
sheep population could support harvest by both
Federally-qualified and non-Federally-qualified users.
The Federal Board approved the opening of the area for
the 2006 season. The State submitted Proposal WP07-56

1 to permanently lift the closure and the Board adopted
2 this proposal in May of 2007. The Board then adopted
3 Proposal 12-76 in January 2012 to close the sheep
4 management area citing pressure from non-local users
5 affecting access by residents and displacement of sheep
6 further out of the range of residents access, among
7 other reasons.

8

9 So, to just to start to address the
10 three criteria that I mentioned at the outset, the
11 first one being information not previously considered
12 by the Board. The State argues throughout its petition
13 to the Board that the Board either failed to consider
14 or not given certain relevant information that could
15 have supported a finding that the closure was not
16 necessary. The State claims that OSM failed to report
17 the best and most recently available data to the
18 Federal Board, which was presented to the Eastern
19 Interior RAC, that was a report by Hollis Twitchell, of
20 Arctic Village, reporting seeing no local hunters in
21 the sheep management area in the summer of 2012, and
22 only one local user in 2013. The State claiming that
23 this represents the best and most recent available data
24 was not deemed convincing by the Eastern Interior RAC
25 at its meeting. In addition water levels were very low
26 in 2013, which prevented access to the area by locals,
27 who typically access the area by boat, with the only
28 access being by air, several non-locals used to access
29 this area by those means. So absence of locals should
30 not be taken as a general lack of use of the area in
31 question. This information was also included in the
32 analysis presented to the Board and, therefore,
33 contradicts the State's claims on this issue.

34

35 The State also asserts that OSM failed
36 to mention contrary evidence related to resident use of
37 Red Sheep and Cane Creek. The State uses, evidence the
38 testimony of a single person, Gideon James, who stated
39 that residents, "don't go there every year." This
40 testimony is not new, nor does it contradict extensive
41 public testimony concerning local use of the area.

42

43 The State has failed to offer any new
44 or contradicting information and, therefore, this
45 particular claim does not appear to have any merit.

46

47 On to the second criteria. The idea
48 that the existing information used by the Federal Board
49 was incorrect. The State claims that the record does
50 not provide factual support for the Board's finding and

1 that the Federal Board used information that was
2 "sparse, inconclusive, and without support." OSM and
3 the Federal Board have acknowledged that evidence of
4 local use of the area for sheep hunting in the area is
5 "sparse" but said that -- OSM stated the lack of
6 reported use reflects local, cultural practices, which
7 have been slow to accommodate State and Federal
8 permitting and reporting requirements. Absence of
9 these requirements for reported use does not indicate
10 lack of use by local residents. There is a substantial
11 public record developed over more than 20 years
12 indicating that the importance of the area to local
13 residents. This record was referenced in both WP14-51
14 and WP12-76. The public record is far from sparse as
15 the State contends.

16

17 The State also claims that
18 anthropological studies cited by OSM are equally sparse
19 and inconclusive, are presented without discussion and
20 as reported, do not support closure.

21

22 Both 12-76 and 14-51 cited a small, but
23 comprehensive number of studies, the paucity of these
24 anthropological studies is not indicative of lack of
25 local use, but, rather, they cite the importance of the
26 area to local peoples. The State has not provided any
27 information that these studies were factually
28 incorrect. And, in fact, there's an extensive quote
29 on, I believe, Page 9, of your booklet that speaks to
30 the history of sheep harvest by Arctic Village
31 residents and the very important cultural -- the
32 importance of that area to the Arctic Village
33 residents.

34

35 The State contends that the Board
36 meeting materials and transcripts contain no discussion
37 or support for residents having a long history of use
38 of the Red Sheep Creek and Cane Creek area and that OSM
39 repeat the same "unsupported and sweeping conclusions"
40 meeting after meeting until these statements are
41 assumed to be correct. However, there's extensive
42 public record from Federal agency Staff, personal
43 communications from local residents, anthropological
44 studies and discussions at the relevant Council and
45 Board meetings which provide the foundation of OSM
46 Staff's statements and conclusions. There was
47 extensive public testimony of the 2012 Federal
48 Subsistence Board meeting materials discussing the
49 importance of the area to local residents. WP12-76 and
50 14-51 contain a summary of public testimony that took

1 place at the Eastern Interior Council meeting and the
2 Federal Board meeting as well, testifying to the long
3 history of harvesting sheep by local residents and the
4 difficulties in conducting their customary and
5 traditional use activities in these areas.

6
7 Therefore, the Board relied on the
8 relevant and factual information, there does not appear
9 to be merit to this claim of the State.

10
11 The State also contends that there is
12 no evidence in the record at all that subsistence users
13 have been prevented from or impaired in meeting their
14 subsistence needs by non-subsistence users hunting in
15 the area. However, residents of Arctic Village have
16 provided testimony over many years of non-Federally-
17 qualified users hunting in the Red Sheep and Cane Creek
18 drainages impaired their subsistence opportunities by
19 driving sheep to higher elevations and the residents
20 have been described as being crowded out of the area,
21 as well as their own cultural practice of excluding
22 themselves from areas in which non-locals were hunting
23 or camping, not a desire to exclude outsiders as the
24 State contends.

25
26 It is not a trespass or user conflict
27 issue, as the State argues, but an issue of access.

28
29 Now, as to the final criteria and the
30 Board's interpretation of information, applicable law
31 or regulation being in error to -- or contrary to
32 existing law. The legal base for closure can be found
33 in Title VIII of ANILCA, Section .815(3), which
34 discusses that the restriction on take for non-
35 subsistence uses would not be necessary unless needed
36 for the conservation of healthy populations of fish and
37 wildlife, to continue subsistence uses of such
38 populations, or pursuant to other applicable law.

39
40 Further, the [Federal Subsistence
41 Board's closure policy determines if restrictions are
42 necessary for the conservation of healthy populations
43 of fish and wildlife resources or to provide a
44 meaningful preference for qualified subsistence users.

45
46 The State claims that the application
47 of the incorrect legal standards by the Federal
48 Subsistence Board in 2012 flowed through and tainted
49 the 2014 action, since the Federal Board voted against
50 WP14-51, because they believed nothing had changed

1 since 2012. The Federal Board used -- according to the
2 State the Federal Board used incorrect closure
3 standards which warrant reconsideration of its
4 decision.

5
6 However, the State's request to the
7 Federal Board here is to reconsider 14-51. The State
8 did not file a timely request to the Federal Board to
9 reconsider WP12-76 and it cannot use this request to
10 alter the Board's decision on another proposal.

11
12 The Federal Board did not rely on
13 incorrect closure standards, but, rather, the record
14 shows it found that credible public testimony, along
15 with the sources of information -- other sources of
16 information demonstrated that restrictions to non-
17 Federally-qualified users were needed to continue
18 subsistence uses of sheep in the area in question to
19 local residents. Additionally, the Eastern Interior
20 Council's recommendation was not contrary to any of the
21 three criteria set forth in Section .805(c) of ANILCA,
22 which would have allowed the Federal Board to decline
23 -- to follow the Council's recommendation.

24
25 Another claim made by the State that
26 the Federal Board considered irrelevant and unlawful
27 evidence in making its decision and that the closure
28 was driven by a desire by local residents to exclude
29 others, and that the Federal Board should have been
30 instructed to consider only the actual impacts on
31 subsistence from hunting by non-Federally-qualified
32 users. The Federal Board found that the extensive
33 public testimony of knowledgeable local residents on
34 the negative impacts to subsistence from non-Federally-
35 qualified hunters to be credible. Local ecological and
36 cultural knowledge provided a factual basis for many of
37 the Board's decisions. In fact, the reason that
38 Congress -- one of the reasons Congress created the
39 Regional Advisory Councils in the first place was to
40 allow residents with knowledge of local subsistence
41 practices to provide input into the decisionmaking
42 process and subsistence regulations. The substantial
43 evidence provided on the record supports a finding by
44 the Board that non-Federally-qualified users were
45 hampering the continuation of subsistence uses of sheep
46 by local residents.

47
48 The State contends that even if there
49 had been a supportable reason for placing restrictions
50 to non-Federally-qualified users, the Board did not

1 consider less restrictive options, including the
2 potential effectiveness of the State approved hunter
3 education class in minimizing real and perceived
4 conflicts with subsistence. Another less restrictive
5 option mentioned by the State would have been to
6 restrict the timing of the closures to only the first
7 few days of the season. Other less restrictive options
8 were also considered in 2012 and were not considered in
9 the threshold analysis here.

10

11 At its 2014 public meeting, the Federal
12 Board was presented with limited available information
13 about the State approved hunter education course.
14 Having heard about this course but with no specific
15 details of the course, the Federal Board then had the
16 opportunity to discuss the issue, but did not do so,
17 with the option of an earlier season also being
18 considered inadequate to resolve the issue of limited
19 subsistence opportunity as well.

20

21 So, in summary, the State's various
22 claims appear to be without merit.

23

24 No new relevant information was
25 presented for the Board's consideration.

26

27 No information that the Federal Board
28 relied on was shown to be factually incorrect.

29

30 And there was no determination that the
31 Board's interpretation of information, applicable law
32 or regulation was in error or contrary to existing law.

33

34 Therefore, the OSM conclusion is to
35 oppose to reconsider WP14-51 since the State's claims
36 individually and collectively fail to reach the level
37 to trigger a request for reconsideration of the Board's
38 policy.

39

40 So that's all I had for my
41 presentation, and open it up to all of you.

42

43 Thank you.

44

45 CHAIRMAN TOWARAK: Before we get --
46 excuse me -- I've got a cold that I'm dealing with on
47 the side here. Before we get too much further we have
48 people on the phone, and I think we will have some
49 people from Arctic Village that are interested in
50 making public comments, so those of you in Arctic

1 Village, if you could hear me, I think based on the
2 instructions from the operator, if you hit star-one
3 you'll have access to our teleconference meeting.

4
5 But is there any general questions from
6 the Board with regards to the Staff presentation, OSM's
7 presentation.

8
9 (No comments)

10
11 CHAIRMAN TOWARAK: No. Are there any
12 comments from the people on line who would like to
13 address the Board at this time with regards to the
14 RFR14-01.

15
16 OPERATOR: Thank you. And, again, if
17 we do have anyone on the telephone lines wishing to ask
18 a question please press star-one at this time.

19
20 One moment, sir.

21
22 (Pause)

23
24 OPERATOR: And I'm showing no questions
25 at this time.

26
27 CHAIRMAN TOWARAK: Thank you, Operator.

28
29 The floor is open to the Board for any
30 action on the request.

31
32 (No comments)

33
34 CHAIRMAN TOWARAK: While we're trying
35 to figure things out here, I noticed there were a lot
36 of comments made with regards to the State's position,
37 would you have any, Staff, Commissioner, that would
38 want to make comments on this issue?

39
40 COMMISSIONER COTTEN: Thank you, Mr.
41 Chairman.

42
43 No, we're confident the Board will make
44 a decision based on the merits. As you know the State
45 of Alaska recognizes the importance of subsistence
46 activities, and, by law, we assign a priority to
47 subsistence use. We also know that we're going to need
48 to improve our subsistence harvest data procedures.
49 And we certainly recognize the concerns that have been
50 expressed about trespass, littering and competition,

1 but we share some common interest as far as
2 conservation and sustained yield in the area and we'll
3 reassess our approach and try to find a permanent
4 solution.

5
6 CHAIRMAN TOWARAK: Thank you. We
7 typically have a very formal process that we use for
8 any issue that comes up and I think, so far, we've seen
9 the analysis by the Staff, and thank you for the
10 information. I don't think this has been brought to
11 the Regional Advisory Council.

12
13 MR. PELTOLA: Mr. Chair. If following
14 our normal procedures, in the packet presented to the
15 Board members, there's documentation of those areas
16 which people may think that we've skipped with regard
17 to a formal action item for the Board's consideration,
18 but there is a summary of public testimony, there has
19 been extensive consultation with regard to proposals
20 and that's included in the packet. We heard some
21 comments from the Department. And there has been ISC
22 consideration for the specific wildlife proposals
23 themselves. So in a sense, some of those have been
24 indirectly addressed in the packet. So where we're at
25 now is we're getting down to the Board discussion and
26 then a potential action item with a motion.

27
28 CHAIRMAN TOWARAK: Okay. The floor is
29 open for the Board for any discussion or final action
30 on.....

31
32 MR. BROWER: Mr. Chair.

33
34 CHAIRMAN TOWARAK: Go ahead.

35
36 MR. BROWER: I move to support the ISC
37 recommendation to not support the consideration for any
38 claims in the request for reconsideration of RFR14-01.

39
40 CHAIRMAN TOWARAK: Okay, it was pointed
41 out that it was the Office of Subsistence Management
42 Staff that made the recommendation along with the ISI
43 [sic]. So there's a motion on the floor to oppose the
44 request to reconsider WP14-51 [sic], is there a second
45 to the motion.

46
47 MS. PENDLETON: I'll second that.

48
49 CHAIRMAN TOWARAK: The motion's been
50 seconded and the floor is open for any discussion on

1 the motion.

2

3 Mr. Haskett.

4

5 MR. HASKETT: So I'd just like to say I
6 very much appreciate the comments from Sam Cotten,
7 State of Alaska, and I think our position has been for
8 a very long time that no new information's been
9 presented for the Board's consideration and that we
10 haven't been shown anything's factually incorrect, so I
11 just want to go ahead and have it on the record before
12 we go to our vote. And, again, thank Sam for his
13 comments, appreciate it.

14

15 MR. LORD: Mr. Chair.

16

17 CHAIRMAN TOWARAK: Go ahead.

18

19 MR. LORD: In the past we've gotten
20 into a little bit of trouble and confusion over some of
21 the double negative motions that we've heard in the
22 past so I just want to make sure that we're clear that,
23 in this case, a yes vote would be to not accept the
24 request for reconsideration and a no vote would be to
25 accept the request for reconsideration.

26

27 (Laughter)

28

29 MR. LORD: Is that correct, the way he
30 framed it, because you said the motion was to oppose
31 the request for reconsideration. So I'm following
32 that, if you want to do it a different way that's fine
33 but we need to be clear.

34

35 MR. BROWER: A nay to it.

36

37 MR. HASKETT: So I thought what was
38 recommended was the motion was to accept the request
39 for reconsideration but that the justification was to
40 be to reject so we would be rejecting.

41

42 MR. LORD: That's fine as long as
43 everyone's clear that's all I'm -- that's my goal here.

44

45 (Laughter)

46

47 CHAIRMAN TOWARAK: Is it clear to
48 everyone, the motion is to accept the request but a no
49 vote would mean that you're opposed to furthering the
50 request.

1 (Laughter)
2
3 CHAIRMAN TOWARAK: Do you think I have
4 it wrong.
5
6 (Laughter)
7
8 MR. CRIBLEY: Just vote yes.
9
10 MS. PENDLETON: Vote no, you want to
11 oppose, no, you want to vote no.
12
13 (Laughter)
14
15 MR. CRIBLEY: I don't want to be first.
16
17 MS. PENDLETON: Reframe it, please.
18 Reframe it.
19
20 CHAIRMAN TOWARAK: Go ahead, Mr.
21 Haskett.
22
23 MR. HASKETT: So let me try again. So
24 just the way we do this here, the motion is to go ahead
25 and accept the proposal that we looked at, but that the
26 expectation, I think, what the Board's going to do is
27 to vote no, to reject it, and then it goes away,
28 essentially. I'm trying to put it as simply as
29 possible.
30
31 (Laughter)
32
33 CHAIRMAN TOWARAK: Mr. Christianson.
34
35 MR. CHRISTIANSON: I was just going to
36 say maybe we just need to rephrase the motion so it's
37 not confusing. Because yes means no right now and
38 Geoff's saying no means no, so I think we need to
39 clarify the motion.
40
41 CHAIRMAN TOWARAK: Well, our typical
42 process is to make a positive motion -- Mr. Haskett.
43
44 MR. HASKETT: So, Charlie, if it's
45 okay, could we pull yours and let me make one.
46
47 MR. BROWER: With the concurrence of my
48 second because I was going by the ISI [sic]
49 recommendation not to support it.
50

1 Go ahead, if you want to make a new
2 motion.
3
4 MR. HASKETT: Is that okay then.
5
6 MS. PENDLETON: Uh-huh. (Affirmative)
7
8 CHAIRMAN TOWARAK: Okay, the Chair will
9 determine that the first motion was withdrawn and if
10 it's okay with the second.....
11
12 MS. PENDLETON: That's fine.
13
14 CHAIRMAN TOWARAK: Okay, you concur.
15 The motion has been withdrawn. Then Mr. Haskett.
16
17 MR. HASKETT: So I'd like to make a
18 motion to accept the request for reconsideration of 14-
19 01 and I'll provide my justification as to why I intend
20 to reject the request if I get a second.
21
22 MS. PENDLETON: Second.
23
24 CHAIRMAN TOWARAK: You heard the motion
25 and the second. Discussion.
26
27 MR. HASKETT: So as discussed in the
28 threshold analysis, we believe the State's various
29 claims are without merit. No new relevant information
30 was presented for the Board's consideration. None of
31 the information the Board relied on was shown to be
32 factually incorrect. We continue to believe that this
33 area is very important to the people of Arctic Village
34 and that they have a long history of subsistence use in
35 the area. Finally, there was no demonstration that the
36 Board's interpretation of information, applicable law
37 or regulation was in error or contrary to existing
38 laws.
39
40 CHAIRMAN TOWARAK: Any further
41 discussion.
42
43 (No comments)
44
45 MR. CHRISTIANSON: Question.
46
47 MR. HASKETT: Call for the question.
48
49 CHAIRMAN TOWARAK: Question's been
50 called for, a roll call vote.

1 MR. PELTOLA: Okay, Mr. Chair. The
2 motion was to accept RFR so a yes means you accept it
3 and a no means you deny the RFR.
4
5 Roll call vote.
6
7 National Park Service.
8
9 MR. FROST: Can you run that by me one
10 more time. I was okay over here and now I'm confused
11 again.
12
13 MR. LORD: So, Mr. Chair, a yes vote
14 means that you accept the State's request for
15 reconsideration and a no vote means that the State's
16 request for reconsideration is being rejected.
17
18 MR. FROST: Okay. All right. I think
19 I know what I'm doing.
20
21 (Laughter)
22
23 MR. LOUDERMILK: Good, let me know.
24
25 MR. FROST: So I'm not voting to
26 support the reconsideration. And consistent with the
27 ISC's recommendations.
28
29 MR. HASKETT: So, no?
30
31 MR. FROST: No.
32
33 MR. PELTOLA: Thank you. BIA.
34
35 MR. LOUDERMILK: No.
36
37 MR. PELTOLA: BLM.
38
39 MR. CRIBLEY: No.
40
41 MR. PELTOLA: National Forest Service
42 [sic].
43
44 MS. PENDLETON: No.
45
46 MR. PELTOLA: Fish and Wildlife
47 Service.
48
49 MR. HASKETT: No.
50

1 MR. PELTOLA: Public member
2 Christianson.
3
4 MR. CHRISTIANSON: No.
5
6 MR. PELTOLA: Public member Brower.
7
8 MR. BROWER: No.
9
10 MR. PELTOLA: Mr. Chair.
11
12 CHAIRMAN TOWARAK: No.
13
14 MR. PELTOLA: The motion to accept the
15 RFR fails 0-8.
16
17 CHAIRMAN TOWARAK: Thank you. That
18 concludes discussion then on RFR14-01.
19
20 Mr. Haskett.
21
22 MR. HASKETT: So it might be good, just
23 before we go into the next one, just one more time in a
24 very simple way go over how we do the motions, and I
25 can do that or Ken Lord can do it.
26
27 (Laughter)
28
29 MR. LORD: Mr. Chair. Our practice has
30 been to phrase.....
31
32 MR. BROWER: Your mic.
33
34 MR. LORD: Sorry. Mr. Chair. Our
35 practice borne of painful experience is to frame our
36 motions in the positives, that is, always to accept
37 whatever the proposal or in this case, RFR, is, and
38 then either to vote to accept it -- a yes vote is
39 always then to accept it and a no vote is always to
40 reject it and that way there is less confusion.
41
42 CHAIRMAN TOWARAK: We will review the
43 process again next year.
44
45 (Laughter)
46
47 CHAIRMAN TOWARAK: Any further
48 discussion on the motion.
49
50 (No comments)

1 CHAIRMAN TOWARAK: I assume that if
2 there is anyone on the phone from Arctic Village, we
3 had earlier asked for any input from the teleconference
4 people but it doesn't sound like there's anyone on so I
5 assume that this information will be brought to their
6 interests.

7
8 We will proceed then to the next item
9 on the agenda, discussion and action of rural
10 determination process.

11
12 Theo.

13
14 MR. MATUSKOWITZ: Mr. Chair. Members
15 of the Board. I'm Theo Matuskowitz, regulation
16 specialist for the Office of Subsistence Management.
17 And with me this morning I have Jeff Brooks, who, in
18 the past was a social scientist with our office and has
19 moved on to a new position, however, he was kind enough
20 to join us in case you have specific questions on the
21 work that he's done.

22
23 This morning we will be asking you to
24 take action on three separate areas referencing the
25 rural determination process.

26
27 We will start with the proposed rule
28 that you made recommendations to the Secretary on
29 earlier this year and the Secretary's published a
30 proposed rule in which they made significant proposed
31 changes to the current rural determination process.
32 Basically what the new rule, or what the proposed rule
33 states is that everything -- instead of having a rural
34 and non-rural designation, everything is rural unless
35 the Board makes it non-rural. So that's the most
36 significant change. It also takes away many of the
37 listed guidelines from the regulatory process and gives
38 you, the Board, more flexibility in rural
39 determinations to proceed and would also take away the
40 10 year timeline that is current regulations.

41
42 So the proposed rule is published and
43 it was presented to the Councils and, of course, there
44 was a public comment period.

45
46 Mr. Brooks done the analysis for all of
47 the public comments, and if you turn to the tab listed
48 as rural determination process in your books, the
49 second page is a summary of public comments and at this
50 time I'll let Mr. Brooks address those comments.

1 CHAIRMAN TOWARAK: Go ahead.

2

3 MR. BROOKS: Thank you, Theo.

4

5 Good morning, Mr. Chairman, members of
6 the Board, ISC and public members here today.

7

8 My name is Jeffrey Brooks for the
9 record. I am currently a social cultural specialists
10 at the Bureau of Ocean Energy Management here in
11 Anchorage. I've only been there two weeks. At the
12 time of this analysis and public comment period I was a
13 social scientist in the Office of Subsistence
14 Management.

15

16 And as Theo said, we did do extensive
17 public involvement on this proposed rule. I'll just
18 summarize my analysis for you.

19

20 The Board received numerous public
21 comments from various sources in response to the
22 proposed rule published in the Federal Register January
23 28th, 2015. While I was at the Office of Subsistence
24 Management, I carefully read through each one of these,
25 synthesized the information for you, the
26 decisionmakers. That work was summarized in this
27 document and I believe it's been made available to you
28 in some format or another. Also Mr. Carl Johnson at
29 the Office of Subsistence Management has prepared a
30 separate summary of the positions that the Regional
31 Advisory Councils took on the proposed rule.

32

33 This analysis includes public comments
34 and Council deliberations during their meetings. So it
35 includes written comments that came in on the proposed
36 rule, it includes comments from hearings that we did in
37 conjunction with the Regional Subsistence Advisory
38 Council meetings and it also includes deliberations of
39 those Council meetings as well as anything submitted
40 via regulations.gov. In this synthesis of the 90 total
41 substantive comments that we received on this I broke
42 them into five main categories. They sort of fell out
43 like this.

44

45 54 respondents supported the proposed
46 rule as written.

47

48 16 respondents neither supported nor
49 opposed the proposed rule.

50

1 17 respondents supported the proposed
2 rule and they offered modifications to it.

3
4 7 respondents neither supported nor
5 opposed the proposed rule, however, they did suggest
6 modifications or recommendations.

7
8 6 respondents opposed the proposed
9 rule.

10
11 I broke this down a little further and
12 I'm not sure if you have the number of respondents and
13 these numbers really are meaningless from a social
14 scientific standpoint because the sample size is so
15 low.

16
17 But for your information six
18 respondents said provide in regulatory language
19 objective criteria methods or guidelines for making
20 non-rural determinations. So if you're familiar with
21 the proposed rule, as presented in the Federal Register
22 notice, it took away many, if not all of the guidelines
23 and criteria and rural characteristics that were used
24 before. However, in the preamble it offered a proposed
25 plan. It gave some guidance on what the Board would be
26 considering. Some of these respondents, including
27 those who supported and those who did not support or
28 those who are neutral offered recommendations and some
29 of those specifically said to provide in regulatory
30 language objective criteria, methods or guidelines for
31 making these non-rural determinations.

32
33 Another group, about five respondents
34 said, that they would like to see the Board set a
35 timeframe for how often the proposed changes may be
36 submitted. People are interested in how often and how
37 is this going to happen. When is the Board going to be
38 triggered to make a non-rural determination.

39
40 4 respondents said that they preferred
41 that the Board give deference to Regional Advisory
42 Councils on non-rural determinations and they would
43 like to see that placed in the regulatory language.

44
45 Another four respondents said redefine
46 rural to allow non-rural residents originally from
47 rural areas to come home and participate in subsistence
48 hunting and fishing activities.

49
50 Some of these may be out of the purview

1 of the Board and Legislation but I summarized them all
2 to represent the public voice.

3
4 3 respondents said develop a formal
5 policy for making non-rural determinations including
6 guidance on how to analyze proposed changes.

7
8 Another set of responses were allow
9 rural residents to harvest outside of their areas or
10 communities of residence, similar to what I said
11 before.

12
13 Some other respondents said rely
14 heavily on the recommendations and reports from the
15 Regional Advisory Councils when making non-rural
16 determinations and place that in regulatory language.

17
18 Another suggestion was that only local
19 proponents should be allowed to submit proposed changes
20 to community status. So that would be within a region
21 within a community.

22
23 Other respondents said make these
24 determinations for individuals, sort of like an
25 individual customary and traditional use determination.

26
27 Another respondent said that the
28 Regional Advisory Council should screen the proposed
29 changes in community status before these go to the
30 Federal Subsistence Board.

31
32 And there is a table provided to you of
33 these 90 comments broken down by the source, the
34 position and the summary of the comment. It's just a
35 paraphrase that I put together from reading the more
36 extensive information in the public record.

37
38 Thank you, that's the end of the
39 presentation on the public comment process.

40
41 MR. MATUSKOWITZ: Okay. What we're
42 going to ask the Board to consider this morning is
43 three different areas. We've broken it down into three
44 phrases.

45
46 The first one would be options for the
47 Board recommendation on the current Secretarial
48 proposed rule.

49
50 The second part would be options for

1 Board action to determine a start point for non-rural
2 communities and areas.

3

4 And the last part would be options for
5 the Board to direct future non-rural determinations.

6

7 The last page of the rural
8 determination process, you have a table where each of
9 these phases are listed out. We list the pros and
10 cons, timeline and have appropriate notes.

11

12 Staff came up with four options for you
13 reference the current Secretarial proposed rule.

14

15 The first being to adopt as written.
16 This one has the shortest timeline, the majority of
17 public comments supported this option. A negative
18 point would be it lacks guidance on future actions.
19 But I believe as we go through this process we will
20 address how you could deal with that negative. The
21 timeline is, we believe we could have this published by
22 mid-August, that's this August 2015. And part of that
23 response time, of course, would have to take in effect,
24 because it's going for Secretarial signature so we
25 don't have as much control over that as we would with
26 our normal final rules.

27

28 This option provides the greatest
29 opportunity for the Board to resolve this issue well
30 prior to the May 2017 deadline, so to speak, that we
31 have, which is the date that the 2007 rule would become
32 effective for making communities that were decided to
33 be non-rural. So in 2007 that final rule, certain
34 communities were changed from rural to non-rural
35 status. So you have to make a decision prior to the
36 May 2017 otherwise that 2007 rule goes into effect.

37

38 Another note that guidance for future
39 actions could be addressed in the preamble of the final
40 rule, which is basically when we're explaining the
41 background and the intent and reasons that you made
42 your decision you can address what you plan on doing in
43 the future or how you plan on addressing certain other
44 items and issues.

45

46 The second option would be adopt with a
47 directive to Staff to develop and maintain a policy.
48 This would address some of the public comments that had
49 concern on this. It would -- we would still likely
50 meet the May 2017 deadline but it would probably add at

1 least 60 days to the publication dates and the
2 Secretary's could direct another round of public
3 comments adding considerable time and the possibility
4 that we would not meet the intended timeline.

5
6 As far as the actual timeline, we
7 believe October 2015 would be the soonest that we could
8 take action, or have this document published. And,
9 once again, this option may not meet the May 2017
10 deadline if the Board is directed to have additional
11 public comment period. And, once, again, the preamble
12 could address the Board's policymaking plan if that
13 option would be selected.

14
15 The third option is to adopt with
16 substantial modification. Some of the items that might
17 be considered substantial modification would be
18 deference to the Councils, and then listing non-rural
19 criteria. Again, this would address some of the public
20 comments brought up, but it would go against the
21 Secretary's intent to simplify the process. It would
22 likely require additional public comment and it may
23 require an additional proposed rule to be published,
24 which would make it very difficult for us to meet the
25 May 2017 deadline.

26
27 The last option is to reject or
28 recommend to the Secretaries to reject the current
29 proposed rule. If you would do this action the 2007
30 final rule becomes effective in 2017, does not follow
31 the Secretary directive to address the rural issue and
32 does not address the majority of public comments.

33
34 The recommendation from the Program
35 Staff is to adopt as written the current Secretarial
36 proposed rule. The action being in line with the
37 majority of the Regional Advisory Council's
38 recommendations and public comments. It would also
39 provide the shortest timeline and greatest opportunity
40 for the resolution of this issue prior to the May 2017
41 deadline. If the Board does not take action prior to
42 the deadline, communities that were selected to change
43 from rural to non-rural in the 2007 final rule will
44 become effective.

45
46 Okay.

47
48 The next option -- or the next phase
49 that we would ask you to address is options for Board
50 action to determine a start point for non-rural

1 communities and areas. Now, this is only -- you would
2 only need to take action on this if you would support
3 the proposed rule to become a final rule. Obviously if
4 you reject it it would end there. But should you
5 decide to adopt the current Secretarial proposed rule,
6 we have three options which would be the next step that
7 would be required.

8

9
10 The first being is to direct Staff to
11 publish a direct final rule. Now, keep in mind this
12 would not be under Secretarial purview, this would be
13 under your purview, so we could move much quicker on
14 this. Once, again, direct Staff to develop a direct
15 final rule adopting the non-rural communities in the
16 pre-2007 final rule. So basically we're going back in
17 time prior to the 2007 final rule that was published.
18 So all those communities that were rural then would,
19 again, be rural.

19

20 This would provide the shortest
21 timeline, provide foundation for non-rural communities
22 and areas. There could be public disapproval due to
23 the lack of public input, however, I'll quickly explain
24 how a direct final rule works.

25

26 You publish a direct final rule because
27 you do not expect much input or negative comments on an
28 action. And we publish that, it becomes the
29 regulation. And then there is a 90 day window after
30 that, that if the public disagrees with your action
31 they still can comment on that action and then 90 days
32 after the publication of the direct final rule we
33 would, again, publish a notice in the Federal Register
34 which would either support your action stating nobody
35 disagreed so, yes, this is the rule, or this is the new
36 regulation. Or if there is significant negative public
37 feedback you could address that and make your decision
38 based on whatever comments came in. And historically
39 you have done this in the past. You have published a
40 direct final rule, there was significant public input
41 that was against that direct final rule and as a result
42 you withdrew it and, you know, made a different
43 decision based on that input from the public. So even
44 though we would do the direct final rule it does not
45 mean that there would be no input and, you know, that
46 we could be challenged -- I mean we still could be
47 challenged but it would reduce that effect because you
48 have the opportunity to take a step back and go in a
49 different direction if that's what you so choose based
50 on public comment.

1 We could publish this document probably
2 in September of 2015. And I would also say that by
3 taking this action it would resolve the issues that
4 some of the communities have with the 2007 final rule.
5 So that issue would no longer be on the table.

6
7 The next option that you could do on
8 this is initiate new formal rulemaking to revert to
9 pre-2007 rural determinations. This would have
10 complete RAC and public comment periods but the process
11 could take up to a year to complete and part of that is
12 based simply on the time of the year that it is now and
13 the cycles that the Councils meet in, which we can't
14 make adjustments to that. This would probably be
15 published in July of 2016.

16
17 The last option that you would have
18 would be to initiate new formal rulemaking with no
19 start point and address each non-rural community on a
20 case by case basis. This process could take up to two
21 plus years to complete. The 2007 rule becomes
22 effective, once, again, May of 2017 and we would look
23 at a timeline to publish this in July of 2017 or later.
24 And, obviously the communities selected for the 2007
25 final rule to change status from rural to non-rural
26 would become non-rural.

27
28 So once again the Program's Staff's
29 recommendation is to initiate a direct final rule to
30 adopt the pre-2007 rural determinations.

31
32 Program Staff -- or this action would
33 resolve any current issues with communities or areas
34 that were changed to non-rural in the 2007 final rule.
35 If significant negative response from the public
36 occurred, the direct final rule could be withdrawn and
37 normal rulemaking could be undertaken.

38
39 This option provides the shortest
40 timeline and greatest opportunity for the resolution of
41 this issue prior to the May 2017 deadline.

42
43 Okay, the last thing we will present to
44 you is options for the Board to direct future non-rural
45 determinations. And, basically, Staff has come up with
46 two options for you.

47
48 The first would be to direct Staff to
49 draft a policy on non-rural determinations. This
50 allows the greatest flexibility for Board actions and

1 the inclusion of regional variations. It requires less
2 time than formal rulemaking. The timeline would depend
3 on the Board's direction for public, Council, and
4 tribal input. So we do have greater flexibility with
5 this third action that we're asking you to address.

6

7 The next option would be direct Staff
8 to initiate formal rulemaking to address future non-
9 rural determinations.

10

11 Basically what you'd be asking Staff to
12 do is to address what was taken out of the regulations,
13 but then place them back into the regulations. So,
14 once, again, that process would take at least a year,
15 depending on how much public input we had and, of
16 course, tribal consultation and the RAC cycles to get
17 them to comment.

18

19 Program Staff recommend that the Board
20 direct a policy to be drafted to address future non-
21 rural determinations. Once, again, this action allows
22 the greatest flexibility for the Board, and the
23 inclusion of regional variations. This option
24 addresses concerns raised by some of the Council, what
25 the process of future non-rural determinations will be.
26 Additionally, it would require less time and the policy
27 could be revised without formal rulemaking. Potential
28 policy components could address non-rural
29 characteristics with weighing potential that would
30 accommodate regional variation and criteria for
31 initiating a review of a community or area. The rural
32 subcommittee that the ISC has set up, who's membership
33 consists of Program Staff and ISC members could develop
34 this policy with input from the Councils, tribes and
35 public over the next 18 months, with the goal of
36 adoption by the Board in early 2017.

37

38 So, once, again, those are the three
39 actions that we're asking you to address.

40

41 Once, again, it's the current
42 Secretarial proposed rule. Followed by action to
43 determine a start point for non-rural communities and
44 areas, And the last would be to direct future non-
45 rural determinations.

46

47 So that's basically the briefing at
48 this time and I'm open for any questions.

49

50 CHAIRMAN TOWARAK: The floor is open

1 for questions.

2

3 Mr. Haskett.

4

5 MR. HASKETT: So, thank you. I'm going
6 to ask a couple of questions because that was pretty
7 complicated.

8

9 MR. MATUSKOWITZ: Yes, sir.

10

11 MR. HASKETT: And just to kind of get
12 to what I think is the main thrust of what these three
13 will do. And, actually, I'm going to separate out my
14 question on the third option and the first two because
15 I'm going to be more interested on the first two, I
16 think.

17

18 So phase three question, the only one I
19 have for you on that is that really the two
20 recommendations that we have on that is that once we
21 get one or two done, we direct the Staff to either do a
22 rulemaking or do it through policy?

23

24 MR. MATUSKOWITZ: That is correct, yes,
25 sir.

26

27 MR. HASKETT: Okay. So I'm not going
28 to ask any more questions about three because I think
29 one and two is the part I mostly want to ask about.

30

31 So my understanding is if we adopt the
32 first two motions, that options for the Board
33 recommendation for a Secretarial proposed rule and also
34 the second one, to initiate a direct final rule that
35 would actually be done by the Board, so we could do
36 this quicker.

37

38 MR. MATUSKOWITZ: Yes.

39

40 MR. HASKETT: And this keeps talking
41 about May of 2017 but really these two, what we're
42 shooting for, is September or October, assuming the
43 Secretary moves quickly and the moves in this action,
44 that we could actually get it done by September or
45 October of 2015.

46

47 MR. MATUSKOWITZ: Yes, sir, that is
48 correct.

49

50 MR. HASKETT: That's the only questions

1 I have. Thank you.

2

3 CHAIRMAN TOWARAK: Just a
4 clarification. On the first option, then it would be
5 to adopt it as it's written.

6

7 MR. HASKETT: Well, I haven't gotten to
8 that point yes, but, yes.

9

10 CHAIRMAN TOWARAK: Mr. Christianson.

11

12 MR. CHRISTIANSON: My only question
13 would be do we do this all in one motion or are we
14 going to break it down into two motions or three,
15 because I'm ready to make a motion.

16

17 CHAIRMAN TOWARAK: Go ahead, Mr.
18 Haskett and then.....

19

20 MR. HASKETT: I think we should do the
21 first two separately from the third because I think
22 there's questions from some Board members on the third
23 one and the first two is the one that accomplishes --
24 or attempts to accomplish the ability to get it done by
25 September or October 2015.

26

27 CHAIRMAN TOWARAK: Do you have further
28 comments.

29

30 MR. ARDIZZONE: Mr. Chair. Just for
31 clarification, as Mr. Haskett said, it would be best to
32 take this as three individual motions for the
33 administrative record, make it clear and less confusing
34 for everybody here at the table.

35

36 CHAIRMAN TOWARAK: Go ahead, Mr. Frost.

37

38 MR. FROST: So I don't know who to ask
39 the question to, you or.....

40

41 (Laughter)

42

43 MR. FROST: So why couldn't -- assuming
44 that the Board agreed with the Staff recommendation on
45 phase one and phase two, to adopt the final rule as
46 it's -- as the proposed was written and to then direct
47 the final rule adopting the non-rural communities pre-
48 2017, why can't you do that in one rule, why can't you
49 include part phase two as part of the final rule so
50 there's only one rulemaking.

1 MR. MATUSKOWITZ: Through the Chair.

2

3 CHAIRMAN TOWARAK: Go ahead.

4

5 MR. MATUSKOWITZ: The current proposed
6 rule is under Secretarial purview. It's in subpart B
7 of our regulations. The direct final rule would be
8 under Board purview. So it's separately who has the
9 authority. So that's why it would have to be separate
10 because the Secretaries published what they have
11 proposed and if we would make significant changes to
12 that we would probably have to reopen public comment
13 period because the Secretaries did not address any of
14 these other issues that we would talk about or address
15 in the direct final rule. So that would be a
16 significant change and basically the way the laws in
17 Federal regulations covering the Federal Register and
18 CFR would not allow that. We would be directed to go
19 back and start over again.

20

21 CHAIRMAN TOWARAK: Mr. Cribley.

22

23 MR. CRIBLEY: Yeah, my question, just a
24 procedural question. As far as publishing the rule, or
25 the Federal Register notice for the rulemaking through
26 the Secretary's authority, can we do that -- does that
27 -- can that be done concurrently with the second
28 rulemaking of the Board on the -- going back to the
29 pre-2007 final rule, or do they have to be done in
30 sequence or are there any rules on that rule on how we
31 do that rulemaking.

32

33 (Laughter)

34

35 MR. MATUSKOWITZ: Once, again, through
36 the Chair. Sir, actually, that is my intent. I've
37 been drafting -- actually I have about four different
38 versions trying to anticipate what you might decide
39 on.....

40

41 (Laughter)

42

43 MR. MATUSKOWITZ:that are kind of
44 standing by. And, yes, we could -- the closest we can
45 do both of these, should you decide to go that route,
46 would be the same day. And we have -- actually that's
47 how it was done the last time that you had a direct
48 final rule.

49

50 MR. CRIBLEY: Okay.

1 MR. MATUSKOWITZ: We published a direct
2 final rule and then a proposed rule in case that direct
3 final rule was going to be pulled, which did happen so
4 we published them on the same day. So we could get
5 both of these to Washington at the same time and, you
6 know, have them reviewed, have them approved and they
7 could publish on the same day.

8
9 MR. CRIBLEY: Okay, thank you.

10
11 CHAIRMAN TOWARAK: Mr. Haskett.

12
13 MR. HASKETT: And, again, just for
14 clarity, the intent is for us to do them concurrently
15 back to Washington, trying to get this done by
16 September, October of 2015.

17
18 MR. MATUSKOWITZ: Yes, sir.

19
20 CHAIRMAN TOWARAK: Mr. Frost.

21
22 MR. FROST: So just a little sense of
23 reality, the October 2015 is to actually not to have
24 the final rule published by then but to get the
25 paperwork back there, because to actually have it
26 published by October '15.

27
28 CHAIRMAN TOWARAK: Mr. Haskett.

29
30 MR. FROST: Because that seems to me --
31 to me, that just seems a little unrealistic.....

32
33 MR. HASKETT: So.....

34
35 MR. FROST:but maybe I don't know
36 the process.

37
38 MR. HASKETT: The normal process of how
39 we do regulations it's completely unrealistic but
40 we've.....

41
42 (Laughter)

43
44 MR. HASKETT:but we have agreed
45 to make calls and contacts with the Secretary and her
46 office, and this is actually something they've been
47 watching and are aware of and it's been set up in a way
48 that if we don't have lots of major uprising on this,
49 that we think that we can actually get it done.

50

1 No promises because obviously we
2 can't.....

3
4 MR. FROST: Right.

5
6 MR. HASKETT:decide what the
7 Secretary does but we do have indications from that
8 office that we could actually get from the Secretary's
9 this done.

10
11 MR. FROST: One more question.

12
13 CHAIRMAN TOWARAK: Go ahead.

14
15 MR. FROST: So back to phase three, so
16 this isn't an either or proposal, I mean the way it's
17 outlaid, it's either you do the policy or you do
18 formal rulemaking; couldn't you -- wouldn't it be
19 possible to sort of blend those two to -- in order to
20 address the issues that need to -- to get a policy in
21 place in order to address the issues with the goal of
22 doing rulemaking in some future time -- in the
23 immediate future -- get the policy in place so you can
24 sort of be able to get the actions done that you need,
25 but ultimately go to rulemaking so that it becomes more
26 solidified and with some teeth in it as opposed to just
27 staying as a policy.

28
29 So I guess my question is, do you just
30 have to do a policy or a rulemaking, or can you start
31 with a policy with an agreement or an understanding
32 that we're going to move towards rulemaking.

33
34 MR. MATUSKOWITZ: Through the Chair.
35 Yes, sir, that could be an option also.

36
37 The reason that the Program Staff
38 looked at the policy as being the preferred method was
39 due to the flexibility. Where, once you go into the
40 formal rulemaking that flexibility goes away because in
41 order to make any changes you have to, once, again, go
42 through formal rulemaking. Whereas just looking at the
43 history of our program, how this issue has changed over
44 -- you know, over the years, instead of having these
45 kind of meetings, having to go through formal
46 rulemaking, if it's a policy, you know, it can be
47 changed much quicker and much easier.

48
49 But in answer to your question, yes,
50 could we have a blend of some formal rulemaking and

1 policy, yes, sir, we could do that also as an option.

2

3 CHAIRMAN TOWARAK: Beth.

4

5 MS. PENDLETON: Through the Chair. I
6 just wanted to -- back on Geoff's comment, note, that
7 Secretary of Agriculture has also been well briefed on
8 this and would be concurrent with Secretary Jewell
9 ready to take action.

10

11 CHAIRMAN TOWARAK: Mr. Haskett.

12

13 MR. HASKETT: And, again, I'm not
14 trying to beat this one to death on why we should
15 separate out one and two and three on the motions, it's
16 just I see that Lee Wallace is here from Saxman, and I
17 will say that my first year on the Board I had the
18 opportunity to go visit with him in Saxman and was
19 swayed very early on that there's some things we need
20 to do as a Board. And we've had these conversations
21 for seven years now, it seems like, I think that's
22 probably right, from that visit I took, and I know
23 there's been lots of concern about how long the process
24 takes. And I think this Board has tried very
25 diligently to get to the point where we could take
26 action where, not only the village of Saxman, but other
27 areas that are affected by this, could get some comfort
28 and some confidence that we're moving forward.

29

30 And I think the proposals one and two,
31 the OSM Staff and other folks working on this have done
32 a tremendous job of coming up with something that
33 allows us to shoot for actually getting this done by,
34 again, September, October of 2015. So I think that's
35 really, really important.

36

37 So I just really want to keep one and
38 two separate and then whatever other discussion we have
39 on three, which I think is valid, take that up as well.

40

41 CHAIRMAN TOWARAK: Any further
42 questions.

43

44 Mr. Christianson.

45

46 MR. CHRISTIANSON: Yeah, I'm ready to
47 make a motion.

48

49 CHAIRMAN TOWARAK: Yeah, here again we
50 need to go back to our process, we need to open the

1 floor to any public testimony. Is there anyone on the
2 teleconference or in the crowd here.

3

4 Mr. Wallace.

5

6 OPERATOR: And, again, participants on
7 the telephone lines, it is star-one to ask a question.

8

9 (No comments)

10

11 CHAIRMAN TOWARAK: Mr. Wallace, would
12 you like to address the Board, and if you could maybe
13 use Mr. Brooks' microphone.

14

15 MR. WALLACE: Thank you, Mr. Chair.
16 Lee Wallace from the Organized Village of Saxman,
17 Saxman IRA Council, Council President.

18

19 I certainly am pleased with the
20 direction the Board has been making. You're making
21 progress. And I'm encouraged from the comments made
22 about the Secretary's wanting to take action. You
23 know, it's been no surprise, you know, Saxman has been
24 advocating for this determination to finalize for some
25 103 months now.

26

27 We've written letters. We've written
28 resolutions. Both Secretaries. Wanting them to
29 administratively take care of this. They have the
30 power to with a stroke of the pen to change this
31 wrongdoing so many years ago. And so actually I'm
32 encouraged by Geoff's comments about them wanting to,
33 you know, finalize this. You know, back in 2009 the
34 Secretary said let's simplify this and let's fix this
35 issue of subsistence in Alaska. So here we are so many
36 years down the road, since 2009, when that announcement
37 came out at AFN. So I'm encouraged.

38

39 First let me say, a week ago I was down
40 in DC giving testimony to HR-2388, Don Young's bill.
41 Don Young's bill is a bill that compliments Senator
42 Murkowski's bill, which she came out in March. Again,
43 they're advocating for Saxman, and I'm pleased with
44 their support, you know, even Don Young's comments at
45 the hearing, he said, he'd really like to see this done
46 administratively.

47

48 You know, just based on the proposals
49 that have been brought forth and the Staff's
50 recommendations, Saxman is in support of the

1 recommendations in this proposed rule, to finalize it.

2

3 It's been a long process, but I think
4 I'm seeing light at the end of the tunnel. It's been
5 about 103 months now that this topic's been on our
6 tribal agenda, rural determination. We've kept abreast
7 of it. We've tried to make all the workshops or
8 meetings that were scheduled, whether it's RAC
9 meetings, or FSB meetings, we were always trying to
10 attend and give comments.

11

12 So, again, I'm encouraged what I'm
13 hearing. And I made some comments about -- comment --
14 phase two comment, option one. Based on the public
15 comment period that just, you know, concluded last year
16 there was really an overwhelming support of the
17 proposed rule. If you want to count the ones that were
18 opposing it, it was six. So the comment about the --
19 you know, the question of we had significant negative
20 comments on the proposed rule, I guess I wouldn't
21 anticipate it. I mean I find it very hard to have it
22 opposed -- you know, this whole issue has vast support
23 from AFN, Sealaska, a lot of the tribal groups in
24 Southeast Alaska. And, yes, I really do include the
25 support from this Board. We've had recent relationship
26 buildings for the recent past and it's through those
27 relationship buildings that we're able to have this
28 dialogue today and looking at the Staff's recommended
29 actions and so I'm encouraged and I just want you guys
30 to -- I know you'll make the right decision and will
31 finalize this administratively versus, you know, a bill
32 going through Congress.

33

34 Gunalcheesh.

35

36 Howa.

37

38 CHAIRMAN TOWARAK: Thank you, Mr.
39 Wallace. Are there any questions of Mr. Wallace.

40

41 Ms. Pendleton.

42

43 MS. PENDLETON: Not so much a question.
44 Through the Chair.

45

46 But just recognition to Mr. Wallace, to
47 you and to your IRA for your persistence and for, I
48 think, your effort to help the Board and Staff, I
49 think, be more thoughtful as we get to the phase of
50 either policy or rulemaking for determining non-rural

1 determinations, what you have been able to bring and
2 your Council with regard to other considerations around
3 criteria has really been helpful, I know, personally to
4 me, to get a deeper understanding of some of the
5 social, cultural, traditional criteria that we might
6 think about. So I just wanted to acknowledge that and
7 would just say that I, too, after 103 months, feel some
8 urgency that we move forward in a responsive and
9 diligent fashion.

10

Thank you.

12

13

CHAIRMAN TOWARAK: Mr. Haskett.

14

15

MR. HASKETT: Yeah, and I'd like to
16 second what Beth said. Like I said, Lee, I met you
17 about seven years ago and I know this has been a very
18 frustrating process but you've always just done a great
19 job of bringing forward what you needed to have done
20 and worked with the Board. And I appreciate your
21 comments very much and it's been good to be able to
22 work with you on this. We're not done yet, but we're
23 working hard on it.

24

CHAIRMAN TOWARAK: Any further comments
26 or questions of Mr. Wallace.

27

28

(No comments)

29

30

CHAIRMAN TOWARAK: Thank you, Mr.

31

32

33

MR. WALLACE: Thank you.

34

35

CHAIRMAN TOWARAK: Is there anyone else
36 in the public that would like to comment on the process
37 that we're going through, the rural determination
38 process.

39

40

Go ahead.

41

42

MR. LORD: Good morning. My name is
43 Victor Lord. I'm from the village of Nenana. And I
44 just wanted to echo what Mr. Wallace was saying, that
45 you guys are doing a job, and I flew all the way down
46 here so I figured I better put my two bits in.

47

48

You know, Nenana is only 55 miles away
49 from Fairbanks, the big city of Fairbanks, and, you
50 know, I've lived in fear of being urbanized or getting

1 sucked into the Borough and going by their rules of
2 personal use and we have subsistence now, and like I've
3 always said before, you know, Nenana, the Parks Highway
4 and the Alaska Railroad landed on our village, we
5 didn't land on the Parks Highway and the Alaska
6 Railroad. So I'd just like to keep that status. We
7 have our potlatches. We harvest our fish. We smoke
8 our fish. And it's a good healthy way to live.

9

10 I appreciate the way you live.

11

12 CHAIRMAN TOWARAK: Thank you. Any

13 questions.

14

15 (No comments)

16

17 CHAIRMAN TOWARAK: I just want to point
18 out that you're the home of the very first Chairman of
19 the Federal Subsistence Board, Mitch Demientieff.

20

21 MR. LORD: Yes.

22

23 CHAIRMAN TOWARAK: We have fond

24 memories of him.

25

26 MR. LORD: Thank you, very much, me

27 too.

28

29 CHAIRMAN TOWARAK: Thank you for your

30 presentation.

31

32 Any other public.

33

34 (No comments)

35

36 CHAIRMAN TOWARAK: If not, then we will
37 -- we've already taken care of portions of our -- go
38 ahead, I'm sorry.

39

40 MS. STICKWAN: Good morning. My name's

41 Gloria Stickwan.

42

43 CHAIRMAN TOWARAK: Good morning,

44 Gloria.

45

46 MS. STICKWAN: I just want to say I
47 support Saxman's position. And I'm going to ask you to
48 give deference to the RACs in the rulemaking, their
49 recommendation to do policy and for rulemaking,
50 simultaneously together, that you give RACs deference,

1 that you consider that as part of your policy and
2 rulemaking. And I'm glad that you're doing this
3 finally and hopefully it'll be taken care of by October
4 2015.

5

6 Thank you.

7

8 CHAIRMAN TOWARAK: Thank you, Ms.
9 Stickwan. And we have recommendations from the Staff
10 to review the Regional Advisory Council's
11 recommendations, that we defer to them, and that's
12 going to be part of the policy considerations in the
13 future.

14

15 Thank you for your comments.

16

17 If there aren't any other public
18 comments we will move on then to -- we've already heard
19 from the Regional Councils and the tribal process. We
20 would like to give the State an opportunity to make any
21 comments. Commissioner.

22

23 COMMISSIONER COTTEN: (Shakes head
24 negatively)

25

26 CHAIRMAN TOWARAK: You don't, okay,
27 then, if not, we will open the floor for Board
28 discussion on this issue.

29

30 MR. CHRISTIANSON: Mr. Chair.

31

32 CHAIRMAN TOWARAK: Go ahead.

33

34 MR. CHRISTIANSON: I make a motion to
35 accept the Staff recommendation one and adopt as
36 written.

37

38 MS. PENDLETON: Second that.

39

40 MR. HASKETT: Second.

41

42 CHAIRMAN TOWARAK: You heard the motion
43 and a second to adopt the rulemaking as it is written.

44

45 Any discussion.

46

47 (No comments)

48

49 MR. BROWER: Question.

50

1 CHAIRMAN TOWARAK: All those in favor
2 of the motion say aye.
3
4 IN UNISON: Aye.
5
6 CHAIRMAN TOWARAK: Any opposed say nay.
7
8 (No opposing votes)
9
10 CHAIRMAN TOWARAK: Motion passes
11 unanimously.
12
13 Further action.
14
15 MR. CHRISTIANSON: I'll make another
16 motion, Mr. Chairman, to phase two to direct a final
17 rule adopting the non-rural communities pre-2007 final
18 rule.
19
20 MR. BROWER: Second.
21
22 CHAIRMAN TOWARAK: You heard the motion
23 and the second. Any discussion.
24
25 (No comments)
26
27 CHAIRMAN TOWARAK: Not hearing any.
28 All those in favor of the motion say aye.
29
30 IN UNISON: Aye.
31
32 CHAIRMAN TOWARAK: Any of the --
33 opposed, say nay.
34
35 (No opposing votes)
36
37 CHAIRMAN TOWARAK: Motion passes
38 unanimously.
39
40 Further motions.
41
42 Mr. Christianson.
43
44 MR. CHRISTIANSON: Through the Chair.
45 I'd like to make a motion to direct Staff to draft
46 policy on non-rural determinations for future
47 consideration.
48
49 MS. PENDLETON: Second that.
50

1 MR. HASKETT: Second.

2

3 CHAIRMAN TOWARAK: You heard the motion
4 and the second. Any discussion on the motion.

5

6 Go ahead, Mr. Frost.

7

8 MR. FROST: I'm just going to bring up
9 this point again that I think it's -- if we leave the
10 criteria and the periodic review process in policy, I
11 think it sets us up for -- well, it doesn't give us any
12 incentive to go back and do the reevaluation on it on
13 some sort of periodic basis. And I don't know what the
14 right number is, and I'm the new guy here so -- but it
15 seems to me that we need criteria in rulemaking so that
16 we can -- so that we have sort of that teeth behind us
17 because this is a very contentious and passionate
18 subject. And if we don't have that -- sort of the
19 teeth of the rulemaking behind our decisionmaking and
20 it's just in policy, I think it leaves the Board
21 vulnerable to being questioned and questioning it
22 ourselves. So I would offer a friendly amendment that
23 we would initiate this proposal as requested with the
24 policy but ultimately try and move that to rulemaking
25 at some point in time in the future in order that we
26 have that legal basis as we have to reevaluate this
27 status in the future at some point in time.

28

29 CHAIRMAN TOWARAK: In my recollection,
30 Mr. Frost, one of the biggest reasons a lot of people
31 wanted to eliminate any criteria was because the former
32 system was so cumbersome and it's taken us years to get
33 anything done and my understanding of the process,
34 through Theo, is that, and it's been, I think, the
35 discussion of the Board in the past to make the process
36 as simple as possible and most flexible as possible
37 without setting any criteria. I don't know if that's
38 what the rest of the Board's -- but that's my
39 understanding of the issue of setting any criteria that
40 might stumble the process in the future.

41

42 MR. FROST: But if there is no criteria
43 how do you make a determination, I guess that's my
44 question. That's what I don't understand. If the
45 criteria -- if there's not some criteria in place, how
46 do you determine what's rural and what's not rural.

47

48 CHAIRMAN TOWARAK: My understanding,
49 here, again, and I might be corrected by Staff, but I
50 think the previous system was too cumbersome and just

1 leaving it to the Board makes it -- we'll go through a
2 process of public hearings and so forth that would
3 allow for all considerations, without developing any
4 criteria.

5

6

Go ahead.

7

8

MR. ARDIZZONE: Mr. Chair. I think the
9 intent of the policy was to work with the Regional
10 Advisory Councils and others to set up some criteria in
11 policy but not in regulation because that's where our
12 problems, I think, started, is we have all these
13 criteria and regulation which locked everything in,
14 there was no flexibility and the policy would give us
15 that flexibility and would also allow the Board to
16 change things in a timely manner, without having to go
17 through rulemaking. But I called Theo up and he can
18 address it if I'm incorrect.

19

20

CHAIRMAN TOWARAK: Go ahead, Mr.

21 Matuskowitz.

22

23

MR. MATUSKOWITZ: Mr. Chair. Yes, that
24 would be the intent behind a policy. We would have
25 criteria, but sort of similar to how you address
26 customary trade now. Yes, customary trade can happen
27 statewide and it's very simple, very open. But then
28 you are very specific in your regulation saying, in
29 this area this is what customary trade will be, in this
30 area this is what customary trade will be. So I would
31 envision a policy similar to that. We could have some
32 very broad, general guidelines that may apply
33 statewide, but more specifically region by region would
34 have or could have their own criteria, own, you know,
35 interpretation based on that region. And, you know,
36 that would be -- you could include public comments to
37 address those issues, obviously RAC recommendations
38 could be included there also. So it's really open how
39 we would do that. And I would envision that Staff will
40 obviously have multiple options for you to consider
41 when that time comes.

42

43

(Laughter)

44

45

CHAIRMAN TOWARAK: You still have your

46 mic on, you must have something to say.

47

48

(Laughter)

49

50

MR. FROST: Well, I don't want to --

1 and I don't want to beat a dead horse in the words of
2 Geoff Haskett, but at the same time I still think it's
3 -- and I think we're sort of talking about the same
4 thing, it's looking at the policy sort of that the
5 highest level policy, the highest level overall
6 guidance that you could solidify in regulation. And I
7 think there needs to be some solidification there.
8 Because if there's not solidification then the policy,
9 there is -- the teeth of the policy is so much less
10 than the teeth that's in a regulatory function. So
11 having the best of that policy, maybe the statewide
12 piece that you talked about and I don't know what it
13 would be, but that at some level there would be some
14 regulatory guidance on how this determination would
15 need. And it may not be the actual criteria but it may
16 set out the framework for how that's going to take and
17 then there could be, maybe step down from that, some
18 policy based on the RAC's input and things like that.
19 I think all that's good.

20

21 I just think there's a regulatory piece
22 here, that if we don't go to the regulatory route we're
23 going to be leaving ourselves vulnerable for challenges
24 in the future.

25

26 CHAIRMAN TOWARAK: Mr. Haskett.

27

28 MR. HASKETT: So a question for you,
29 Bert, could the regulatory part that you're proposing,
30 could it be as simple as just making it clear that the
31 Board's directed to be responsible for implementing the
32 policy that we have?

33

34 MR. FROST: I would envision something
35 a little more than that but I would suggest that it
36 doesn't have to get down to the criteria basis it is
37 today, it could be something much higher than that.
38 But at least it would provide a framework for the Board
39 to be able to make determinations in a more structured
40 way than just with a -- sort of a policy that could be
41 changed fairly easily.

42

43 CHAIRMAN TOWARAK: Theo, go ahead, and
44 then Beth.

45

46 MR. MATUSKOWITZ: Through the Chair.
47 One way that we could address this, in your direction
48 to Staff, that is one of the options that you can tell
49 us to -- that you want us to pursue and present you
50 with options, having some form of regulatory guidance.

1 I mean it could be something as simple as sort of like
2 your closure policy where you direct Staff, you will
3 review all closures every three years. I mean you
4 could possibly -- we could look at maybe a very short
5 statement in regulations that the Board will review its
6 policy or determinations on, you know, some possible
7 timeframe, not the actual determinations themselves so
8 that the communities don't feel like they're under the
9 gun, which is one of the serious, major comments that
10 was done, but you directing you to review your policy.

11

12 That's just a possibility.

13

14 But as far as your concern of something
15 in regulations, we can include that in the options that
16 we present to you in the future.

17

18 CHAIRMAN TOWARAK: Go ahead, Beth.

19

20 MS. PENDLETON: Mr. Chairman. You
21 know, I believe that over the course of the last, you
22 know, five to seven years, with the number of public
23 meetings, tribal consultations, outstanding work by the
24 InterAgency Staff Committee, Office of Subsistence
25 Management Staff, that we have quite a pool of
26 information and knowledge that we can build a simple
27 and elegant policy with enough teeth and direction in
28 it to guide the Board as we move forward in
29 consideration of future non-rural determinations.

30

31 I guess I would just really encourage
32 the Board to keep this simple, but with sufficient
33 teeth and accountability in it that we work this policy
34 with consistency and deliberation. But I do think it's
35 something that we can keep in policy and I would
36 support having OSM and the InterAgency Staff Committee
37 put together some options for the Board to consider in
38 policy and to move this forward in as expeditious
39 manner as possible.

40

41 Thank you.

42

43 CHAIRMAN TOWARAK: And I assume the
44 instruction would be without making it cumbersome.

45

46 MS. PENDLETON: Correct.

47

48 (Laughter)

49

50 CHAIRMAN TOWARAK: Tony, did you have a

1 comment, and then Mr. Cribley.

2

3 MR. CHRISTIANSON: Yeah, I was just
4 going to echo what Beth said. I kind of see where
5 Bert's coming from on wanting to put at least the
6 triggers or the mechanism that would state in the
7 policy that we would either take the Regional Advisory
8 Council recommendation, there's a change in the region,
9 or some type of information that would cause a review;
10 whether it's like, Theo says, on a recurring or cycle
11 basis or when issues arise, that the Regional Advisory
12 Council would probably trigger a review or
13 reconsideration. So keeping it broad, simple, and, you
14 know, just the policy so that it can have built in
15 there when you would do a review or want to reconsider
16 it, what those triggers would look like.

17

18 CHAIRMAN TOWARAK: Mr. Cribley.

19

20 MR. CRIBLEY: Well, I guess building on
21 what everybody has said.

22

23 Well, the first thing, I guess, I would
24 like to comment on is that I think we have, to where
25 we've gotten right now, dealt with the immediate issue,
26 and so we've got the mechanisms in place to deal with
27 that 2007 rulemaking. We're going to get beyond that,
28 you know, pull that back and get beyond that so we
29 don't have that issue. And I don't know that there's
30 any immediate issues going on right now from the
31 standpoint of people beating on the door or anybody
32 beating on the door of communities that should be
33 considered non-rural, so I don't know that there's a
34 sense of urgency, or I don't feel a sense of urgency
35 from the public or from any of the RACs that we have
36 something that we have to have guidance on to
37 implement, or to deal with.

38

39 And based on that, and I think we have
40 time, is that rather than make the decision today,
41 whether it's going to be policy or rulemaking, I guess
42 I would recommend that we direct the Staff to go back
43 and develop options to address future rural
44 determinations and give us a perspective of what that
45 potentially could look like and how we can move forward
46 on that. And then at that time, looking at what -- or
47 considering what they bring to us and what we decide or
48 how we want to deal with future non-rural
49 determinations, we can then make a decision of whether
50 it should be -- whether it would fit into policy and we

1 could defend that or support that, or if it is maybe
2 simple enough and strong enough we can put it into
3 regulatory -- into the regulatory world. And I think
4 that would leave our options open.

5
6 But I guess my big concern is, is I
7 guess I want to see what the options -- or what comes
8 out as the options on how we're going to move forward
9 with this because I'm -- based on a lot of the
10 conversations I'm almost scared, in certain ways, that
11 we're going to go backwards and try to reinstitute a
12 lot of old guidance on how you make non-rural
13 determination and I think we should keep it simple, as
14 simple as possible. And I think we can do that. We've
15 discussed that previously. And I think I would like to
16 make to make sure that that's brought forward.

17
18 And also to protect the rural residents
19 from the standpoint of not putting in policy, that
20 causes them to have the concern, which I heard in a lot
21 of the hearings -- or all of the hearings I did, was
22 the uncertainty, you know, are they going to lose their
23 rural status. And that uncertainty, which was a
24 continuum for a lot of the villages was unnecessary and
25 I don't think we need to put them in that place.

26
27 So I think if we just take it one step
28 at a time and then build into it, I think we can come
29 up with a good path forward that is acceptable and
30 creates that certainty for our rural residents.

31
32 CHAIRMAN TOWARAK: Thank you.

33
34 Any further comments.

35
36 (No comments)

37
38 CHAIRMAN TOWARAK: My understanding is
39 we've got a motion on the floor that Tony made -- or
40 did we vote on that?

41
42 MR. CHRISTIANSON: We voted on the two
43 motions.

44
45 CHAIRMAN TOWARAK: Oh, we did.

46
47 MR. BROWER: We're on the third motion.

48
49 MR. CHRISTIANSON: Mr. Chair. I think
50 we're at the point where we would just direct Staff to

1 do what Bud suggested; at a future date look at some
2 options and then maybe make that decision at that time,
3 when Staff could put together some things that we can
4 consider.

5
6 MR. ARDIZZONE: Mr. Chair. According
7 to my notes Mr. Christianson made a motion to have
8 Staff develop a policy, it was seconded by Beth and Mr.
9 Haskett, about simultaneously, so there is a motion on
10 the floor to direct Staff to develop a policy.

11
12 CHAIRMAN TOWARAK: Go ahead, Mr.
13 Haskett.

14
15 MR. HASKETT: But if I heard -- the
16 conversation's kind of built since then so we may want
17 to relook at whether we want to actually do that motion
18 now or go to where Bud -- I think where Bud and Tony
19 was, and see if the Board is comfortable with directing
20 Staff to come back with what the policy would look like
21 and what a regulation might look like, have further
22 discussion at one of the next meetings and decide if we
23 have a motion at that point or not so we actually have
24 something that's got some meat to it when we look at
25 it.

26
27 MR. CHRISTIANSON: So with -- Mr.
28 Chair, with the second's approval I would just go ahead
29 and rescind my motion and go ahead and direct Staff to
30 develop that policy and recommendations. I'll rescind
31 that motion.

32
33 MS. PENDLETON: Okay.

34
35 CHAIRMAN TOWARAK: Okay.

36
37 MR. HASKETT: I definitely concur.

38
39 (Laughter)

40
41 MR. HASKETT: I'm not going to beat
42 that dead horse.

43
44 (Laughter)

45
46 MR. HASKETT: I don't want to be
47 remembered for that quote either, Mr. Chair.

48
49 (Laughter)

50

1 CHAIRMAN TOWARAK: If you put it in
2 terms of beating dogs maybe it'd be more appropriate
3 for Alaska.

4
5 (Laughter)

6
7 CHAIRMAN TOWARAK: Okay, we have a
8 withdrawal of the original motion and the second agreed
9 to the motion and so we will -- that motion is no
10 longer on the floor.

11
12 Mr. Cribley.

13
14 MR. CRIBLEY: Yes, Mr. Chair, I'd like
15 to -- well, first like to remark that the Bureau of
16 Land Management is very sensitive to the term; beating
17 the dead horse, in a global sense.....

18
19 (Laughter)

20
21 MR. CRIBLEY:please understand
22 that.

23
24 (Laughter)

25
26 MR. CRIBLEY: But seriously, I would
27 like to propose a motion, a third option, which is to
28 direct Staff to develop options to address future rural
29 determinations.

30
31 MR. CHRISTIANSON: Second.

32
33 CHAIRMAN TOWARAK: You heard the motion
34 and a second. Any discussion on that motion.

35
36 (No comments)

37
38 CHAIRMAN TOWARAK: Not hearing or
39 seeing any, all those in favor of the motion say aye.

40
41 IN UNISON: Aye.

42
43 CHAIRMAN TOWARAK: Any opposed say nay.

44
45 (No opposing votes)

46
47 CHAIRMAN TOWARAK: Motion passes
48 unanimously.

49
50 There's a question from the Staff, do

1 we want to set any kind of a deadline on that motion.
2
3 Mr. Cribley.
4
5 MR. BROWER: Next meeting.
6
7 MR. CRIBLEY: Mr. Chairman. Could you
8 reread or read back to me my proposal, I'm not sure I
9 said it right.
10
11 MR. ARDIZZONE: Mr. Chair. My notes
12 say direct Staff to develop options to determine future
13 non-rural determinations.
14
15 MR. CRIBLEY: Okay. Okay. I thought I
16 -- I wasn't sure if I'd said non-rural or rural.
17
18 MR. ARDIZZONE: My question was, is
19 there a timeline that the Board would like to see that,
20 I mean it'd be nice to have some time to get that
21 developed for you.
22
23 CHAIRMAN TOWARAK: I would assume it
24 would be before the 2017 deadline.
25
26 (Laughter)
27
28 CHAIRMAN TOWARAK: Mr. Haskett.
29
30 MR. HASKETT: So could we just ask
31 Staff if it's possible to get us something back by our
32 next meeting.
33
34 MR. ARDIZZONE: Mr. Chair. Our next
35 meeting is in January of next year, that will address
36 FRMP projects, and then the meeting after that would be
37 April to do wildlife proposals. I'll have to defer to
38 Theo and maybe he can give us some guidance here.
39
40 MR. MATUSKOWITZ: I believe we'd need a
41 little bit more time because we would need to present
42 it to the Councils, we would have to plan for tribal
43 consultation and possibly gather the comments that
44 might be made at Council meetings from the public and
45 possibly your planned meetings, we could get comments
46 on that. So just because of the schedule, I believe
47 that your next meeting would be kind of pushing things
48 to get a quality project.
49
50 CHAIRMAN TOWARAK: Mr. Haskett what did

1 you say.

2

3 MR. HASKETT: I'll defer to Beth.

4

5 CHAIRMAN TOWARAK: Okay.

6

7 MS. PENDLETON: Through the Chair. A
8 question for you, Theo. If we had from the committee
9 and from OSM, if we had a set of options for Board
10 discussion, because I think one of the pieces that the
11 Board needs to discuss then is whether or not we would
12 move this forward as policy versus rulemaking or some
13 combination, as was presented by Mr. Frost. So, you
14 know, that's why I was wondering if we had something to
15 deliberate on and have those conversations and have
16 advice from Councils at our January meeting and get
17 some clarity on how we're going to move forward then, I
18 would think that would be in time for our spring RAC
19 meetings to be able to move something forward. It just
20 seems like we're going to need an opportunity for some
21 further conversation amongst the Board on whether or
22 not we move forward with policy, rulemaking or some
23 combination.

24

25 MR. MATUSKOWITZ: Through the Chair.
26 If we're just talking about a very rough outline, both
27 whether regulatory or policy, I believe we could have
28 something ready for you next year at your meetings. If
29 you're talking about specific meat to the policy and/or
30 the regulatory process I think we would need quite a
31 bit of input from the Councils. And even though they
32 would have the winter set of meetings, opportunity to
33 comment, I think they would want more time to really
34 review and, you know, discuss because it would concern
35 them so directly. So, yes, we could have a very rough
36 outline for you to -- you know, whether to decide
37 possibly go into policy versus regulatory route, but I
38 think it would be a lot missing because wouldn't have
39 the time to get specifics from each Council, have them
40 -- I would foresee this issue, as has been done in the
41 past, would be an opportunity to have, in addition to
42 Council input, but to have public meetings throughout
43 the state to have as much public comment as possible so
44 everyone would have a say, so to speak.

45

46 CHAIRMAN TOWARAK: You have a comment.

47

48 MR. ARDIZZONE: Mr. Chair. We surely
49 could have, as Ms. Pendleton said, something together
50 for January for the Board to give us more direction and

1 then we would have time to take it out to the Board
2 [sic], and as Mr. Cribley said, it's not an urgent need
3 at this moment, it's something we need to get done, but
4 there's no pressing communities that want to be
5 declared non-rural and so if we did that in January,
6 and the Board gives us the direction, we could have the
7 winter and the fall meetings to gather more information
8 then come back to the Board, probably, you know, at a
9 later date if that's what the Board so wishes.

10

11 CHAIRMAN TOWARAK: Thank you, Theo. I
12 assume that everyone's good with the process now and
13 we've got a general direction set. I'd like to take a
14 15 minute break if we could at this point and we'll
15 come back for more deliberations.

16

17 (Off record)

18

19 (On record)

20

21 CHAIRMAN TOWARAK: I'll call the
22 meeting back to order. We are on Item No. 5, action on
23 Council annual report replies.

24

25 Melinda Blake -- Burke.

26

27 MS. BURKE: Thank you, Mr. Chair.
28 Board members. Staff. Guests. Welcome to the
29 meeting. I'm filling in today for Carl Johnson, who's
30 the Council Coordination Division Chief. Melinda
31 Burke. Normally I coordinate Western Interior and
32 Northwest Arctic Councils. I'll be covering the annual
33 report replies to the Council's 2014 reports.

34

35 For the new Staff in the room, each
36 room the individual Councils make a detailed report to
37 the Board with issues of concern, items they would like
38 followup on and Staff is assigned to respond to those
39 and those are the responses we're going to be covering
40 today.

41

42 After your third tab you'll see annual
43 report replies and the first letter that comes up is
44 Southeast. In the italics there you see the actual
45 verbiage from the Council's letter and then you'll see
46 the response noted below from the Board. Southeast
47 Council this year has -- or for 2014, excuse me, has
48 four issues there, and hopefully everybody's had a
49 chance to review those, and at any time if there's any
50 questions or edits that need to be made on any

1 particular items please let me know and I'll be happy
2 to note them here today.

3

4 The one that I will bring up here for
5 Southeast is Item No. 3. It's a recurring theme that
6 you'll see from several of the Councils this year and
7 in years past there's been quite a bit of dialogue
8 that's taken place between the Councils, the Federal
9 Subsistence Board and PFMC [sic] regarding concerns.
10 One main thing that we see is the desire from the
11 Councils and from rural Alaska to see a designated
12 subsistence seat on that council. In this response
13 here from the Board to the Southeast RAC, some of the
14 items that are covered here are the response from the
15 Under Secretary of Commerce noting that a nominee
16 recently was appointed by Governor Walker to fill an
17 identified seat. Also they outline the fact that the
18 Council composition of the NPFMC is determined by
19 Congress, not the Secretary of Commerce. The Secretary
20 of Commerce actually appoints from a pool of nominees,
21 so it's not within the Board's scope of authority to
22 advocate for request changes to laws passed by
23 Congress. So that's outlined there for the Council as
24 well. And also the fact that the Magnuson-Stevens Act
25 is going through the process of reauthorization and it
26 outlines the changes that will be made.

27

28 So I wanted to bring that up.

29

30 Mr. Chair.

31

32 CHAIRMAN TOWARAK: Yes, I noticed
33 you've got draft stamped all over these documents and
34 if there's changes that we would like to make, this
35 would be the appropriate time to do it and then they
36 will be sent out.

37

38 MS. BURKE: Yes, sir, that's correct.

39

40 CHAIRMAN TOWARAK: Go ahead,

41 Commissioner.

42

43 COMMISSIONER COTTEN: May I make
44 comment on this last item.

45

46 CHAIRMAN TOWARAK: Yes.

47

48 COMMISSIONER COTTEN: I sit also as a
49 member of the North Pacific Council and am aware of the
50 request for participation by a subsistence user and as

1 been pointed out, the Magnuson Act described the number
2 of participants on the Council and there's been some
3 concern about expanding the number because the -- you
4 know, Alaska holds a majority on the Council now and
5 the -- a concern, if you change the composition of the
6 Council might be that you'd dilute that somehow, but,
7 perhaps not. So it's not a major concern that we --
8 that -- I don't think there's any opposition to
9 expanding as long as you'd maintain an Alaska majority
10 on the Council.

11
12 But secondly the advisory panel, which
13 is a -- to be a member of the advisory panel of the
14 Council, it's actually a competitive situation.
15 There's a lot of people that would like to be on the
16 advisory panel, and those seats are filled at the
17 December meeting. So, for example, this December we
18 will have some vacancies on the advisory panel and we
19 would appreciate hearing from people who are actual
20 subsistence users who might have an interest in
21 participating as a member of the advisory panel, which
22 is a good training ground for membership on the
23 Council. There'll also be two seats open on the
24 Council this next go around so, again, looking for
25 people that would be interested in participating at
26 either level.

27
28 CHAIRMAN TOWARAK: Thank you,
29 Commissioner, for that information.

30
31 MS. BURKE: Thank you, Mr. Chair. I'll
32 give the Board just a second, if there's anybody who
33 has anything they'd like to bring up with regard to the
34 Southeast Council's letter, any of the responses.

35
36 (No comments)

37
38 MS. BURKE: If not, I'll move on to
39 Southcentral.

40
41 Southcentral had nine items on their
42 annual report. One of the ones that I'm going to note
43 here at the beginning is another theme that you'll see
44 throughout some of the letters from throughout the
45 state, the FRMP program. The responses are pretty
46 similar in a lot of the letters. The FRMP guidelines,
47 the reviews, and it's emphasized that the Fisheries
48 Division is currently reviewing the guidelines and once
49 fully staffed they're exploring revisions, and so input
50 is definitely most welcome from the Councils.

1 You'll see the NPFMC item once again.

2

3 And if there's any suggestions, any --
4 anything anybody would like to discuss on Southcentral
5 I'm ready to take some notes.

6

7 (No comments)

8

9 MS. BURKE: Seeing none, the third
10 Council we have up is Kodiak/Aleutians.

11

12 The Kodiak/Aleutians RAC had seven
13 items on their annual report for the last fiscal year,
14 including emperor geese. One thing to note here is
15 there's been some really great dialogue that's been
16 happening between Migratory Birds and the -- the
17 Migratory Birds CoManagement Council and so the RAC is
18 really pleased at the recent presentations there at
19 their meetings.

20

21 One of the things that I also wanted to
22 highlight from this letter is the charter revisions
23 also. The Council really appreciates the recent
24 changes. For example, it's going to be possible once
25 we get response from the Secretary's for there to be
26 alternates to serve on the Council so that there is no
27 open periods where they might not have a quorum or if
28 we run into delays on the appointments as we have in
29 years past. Carl did want me to pass along that we're
30 still waiting on the response from Washington Office.
31 We've been in touch with Pat Pourchot's -- the person
32 who's replaced Pat Porchot, so we're in dialogue with
33 their office.

34

35 MR. BROWER: I have a question.

36

37 CHAIRMAN TOWARAK: Go ahead, Mr.
38 Brower.

39

40 MR. BROWER: Mr. Chair. So there's
41 really no communication on this issue with the
42 population threshold on emperor geese from ADF&G or is
43 there some -- what's happening here, is there a working
44 relationship with the division of Migratory Bird
45 Management and ADF&G to give out the information on the
46 threshold of the emperor geese. I'm just wondering
47 what the status is on this.

48

49 MS. BURKE: It sounds like ADF&G was
50 also at that last Council meeting and they did

1 participate in the dialogue. And it's also noted in
2 the response that Staff is going to take note and
3 provide updates to the Council as to any revisions to
4 the management plan for emperor geese, but it sounds
5 like many parties were at the table at the last RAC
6 meeting for a good discussion.

7

8 MR. BROWER: So, if I may, Mr. Chair,
9 one more. So they're working closely with Alaska
10 Migratory Bird CoManagement Council to see what can be
11 done on that issue, for support?

12

13 MS. BURKE: Mr. Brower, through the
14 Chair. I'm not sure of exactly if there's been a plan
15 laid out but I know that the -- the dialogue beginning
16 -- has -- has been a good start. And for a lot of
17 years this Council had been requesting detailed
18 information. They were very pleased with the exchange
19 so we're happy to follow up with -- with any plan that
20 was made at that meeting for future action but I -- I
21 don't have any further detail and what's present there
22 in the letter. But we'll be happy to follow up or if
23 there's any additions that need to be made.

24

25 MR. BROWER: Thank you.

26

27 MS. DEATHERAGE: Mr. Chair. This is
28 Karen Deatherage with -- I'm the coordinator for the
29 Kodiak/Aleutians RAC. And there's been a lot of
30 activity actually.

31

32 Last week the Pacific Flyaway's
33 Committee met because they're looking at actually
34 changing the plan and looking at new survey methods
35 which could actually result in a higher population of
36 emperor geese and allow for the threshold of 80,000
37 birds to be met so there can be a hunt. And the
38 Council has proposed, also, to allow for a 3,000 bird
39 harvest, legal harvest -- right now there's a lot of
40 illegal harvest, and they're working closely with the
41 Yukon-Delta RAC to try to minimize that illegal
42 harvest.

43

44 So there's a lot of great activity.

45

46 We haven't received the report back yet
47 from the Pacific Flyaways but once we do we'll
48 understand if they've made any changes to the plan for
49 emperor geese.

50

1 MR. BROWER: Thank you.

2

3 MS. BURKE: Any other questions or
4 comments regarding Kodiak/Aleutians annual report.

5

6 (No comments)

7

8 MS. BURKE: Next up we've got Bristol
9 Bay. There were two issues on Bristol Bay's annual
10 report.

11

12 Once again FRMP participation was
13 encouraged and also documentation of local observations
14 and TEK on concerns with the Chignik Lake salmon
15 returns.

16

17 If there's no questions or discussion
18 on Bristol Bay I'll move on to YK-Delta.

19

20 (No comments)

21

22 MS. BURKE: YK-Delta had four issues on
23 their annual report.

24

25 One that you will also see on the
26 Northwest Arctic, is Item No. 1 with the beavers and
27 beaver dams. And also some recent update on Issue No.
28 2, concerns about the moose count numbers and
29 methodology. Spencer Riorden's done a really great job
30 of dialoguing recently with the Council and there's
31 actually going to be a tribal consultation as well as a
32 telephone call with just the Council coming up real
33 soon to discuss that issue in expanded areas where
34 surveys are being conducted and improvements with that.
35 So the Council's pleased with developments of that
36 item.

37

38 If there's no questions or discussion
39 I'll move on to Western Interior.

40

41 (No comments)

42

43 MS. BURKE: You'll see NPFMC come up
44 here once again. There's also a concern here about
45 some dall sheep numbers. There's been a lot of dialogue
46 with BLM regarding that. As well as the Innoko Refuge
47 office move, which has come up the last couple of
48 years.

49

50 CHAIRMAN TOWARAK: Mr. Haskett.

1 MR. HASKETT: So we do have a couple
2 things we'd like added to this one.

3
4 I think it's good, the response that,
5 you know, we talked about the decline in budgets that
6 forced us to go ahead and close that office and the
7 cost analysis and the work we did with the community.
8 I think, though, we need to add that the Service worked
9 with the BIA to transfer excess property. In fact, I
10 owe a thanks to Bruce Loudermilk for making that
11 happen. We actually were working with Washington and
12 hit kind of an impasse. And we talked to people in the
13 community about turning over a bunch of our buildings
14 and Bruce actually helped us make that happen, and so
15 we appreciate that. So I think that needs to be in
16 there, that that includes houses, heavy equipment, and
17 vehicles to the local tribe, that we did.

18
19 Also another thing that we had promised
20 when we had to close down, is that, we knew it was very
21 important to maintain a connection with the tribes in
22 the area so we agreed to go ahead and create, at least
23 one position, we kept two Refuge Information
24 Technicians there, Native people that we hired that are
25 working with the communities, that stayed there. And
26 we also committed to continue field camps, science
27 camps and other outreach support in the McGrath area.

28
29 So there's a number of things that we
30 did to try and make a tough situation a little bit
31 better.

32
33 MS. BURKE: I've noted those, Mr.
34 Chair. And, Mr. Haskett, I'll work with Trevor to make
35 sure that those edits are incorporated.

36
37 Any other discussion or questions on
38 Western Interior.

39
40 (No comments)

41
42 MS. BURKE: Next up we've got Seward
43 Peninsula.

44
45 Seward Peninsula had three items on
46 their annual report this year. You'll see their
47 concern about decrease of availability of salmon
48 populations. You'll see another similar response with
49 regard to FRMP, outlining ways to participate, et
50 cetera.

1 If there's no questions there, you'll
2 see next up we have Northwest Arctic area.

3
4 (No comments)

5
6 MS. BURKE: For Northwest Arctic we had
7 five items on the annual report.

8
9 One of the things to highlight here
10 that you'll see on the North Slope annual report as
11 well, is the concerns about the hunting that's been
12 taking place in the region, especially with regard to
13 the lead cows which lead the caribou migrations.
14 There's great concern that when those lead cows, and
15 the first waves of caribou start to cross the rivers,
16 if they're disturbed, it's going to throw off the whole
17 migration pattern. So you'll see that also brought up
18 by the North Slope. And there's been a lot of
19 discussion about transporters and concerns with
20 different actions in the area, too. We appreciate the
21 agencies careful dialogue with the Council on those
22 actions -- those items.

23
24 Another thing, too, here, was the
25 Council really wanted to express their appreciation for
26 the presence at the Council meetings of the Board
27 members and of the Staff Committee members and really
28 want to see that continue.

29
30 No questions or comments on -- oh, Mr.
31 Brower.

32
33 MR. BROWER: I have one, thank you.
34 Mr. Chair, if I may, I noticed in two of the Advisory
35 Councils there's beaver concerns but abandoned beaver
36 and how it's affecting their fisheries and stuff like
37 that, and at the same time, I guess they're trying to
38 -- looking for some funding for removal from the Refuge
39 or is it from Wildlife Service, or whoever is in charge
40 of those.

41
42 MS. BURKE: Mr. Brower. Through the
43 Chair. In this region, in particular, the Council has
44 been working with Susan Georgette at the Selawik Refuge
45 and I know that there is a study which is being
46 proposed and they're working closely with Susan on
47 that. They really want to gather some local knowledge
48 on how the beaver damming has impacted the fisheries
49 and local harvest. So I know that they're definitely
50 in discussion with a project for that area and I

1 believe something has been submitted formally by Susan
2 and the Selawik Refuge.

3

4 MR. BROWER: Thank you.

5

6 MS. BURKE: You're welcome.

7

8 No other discussion on Northwest Arctic
9 we can move on to Eastern Interior.

10

11 (No comments)

12

13 MS. BURKE: Eastern Interior Council
14 had four items on their annual report.

15

16 One of the things here that I wanted to
17 note they requested information on how tribal
18 consultation with the Board and how the engagement with
19 the RAC process, interested in hearing from you all how
20 the Program's engaging with the tribes and since the
21 coordinator just joined me here at the table I'll let
22 Eva -- Eva go ahead, do you have anything you wanted
23 to.....

24

25 MS. PATTON: I didn't have anything,
26 it's an issue.....

27

28 MS. BURKE: Go ahead.

29

30 MS. PATTON: Greetings, Chairman
31 Towarak and Council members. I just actually wanted to
32 add one additional point that the Eastern Interior
33 Council had meant to include in their report.

34

35 At the winter meeting the Council
36 reviewed their annual report, they also held a joint
37 meeting with the Western Interior Council, and echoed
38 the concerns that Western Interior had identified in
39 their annual report of difficulties for rural residents
40 accessing the regulations.gov. So just wanted to make
41 sure that that was -- that was inadvertently left out
42 in the draft that came before the Board. So the
43 response from the Board would be essentially the same
44 unless you have additional discussion there.

45

46 I'd be happy to answer any questions on
47 any other topics as well.

48

49 Thank you.

50

1 MR. ARDIZZONE: Just for the record
2 that's one of our coordinators, Eva Patton, for the new
3 people in the room.

4
5 MS. BURKE: Any other clarification or
6 questions on Eastern Interior.

7
8 (No comments)

9
10 MS. BURKE: Then here to round it out
11 we've got the North Slope annual report.

12
13 There were seven items on the annual
14 report for North Slope this year.

15
16 One of the things that they did bring
17 up that we've heard from several other Councils during
18 meetings is the need for some workshopping on some
19 different -- some different items, such as ANILCA,
20 customary and traditional use, et cetera. There is
21 definitely some workshopping planned for the all
22 Council meeting next spring if we're able to pull that
23 off, we're still -- we're still waiting for some
24 contracting processes to happen and we're hoping that
25 we'll still be able to hold the all Council meeting,
26 but there's definitely some workshopping opportunities
27 that -- that will take place at that meeting if -- if
28 we're able to make it happen. And also there's been
29 some really great informational fliers and -- and one-
30 pagers and a lot of outreach that's come from our new
31 outreach coordinator, Deb Coble, so as we hear more
32 from the public and from the Councils on things that
33 need -- need some materials, tribes can request sending
34 out some of those materials might really help in their
35 discussions and their participation in this program.

36
37 And then I guess the only other topic
38 I'll bring up here at the end, then, Mr. Chair, and it
39 kind of ties in with the presence of the Board members
40 and the Staff Committee members at the meetings.
41 Another thing that is very helpful is being able to
42 hold meetings in the non-hub, in the rural villages,
43 when possible. It's not often that -- that we get to
44 do it but when -- when we do, we -- we really see some
45 great local participation and we're able to carry the
46 meetings to -- to folks who might not have participated
47 in the past and -- and it's really great to dialogue
48 with those communities. We've held some successful
49 ones the last couple of years and when we're able to do
50 that, with all of the cost considerations, logistics,

1 et cetera, it's -- it's really great when we can pull
2 it off, so they really want to still see us coming out
3 to -- to the villages when possible. And I know our
4 Staff's been working hard to try to make that happen
5 when we can.

6

7 CHAIRMAN TOWARAK: With that, in
8 regard, there was once a calendar that was distributed,
9 I think, to Board members, and asking for volunteers on
10 who would be available to attend the Regional Councils,
11 is that going to happen again.

12

13 MS. BURKE: Yes, Mr. Chair. I do have
14 the most current version of the fall 2015 calendar and
15 I will be joining you again in your executive session
16 to go over the Council nominations and panel report, so
17 I can hand this out to your Staff Committee members and
18 -- and to you folks as well and we can have a
19 discussion there at the end of that session if you'd
20 like, as far as some of the staffing and seeing some
21 early calendar and see maybe who we can pencil in for
22 some of these meetings.

23

24 Mr. Chair.

25

26 CHAIRMAN TOWARAK: If there's any one
27 person that I would like to see recognized, and he's
28 going to be recognized in Glennallen, I think, is Ralph
29 Lohse, has retired from the Regional Advisory Council
30 after how many years of service did he have, 25 years
31 or so.

32

33 MR. ARDIZZONE: Donald, can you help us
34 there.

35

36 MR. MIKE: Thank you, Mr. Chair.
37 Donald Mike, Council coordinator.

38

39 Yes, the Southcentral's going to have
40 its meeting in the Copper River, actually in Copper
41 Center at the AHTNA Cultural Center, and we're going to
42 recognize Mr. Lohse's service to the RAC, and I believe
43 he's been serving pretty close to 25 years -- actually
44 it's 22, if he reapplied it could be 25, but we will
45 hold a potluck for Mr. Lohse and recognize his service.
46 And we're planning on doing a potluck the first night
47 of our Council meeting.

48

49 Thank you, Mr. Chair.

50

1 CHAIRMAN TOWARAK: Thank you. Okay, if
2 we could have a motion for approving letters that would
3 go to -- okay, ratify the changes made by the Federal
4 Subsistence Board.

5
6 MR. CHRISTIANSON: So, Mr. Chair, I'll
7 make a motion to accept the annual report replies with
8 the modifications discussed here today.

9
10 MR. HASKETT: Second.

11
12 CHAIRMAN TOWARAK: You hear the motion
13 and a second. Any discussion or questions on the
14 motion.

15
16 (No comments)

17
18 CHAIRMAN TOWARAK: Not hearing any, all
19 those in favor of the motion say aye.

20
21 IN UNISON: Aye.

22
23 CHAIRMAN TOWARAK: Any opposed say nay.

24
25 (No opposing votes)

26
27 CHAIRMAN TOWARAK: Motion passes
28 unanimously. Thank you very much Natalie [sic].

29
30 (Pause)

31
32 CHAIRMAN TOWARAK: The next item on the
33 agenda is No. 6, Kenai River subsistence.....

34
35 MR. ARDIZZONE: Could we take like a 15
36 minute break while we hand out some material and stuff.

37
38 CHAIRMAN TOWARAK: Okay. And we're
39 going to take a couple minute break while material is
40 being distributed to the Board members.

41
42 Just in looking at the timeframe, we
43 think we can get this done before noon, and then
44 there's a request from a couple of Board members to
45 leave prior to noon, and I want to give you guys
46 authorization to go ahead and do that.

47
48 MR. HASKETT: I don't need to leave
49 until 2:30 or 3:00.

50

1 CHAIRMAN TOWARAK: Okay.
2
3 MR. HASKETT: You think we'll get this
4 done by noon?
5
6 CHAIRMAN TOWARAK: With this?
7
8 MR. HASKETT: Yeah.
9
10 CHAIRMAN TOWARAK: I think so.
11
12 (Laughter)
13
14 (Pause)
15
16 CHAIRMAN TOWARAK: Is there anyone here
17 from Ninilchik.
18
19 (No comments)
20
21 CHAIRMAN TOWARAK: Okay.
22
23 (Off record)
24
25 (On record)
26
27 CHAIRMAN TOWARAK: I'll call the
28 meeting back to order and I'll turn the meeting over to
29 the Staff.
30
31 Chuck.
32
33 MR. ARDIZZONE: Mr. Chair. Chuck
34 Ardizzone from the Office of Subsistence Management.
35
36 The topic we're going to cover is the
37 request we received from Ninilchik Traditional Council.
38 There's a number of requests submitted to the Board by
39 Ninilchik Traditional Council regarding Kenai Gillnet
40 Fishery via two separate letters; one dated July 17th,
41 2015, and one dated July 21st, 2015.
42
43 From the July 17th letter they had two
44 requests, one was to immediately overturn the decision
45 of the US Fish and Wildlife Service Cook Inlet in-
46 season manager, which closed the Federal fishery for
47 chinook salmon in the Kenai River downstream from the
48 outlet of Skilak Lake beginning at 12:01 a.m.,
49 Thursday, June 18th through 11:59 p.m., Saturday,
50 August 15th.

1 Their second request from that letter
2 was to immediately negate the decision of the US Fish
3 and Wildlife Service, which now refuses to authorize an
4 operational plan for a gillnet on the Kenai River for
5 the 2015 fishing season.

6
7 And then we had a second letter come in
8 on the 21st of July with three requests.

9
10 The first request was that the Federal
11 Subsistence Board immediately rescind the Federal Cook
12 Inlet in-season manager authority for Cook Inlet area
13 subsistence fishing. Current regulations allow for the
14 Federal in-season manager to make in-season closures
15 and changes to the subsistence fishing without approval
16 by the Federal Subsistence Board. This delegation of
17 authority should be immediately be rescinded.

18
19 Their second request from the July 21st
20 letter was; we request that the previous decision by
21 the US Fish and Wildlife Service Cook Inlet in-season
22 manager, which closed the Federal subsistence fishery
23 for the chinook salmon in the Kenai River downstream
24 Skilak Lake beginning on 12:01 a.m., Thursday, June
25 18th through 11:59 p.m., Saturday, August 15th be
26 rescinded by the Board. By removing the authority of
27 the in-season manager the Federal Subsistence Board can
28 reverse this decision and allow the Federal subsistence
29 chinook fishery on the Kenai to go ahead. So No. 2 in
30 the second letter is basically the same request as No.
31 1 from the first letter.

32
33 And the third request from the second
34 letter was that the Board remove or amend the language
35 from the Kenai River salmon community gillnet
36 regulation which states: one registration permit shall
37 be available and will be awarded to the Federal in-
38 season fishery manager -- awarded by the in-season
39 manager in consultation with the Kenai National
40 Wildlife Refuge based on the merits of the operational
41 plan. The registration permit will be issued to an
42 organization that as a community gillnet owner will be
43 responsible for its use and removal in consultation
44 with the Federal fishery manager as part of the permit.
45 The organization must, prior to the season, provide a
46 written operational plan to the Federal fishery
47 manager, including a description of how the fishing
48 time and fish will be offered and distributed among
49 households and residents of Ninilchik. After the
50 season provide written documentation of required

1 evaluation information to the Federal fishery manager
2 including, but not limited to persons or households
3 operating the gear, hours of operation and the number
4 of species caught and retained or released.

5
6 So those are the requests from the
7 letter. There was one additional request in the July
8 17th letter, and that was a request for a government to
9 government consultation with the Federal Subsistence
10 Board and NTC. This consultation was conducted on July
11 24th, 2015 and I have Orville Lind here to provide a
12 summary, and after Orville gives a summary I do have
13 some recommendations on these different requests from
14 the letters that I'll provide to the Board.

15
16 OPERATOR: And, sir, we do have a
17 question from the telephone audience when you're
18 comfortable with taking it.

19
20 CHAIRMAN TOWARAK: Let's go ahead and
21 hear the question.

22
23 OPERATOR: Thank you, sir. The
24 question comes from Sky Starkey.

25
26 CHAIRMAN TOWARAK: Go ahead, Mr.
27 Starkey.

28
29 MR. STARKEY: Are you ready for the
30 question?

31
32 CHAIRMAN TOWARAK: Yes, we are, go
33 ahead.

34
35 MR. STARKEY: Will there be an
36 opportunity to comment?

37
38 Thank you, Mr. Chairman.

39
40 CHAIRMAN TOWARAK: Yes, there will be
41 an opportunity after our briefing.

42
43 MR. STARKEY: Thank you, Mr. Chairman.

44
45 CHAIRMAN TOWARAK: Did you have
46 something to report regarding the tribal consultation.

47
48
49 MR. LIND: Thank you, Mr. Chairman.

50

1 CHAIRMAN TOWARAK: Go ahead.

2

3 MR. LIND: Good morning. I'm honored
4 to be here and to share some information with the
5 Ninilchik consultation which happened on July 24th from
6 10:00 to noon.

7

8 I'm not going to read you the whole
9 summary because some of you I see are going through it.
10 You know, Ninilchik Tribe did certainly express their
11 frustration over the Kenai River Federal subsistence
12 fishery closure. And, you know, the other important
13 note was, you know, Ivan, who's the executive director
14 also demonstrated the tribe's compliance as the Federal
15 Subsistence Board decision was made awhile back.

16

17 Again, the expression of the lack of
18 subsistence opportunities, as Greg described, is a
19 great injustice to other users -- as other users
20 continue to harvest chinook. And Mr. Encelewski stated
21 that the Alaska Department of Fish and Game has a net
22 in the river and release chinook with limited mortality
23 and that Ninilchik could do the same, however, even if
24 chinook were caught and did not survive the handling,
25 Ninilchik had C&T for chinook and, again, if any
26 harvest of the fish occurs it should be for subsistence
27 purposes before any others.

28

29 Mr. Williams, the tribe's resource and
30 environmental department director, and responsible for
31 the Kasilof River community net informed the meetings
32 attendees that since installment, the community net
33 harvested 146 sockeye salmon, which was as of Friday,
34 last week, approximately 40 hours of fishing and then
35 with one bycatch of one Dolly Varden which was caught
36 live and then released. And Darryl's point was that
37 such careful use of the net and monitoring demonstrated
38 on the Kasilof, that would also be used on the Kenai as
39 well.

40

41 There was an elder Mr. Dean Kashnikoff
42 who stated, you know, he mentioned we fought for our
43 small fishery and that we're being pressured by
44 politics and we're fighting for what's ours.

45

46 The legal counsel, Mr. Starkey,
47 reiterated Mr. Kashnikoff's testimony, in that, the
48 tribe has worked hard for their subsistence fishery and
49 that a customary and traditional use determination
50 controversy has long boiled around the Kenai because of

1 the heavy sport interest in the fish. Starkey asked if
2 the in-season manager is also -- is so concerned for
3 the conservation of the chinook, he should explain to
4 the community why hasn't the fishery closed down for
5 Federal waters. Additionally, he asked the Board to
6 advise OSM to conduct an independent analysis in
7 cooperation with the Ninilchik on the justification for
8 a biological concern that leads to closing of the
9 subsistence fishery and not any other.

10

11 Also Mr. Ivan's comments concluded
12 community discussion saying that Ninilchik worked with
13 the Fish and Wildlife Service on a plan for the Kasilof
14 and as part of the plan a 24 hour reporting period was
15 established and he agreed that it was onerous but
16 effective. The same management tools can be
17 established on the Kenai, however, Mr. Encelewski
18 finished by stating, we believe the underlying
19 intention is to undermine the village and to keep us
20 off the Kenai.

21

22 And that concludes the summary.

23

24 Mr. Chairman, thank you.

25

26 CHAIRMAN TOWARAK: Thank you. Are
27 there any questions for the Board, on the Staff.

28

29 (No comments)

30

31 CHAIRMAN TOWARAK: I assume that all of
32 this documentation, because it's relatively new has not
33 gone through the Regional Councils?

34

35 MR. ARDIZZONE: Mr. Chair. No, this
36 just occurred last Friday.

37

38 CHAIRMAN TOWARAK: Thank you.

39

40 Did you have more information, Mr.
41 Johnson.

42

43 MR. ARDIZZONE: Ardizzone.

44

45 CHAIRMAN TOWARAK: Ardizzone, I mean,
46 I'm sorry.

47

48 MR. ARDIZZONE: Mr. Chair. I do have
49 some recommendations, I think Donald Mike has some
50 additional information he'd like to add before I go

1 into my recommendations from OSM.

2

3 MR. MIKE: Thank you, Mr. Chair.

4 Donald Mike, Council coordinator.

5

6 During the July 24th consultation
7 process with the Ninilchik tribe and the Federal
8 Subsistence Board, the tribe brought forth its concerns
9 that it's -- discussions, as summarized by Mr. Orville
10 Lind's presentation, at the end of the consultation on
11 July 24th the State of Alaska issued an emergency order
12 to rescind it's latest emergency order and the tribe
13 wanted the emergency order as part of their
14 consultation discussion to the Board to be recognized.

15

16 Thank you, Mr. Chair.

17

18 And the concern that was forwarded by
19 Mr. Encelewski was emailed by Mr. Orville Lind for the
20 Federal Subsistence Board's reference.

21

22 Thank you.

23

24 CHAIRMAN TOWARAK: Thank you. Go

25 ahead, Mr.....

26

27 MR. ARDIZZONE: Mr. Chair. During the
28 consultation I did communicate with Ninilchik
29 Traditional Council on how OSM was going to brief the
30 Board on how to treat these different requests. OSM
31 worked with the Solicitor's office and determined how
32 we recommend the Board should address each request that
33 came from the Traditional Council.

34

35 The Traditional Council presented these
36 requests as special actions, however, based on our
37 analysis they do not meet the criteria established in
38 Section 19 of the regulations.

39

40 So from the July 17th letter, the first
41 request which was to overturn the in-season manager's
42 special action, Staff recommends that the Board address
43 this as a reconsideration, I guess a request for
44 reconsideration. And at the direction of the Board,
45 OSM will initiate a threshold analysis on that.

46

47 Request No. 2 from the July 17th
48 letter, immediately negate the decision of the in-
49 season manager. If the Board decides to take action on
50 that, the Staff recommends that this could be handled

1 administratively. The Board can give or remove a
2 delegation of authority at any time it sees fit, so
3 that could be done administratively.

4
5 From the July 21st letter, the first
6 request was to rescind the in-season management --
7 excuse me -- okay, so that would be rescind the
8 delegated authority and that would be by our
9 recommendation, could be handled administratively.

10
11 The second request is to rescind the
12 special action. Once, again, that would be considered
13 an RFR based on our recommendation.

14
15 And the third request, which wants to
16 change a lot of the regulatory language, that does not
17 fall under the purview of Section 19, which is the
18 special action regulations, or Section 20, which is the
19 request for reconsideration regulations, and that
20 should be submitted as a regulatory proposal during a
21 normal regulatory cycle.

22
23 So that's our recommendations to the
24 Board at this time, based on consultation with our
25 Solicitor's office.

26
27 CHAIRMAN TOWARAK: Go ahead Mr.
28 Loudermilk.

29
30 MR. LOUDERMILK: And I'm trying to
31 understand this and trying to wrap my head around it.
32 But I understand that you're recommending that this be
33 an RFR versus a special action as per Section 19.
34 Could you explain that a little bit better, I mean is
35 that something that we could discuss here to where I
36 might have a better understanding as to why it's not an
37 RFR -- or it's not a special action.

38
39 MR. ARDIZZONE: Mr. Chair. I'd have to
40 turn that over to Mr. Lord.

41
42 MR. LORD: Mr. Loudermilk. We
43 struggled a bit with this. I think the reason that
44 Ninilchik framed it as a special action is because
45 that's something we do quickly, whereas the request for
46 reconsideration process is a lengthy one, it's not
47 really meant to address the situation where we have to
48 act quickly and respond quickly to the situation in the
49 field. So what the Board could do is because this is a
50 delegation of authority from the Board to the in-season

1 manager, the Board retains the inherent authority to
2 review that in-season manager's decisions. So the
3 Board could just take this up, not under the RFR
4 process laid out in our regulations, but just as a
5 review of that delegated authority and that decision
6 here. So we struggled with what to call it, we didn't
7 want there to be confusion. But you could take it up
8 and review it quickly and turn it around, sort of in
9 the same manner as an RFR but not using our RFR process
10 laid out in regulation.

11
12 MR. LOUDERMILK: Thank you very much, I
13 appreciate that information. I guess, you know, as I
14 go through and I take a look at this and I look at the
15 decision that was made, obviously, it's something that
16 I'm struggling with and would like to, you know, get a
17 better understanding of as we work through it, but I
18 definitely can see the quandary that may be proposed
19 here. I kind of struggle with it being a special
20 action though, I really do.

21
22 Thank you.

23
24 CHAIRMAN TOWARAK: Go ahead, Mr. Frost.

25
26 MR. FROST: So for the new guy in the
27 room again, other than the length of the difference
28 between the special action and the RFR, can you sort of
29 substantively tell me what the difference is.

30
31 MR. LORD: The substance of it is
32 because Ninilchik is asking for this Board to overturn
33 a decision that has been made, it's not really a
34 special action. It's not a new decision that's being
35 made. They're asking for a review of an existing
36 decision.

37
38 MR. FROST: So outside of this specific
39 issue, can you explain what a special action does, how
40 a -- what's the difference between a special action and
41 an RFR?

42
43 MR. LORD: A special action is an out
44 of cycle action taken by the decisionmaker, whether
45 it's the Board or the in-season manager to address an
46 emergency or temporary situation that couldn't be
47 addressed during our regular regulatory cycle. It's
48 set forth in ANILCA in Title VIII and the Board is
49 given -- or the Secretary's are given that authority by
50 the statute.

1 And RFR or request for reconsideration
2 is a process set out in our regulations to review those
3 Board decisions that people want to -- it's part of the
4 administration process if people want to challenge or
5 question a Board decision. It's actually fairly a
6 lengthy process. We -- the way it's set up, we do a
7 threshold analysis, or actually OSM does a threshold
8 analysis, laying out for the Board whether or not the
9 RFR meets certain criteria for acceptance. Does it
10 give new information, does it lay out some -- an error
11 of law that the Board created. Those sorts of
12 questions. And if the decision is made by the Board to
13 accept the RFR because of one of those criterias is
14 met, then OSM launches into a more full complete
15 analysis of the issue for Board consideration. So it's
16 a process that can take a year sometimes.

17
18 MR. FROST: Right. Right. Right.
19 Okay, thank you.

20
21 CHAIRMAN TOWARAK: Go ahead, Mr.
22 Haskett.

23
24 MR. HASKETT: So when you said that we
25 might get this done by noon.....

26
27 (Laughter)

28
29 MR. HASKETT:I was thinking I
30 wouldn't ask this but I don't actually think we're
31 going to get it done by noon, I think we need to go to
32 executive session because there's a lot of questions
33 that I think we could have some discussion with that'll
34 be helpful and then go back into regular Board session
35 to go ahead and have some additional discussion. And
36 then maybe we want to do that after lunch, I don't
37 know.

38
39 CHAIRMAN TOWARAK: What's the wishes of
40 the Board, do you want to spoil your lunch before you
41 go.

42
43 (Laughter)

44
45 CHAIRMAN TOWARAK: We could wait until
46 after lunch, if we could reconvene at 1:00 o'clock.

47
48 MR. HASKETT: In executive session?

49
50 CHAIRMAN TOWARAK: And the purpose of

1 the executive session? We were instructed to minimize
2 the use of our executive session authority, what's the
3 purpose of the executive session?

4
5 MR. HASKETT: So I think there's a lot
6 of things that could be clarified in executive session
7 and still have the ability to talk about it in the open
8 session afterwards and I'd actually talked to Counsel
9 about this previously, I think that we'll be in a much
10 better place to have an understanding of what's
11 involved here if we have an executive session for some
12 short period of time, it wouldn't take long.

13
14 CHAIRMAN TOWARAK: What's the wishes of
15 the Board.

16
17 MR. LOUDERMILK: I agree.

18
19 CHAIRMAN TOWARAK: Okay, we will
20 adjourn this meeting and reconvene at 1:00 o'clock in
21 executive session then.

22
23 MR. HASKETT: We don't need to adjourn.

24
25 (Pause)

26
27 CHAIRMAN TOWARAK: Go ahead Mr.
28 Ardizzone.

29
30 MR. ARDIZZONE: Yeah, Mr. Chair, just
31 process, I think we need to recess, go into executive
32 session, come back and reconvene in the public meeting
33 again, we don't want to adjourn.

34
35 (Laughter)

36
37 CHAIRMAN TOWARAK: Okay. I stand
38 corrected.

39
40 MR. HASKETT: So.....

41
42 CHAIRMAN TOWARAK: Go ahead, Mr.
43 Haskett.

44
45 MR. HASKETT: So my request, just to be
46 a little more specific, is that, I don't think we need
47 to go to a full lunch, maybe we could just take 45
48 minutes, reconvene for the executive session, and then
49 come -- we're not adjourning; is that okay?

50

1 MR. LORD: I have another teleconference
2 at noon. I don't think it'll go very long but I'd
3 appreciate a little time to get something to eat.

4
5 (Laughter)

6
7 MR. HASKETT: So make it 1:00 o'clock.

8
9 CHAIRMAN TOWARAK: Okay, we will
10 reconvene -- take a break and reconvene at 1:00 o'clock
11 in executive session.

12
13 (Off record)

14
15 (On record)

16
17 CHAIRMAN TOWARAK: I would like to
18 reconvene this meeting. We are done with the executive
19 session. And to begin with, Ken, do you want to
20 explain what we need to do, or how we can't act on the
21 fourth one or fifth one.

22
23 MR. LORD: I was asked to clarify that
24 there is one request from Ninilchik, for those of you
25 who have seen the letter, it's the letter of July 21st,
26 the third request, where Ninilchik asks the Board to
27 remove or amend the language in regulation that
28 requires them to submit an operating plan. That's not
29 something we can do here today. That's a regulatory
30 proposal that would have to go through the regulatory
31 process and be reviewed and subject to public comment
32 and review by the Regional Advisory Council. So that's
33 something that we're going to have to hold off on.

34
35 CHAIRMAN TOWARAK: Thank you. So, Mr.
36 Haskett, do you want to bring us back to where we were
37 originally, and what kind of follow up you'd like to do
38 on the Ninilchik request.

39
40 MR. HASKETT: I'm not sure I was
41 expecting you to turn it over to me at this point.

42
43 (Laughter)

44
45 MR. HASKETT: Mr. Chair. So, Ken,
46 thank you for pointing out of the four things we can
47 take an action on, we can't on the one that's to revise
48 regulatory language and we'll need to address that some
49 other way so there's three items before us.

50

1 I guess I'd like to point out the
2 reason we're in the middle of these three items is that
3 the Board took a vote at our last session that's now
4 the subject of a number of requests for
5 reconsideration, both from the State and from the Fish
6 and Wildlife Service and from hundreds of other users.

7
8 The specific things that we're looking
9 at here today is that the in-season manager, who's
10 here, and I think we'll need to hear from him at some
11 point this afternoon, was given two operational plans
12 from Ninilchik, one on the Kasilof, and one on the
13 Kenai. The Kasilof is one that we all voted for to
14 move forward the last go around. The in-season manager
15 worked very closely with Ninilchik and was able to
16 approve that. The plan on the Kenai we have lots of
17 concerns with still, conservation concerns. Again, at
18 some point I think I'd like the in-season manager to be
19 able to talk about what those were, and he was unable
20 to approve that, based upon those concerns. And based
21 upon that action the three things we can look at today
22 is a request from Ninilchik to remove that in-season
23 manager's delegated authority as Federal in-season
24 manager, and the request to reverse existing special
25 action to close Federal subsistence fishing in the
26 Kenai and request to negate the decision the Service
27 did not authorize an operational plan for gillnet on
28 the Kenai River.

29
30 So that kind of frames what we're
31 looking at here.

32
33 I guess my suggestion is we need to
34 have, I think, presentations by folks about -- I mean
35 answering some of these things, and maybe based upon
36 the Board asking questions, I don't know how you want
37 to do that. I have both Andy Loranger, the Refuge
38 Manager, and Jeff Anderson, the in-season manager here
39 to answer questions about these actions. And I think
40 it's good that we have Sam Cotten here, too, to be able
41 to talk about State concerns as well.

42
43 So with that I'll turn it back to you
44 to decide how we'll move forward from here.

45
46 CHAIRMAN TOWARAK: Okay. We'll go
47 ahead and have your Staff come up and give us an update
48 on their actions. And, earlier, Sky Starkey was on the
49 line and I told him that in the public comment period
50 he would have an opportunity to address the Board, so I

1 hope if he's available I'd like to give him an
2 opportunity to respond or to update his -- he's
3 representing the Ninilchik Tribe, so we'd like to hear
4 from that too. But let's go ahead and start with your
5 Staff.

6

7 MR. HASKETT: Thank you, Mr. Chair. So
8 Andy and Jeff if you could come on up.

9

10 CHAIRMAN TOWARAK: While you're doing
11 that I skipped one small brief introduction. I'd like
12 to introduce Mike Johnson. Mike has taken Pat
13 Pourchot's place with the Secretary of the Interior's
14 Office here in Anchorage and I'd like to give him an
15 opportunity to say hello.

16

17 MR. JOHNSON: Thank you.

18

19 CHAIRMAN TOWARAK: Thank you for your
20 patience. Go ahead.

21

22 MR. ANDERSON: Mr. Chair. Board
23 members. For the record, my name's Jeff Anderson and
24 I'm the field supervisor for the Kenai Fish and
25 Wildlife Field Office for the US Fish and Wildlife
26 Service, and in that capacity I'm delegated authority
27 as the in-season manager for Cook Inlet Federal
28 Fisheries.

29

30 I issued an emergency special action on
31 June 17th that closed the Federal subsistence fishery
32 for early run chinook salmon in all Federal public
33 waters of the Kenai River downstream from the outlet of
34 Skilak Lake through August 15th of 2015. And that
35 action in concert with an emergency order from the
36 State of Alaska closed the sportfishery and the Federal
37 subsistence fishery and it, in essence, prohibited all
38 fishing for early run chinook salmon in the Kenai River
39 watershed. They are two distinct runs of chinook
40 salmon that enter the Kenai River. There's an early
41 run that's managed through a separate plan. They enter
42 the river, pass the sonar site up to and including June
43 30th it's managed for an escapement goal of 5,300 to
44 9,000 fish. It's also managed to achieve size specific
45 objectives to conserve the large chinook salmon that
46 enter the run so there's actually a slot limit that
47 folks have to release fish within the slot limit to
48 protect some of the larger fish in the early run. The
49 late run starts to enter the Kenai River on July 1st
50 and, you know, typically runs through the month of July

1 is when the sportfishery occurs, but the run continues
2 through the middle of August. And those two distinct
3 runs are managed with two distinct management plans.

4
5 And, although, you know, like right
6 now, the early run chinook salmon there's been no
7 directed sport or Federal subsistence fish -- sport,
8 commercial or Federal subsistence fisheries throughout
9 the 2015 run, either in the Kenai River, in State
10 waters or in Federal waters. So there has been no --
11 no user groups have targeted the early run chinook
12 salmon. That's been closed to all users.

13
14 The late run fishery started on July
15 1st in the lower river below regulatory markers and it
16 has continued and it started with a no bait restriction
17 but it has since been liberalized because the late run
18 is returning stronger than expected initially and there
19 has been a -- there's been a targeted sport fishery,
20 there's been commercial fishing that has occurred on
21 that stock as well, and with the recent liberalization
22 to bait, there has been -- actually harvest is allowed
23 in the personal use dipnet fishery at the mouth of the
24 Kenai River as well.

25
26 While all this is happening the river,
27 above regulatory markers, below Slikok Creek has
28 remained closed to protect the fish that have already
29 passed through all of the fisheries and are, you know,
30 either spawning or staging to spawn, these are in
31 tributaries or the mainstem Kenai River right now.

32
33 My emergency special action, you know,
34 on June 17th has kept the fish -- the Federal
35 subsistence fishery along with all others closed.

36
37 And although the return of 6,100 and
38 some fish in 2015 exceeded the lower bound of the early
39 run escapement goal range, is the fourth lowest return
40 on record, and the fifth lowest escapement on record.
41 Moreover, the composition of the early run in recent
42 years has been increasingly skewed towards smaller,
43 younger fish, and nearly half of the return in 2015 was
44 less than 30 inches, most of which are likely males.
45 Achievement of the lower bound, the escapement goal,
46 does not alleviate our conservation concerns for this
47 stock and we're not comfortable allowing any harvest of
48 these fish.

49
50 As I mentioned earlier, fishing for

1 early run chinook salmon, in Federal waters of the
2 Kenai River, which is where my delegated authority lies
3 has been closed to all users throughout the 2015
4 season. The Federal special action in concert with the
5 State's emergency order has prohibited all fishing for
6 early run chinook salmon in the Kenai River.

7
8 Recent research that's been conducted
9 by the Alaska Department of Fish and Game indicates
10 that some early run chinook salmon are present and
11 spawning in Federal waters of the mainstem Kenai River
12 until mid- to late August. Between 2010 and 2013 the
13 Department successfully radiotagged and tracked fish to
14 those spawning areas and a very small number -- well,
15 and actually they radiotagged and tracked 241 early run
16 chinook salmon to spawning areas but only six of those
17 fish, about 2.5 percent spawned in the Federal waters
18 of the mainstem Kenai River below Skilak Lake. If we
19 assume a similar spawning distribution in 2015, only
20 about 150 of those early run fish are likely expected
21 to spawn in the mainstem area this year, but there's a
22 lot of uncertainty in that number. Regardless of the
23 uncertainties that's a very small number of fish in the
24 area at this time. And because of the uncertainties in
25 the data in these estimates, none of these fish really
26 represent a harvestable surplus.

27
28 So I hope the Board does not rescind my
29 delegated authority because I believe I am doing the
30 right thing to conserve early run chinook salmon
31 through my special action. We are at -- you know, even
32 though the lower bound, the escapement goal has been
33 achieved this year, it's the fourth lowest total return
34 on record, we are at historically low abundance levels,
35 and the small number of fish that are spawning or
36 staging to spawn on Federal waters right now do not
37 represent a harvestable surplus.

38
39 Conservation is at the heart of ANILCA
40 and conservation is at the heart of our mission with
41 the Fish and Wildlife Service. If my last act as the
42 delegated in-season manager is to conserve early run
43 chinook salmon, I'm okay with that because I feel I've
44 done my job.

45
46 And I'm happy to take any questions.

47
48 CHAIRMAN TOWARAK: Thank you. Are
49 there any questions.

50

1 Go ahead.
2
3 MR. LORD: Thanks, Jeff. So you said
4 that the early run chinook spawn in the mainstem until
5 mid-August, maybe late August, when are those late run
6 fish going to hit the upper Federal waters, roughly?
7
8 MR. ANDERSON: They will overlap
9 somewhat with the early run and there'll be a
10 combination of both early run and late run fish in the
11 upper mainstem through, sometime in mid- to late
12 August.
13
14 MR. LORD: But the special action that
15 closes the fishing right now expires when?
16
17 MR. ANDERSON: August 15th.
18
19 MR. LORD: August 15th, okay, thank
20 you.
21
22 CHAIRMAN TOWARAK: Mr. Christianson.
23
24 MR. CHRISTIANSON: So, like I was going
25 to ask a similar question, so the late run -- the early
26 run should be done spawning August 15th time period?
27
28 MR. ANDERSON: That's actually
29 probably, you know, towards the -- you know, the peak
30 of -- or the tail of when they're actually spawning up
31 there.
32
33 MR. CHRISTIANSON: Okay, thank you.
34
35 MR. ANDERSON: But they're likely
36 present and spawning through most of August.
37
38 MR. CHRISTIANSON: Okay. And so the
39 other ones would be available then later August,
40 probably into September?
41
42 MR. ANDERSON: That's correct.
43
44 MR. CHRISTIANSON: And that run this
45 year is a little bit more sizeable but still small?
46
47 MR. ANDERSON: No, I think the run.....
48
49 MR. CHRISTIANSON: The late run.
50

1 MR. ANDERSON:is coming in pretty
2 strong.....

3
4 MR. CHRISTIANSON: Pretty good.

5
6 MR. ANDERSON:right now and it's
7 been -- the sportfisheries and commercial fisheries
8 have been liberalized because of the run strength, the
9 mainstem late run fish are coming in pretty strong this
10 year.

11
12 MR. CHRISTIANSON: And my next question
13 then, I guess, the target species isn't the chinook to
14 begin with, it's sockeye, you know, are the sockeye
15 present in that mainstem that late?

16
17 MR. ANDERSON: The sockeye are present
18 and, you know, available to subsistence users. I think
19 the dipnet on the Russian River, at the Russian River
20 Falls, people catch fish up until the day it closes on
21 August 15th.

22
23 MR. CHRISTIANSON: Oh, so it's closed
24 then.

25
26 MR. ANDERSON: So that's the dipnet
27 fishery at the Russian River Falls, it's open to
28 harvest of sockeye throughout the rest of the year
29 basically, if they're still present and depending on
30 run timing and run strength, yes, they are still
31 available in parts of the river as well but so are
32 other fish at that time so.

33
34 CHAIRMAN TOWARAK: Mr. Loudermilk.

35
36 MR. LOUDERMILK: Good afternoon, my
37 name's Bruce Loudermilk, I'm with the Bureau of Indian
38 Affairs, Federal Subsistence Board member.

39
40 I guess in trying to clarify in my
41 mind, it's my understanding and I don't want to put
42 words in your mouth, but you worked with the State in
43 determining based on the numbers that this was the
44 opportunity -- closure that needed to happen; does that
45 make sense?

46
47 MR. ANDERSON: Yes.

48
49 MR. LOUDERMILK: I'm a new -- I keep
50 saying I'm the new kid on the block, I ain't going to

1 be able to say that much longer but.....

2

3 MR. FROST: I'm the new kid on the
4 block.

5

6 MR. LOUDERMILK:anyway -- he's
7 the new kid on the block, okay.

8

9 (Laughter)

10

11 MR. LOUDERMILK: So you worked with the
12 State on that, right?

13

14 MR. ANDERSON: We consulted with the
15 local area manager, yes.

16

17 MR. LOUDERMILK: Okay. And that was
18 part of the impact of the decision and why it needed to
19 be closed because of the numbers and in conjunction and
20 working with the State that determined.....

21

22 MR. ANDERSON: Correct.

23

24 MR. LOUDERMILK: Correct, okay. Okay,
25 so now based on that determination then, was the -- did
26 this also impact sportfishing, this closure?

27

28 MR. ANDERSON: Sportfishing for early
29 run chinook salmon was closed throughout the entire
30 season up until June 30th, is when the early run
31 sportfishery usually.....

32

33 MR. LOUDERMILK: Okay.

34

35 MR. ANDERSON:ends and then
36 there's other regulations that continue into mid-July
37 but those were taken care of because of the closure
38 above Slikok Creek closed all fishing for chinook
39 salmon throughout the year.

40

41 MR. LOUDERMILK: And is sportfishing
42 being allowed now then?

43

44 MR. ANDERSON: Not with -- not above
45 the regulatory mark or below Slikok Creek, so
46 sportfishing for chinook salmon is closed in the upper
47 river in the same area where the Federal subsistence
48 closure remains. Sportfishing is open below regulatory
49 markers, below Slikok Creek so it's the lower mainstem,
50 about the lower 17, 18 miles of the river.

1 MR. LOUDERMILK: Okay. So the
2 subsistence fishing and, bear with me as I go through
3 this, the subsistence fishing would definatley have an
4 impact on the sportfishing that is in the lower part of
5 the river?

6
7 MR. ANDERSON: Not at all, sir.

8
9 MR. LOUDERMILK: Not at all.

10
11 MR. ANDERSON: Not at all, sir. The
12 Federal waters of the Kenai River represent about seven
13 miles of the lower 50 miles, about five of those miles
14 are directly below Skilak Lake and there's about
15 another 2.5 mile stretch in the Moose Range Meadow
16 section, so 7 miles of the lower 50 miles of river are
17 -- are what constitute Federal waters in the Kenai
18 River, below Skilak.....

19
20 MR. LOUDERMILK: And it's at the tail
21 end.....

22
23 MR. ANDERSON:Lake.

24
25 MR. LOUDERMILK:then, okay, thank
26 you.

27
28 MR. ANDERSON: Correct.

29
30 MR. LOUDERMILK: Thank you.

31
32 MR. FROST: So what happens after
33 August 15th. This special action closes everything
34 until August 15th, what happens after that? Is there
35 any opportunity for subsistence fishing after that?

36
37 MR. ANDERSON: There is. Federal
38 subsistence regulations in the Kenai River run through
39 the middle of September for chinook salmon and other
40 species, other salmon species with rod and reel gear.

41
42 MR. FROST: So is -- so could there be
43 an opportunity, given an appropriate plan, for the
44 Ninilchik to do some fishing, Federal subsistence
45 fishing between the August 15th and September 15th,
46 given the proper plan?

47
48 MR. ANDERSON: With rod and reel gear
49 as I -- I think the regulations, as adopted for a
50 community gillnet fishery to run from June 15th to

1 August 15th, so that's -- those dates are established
2 in regulation.

3

4 CHAIRMAN TOWARAK: Go ahead Tony.

5

6 MR. CHRISTIANSON: Yeah, I guess that's
7 it -- so the regulation that we did put in place
8 doesn't go to September 15th, it would have ended on
9 the August 15th deadline so.....

10

11 MR. ANDERSON: That is correct.

12

13 MR. CHRISTIANSON: Yeah, okay, I think
14 that was your question.

15

16 MR. FROST: But that's something we
17 could change in the future if we wanted to, to allow
18 opportunities, potentially. That's within our control.

19

20 CHAIRMAN TOWARAK: On paper it is,
21 yeah.

22

23 (Laughter)

24

25 CHAIRMAN TOWARAK: But my understanding
26 there wouldn't probably be any fish -- and it's right
27 in the middle of spawning grounds, right, even for
28 reds, is it?

29

30 MR. ANDERSON: That's correct. All
31 species of salmon. In essence that's what that area of
32 the Kenai River represents, it's a spawning area for
33 chinook salmon, sockeye salmon, coho salmon, pink
34 salmon. So starting when the early run chinook begin
35 spawning in that area in late July and through
36 September there's one species or another of salmon is
37 spawning in that stretch of river, correct.

38

39 CHAIRMAN TOWARAK: Go ahead.

40

41 MR. FROST: So I'm the new guy on the
42 block. I'm the real new guy on the block.

43

44 (Laughter)

45

46 MR. LOUDERMILK: As long as you're not
47 the new kid.

48

49 (Laughter)

50

1 MR. FROST: New guy, new kid, new gal,
2 whatever.

3
4 So from the discussion that I -- I
5 wasn't at the discussion when the last Board met, Joel
6 Hard was here on my behalf, but I've had lots of
7 discussion since then and have tried to read all the
8 material. And I guess what I hear is I hear a lot of
9 no, no, no, here are all the reasons why we can't fish,
10 could you, as an in-season manager help the tribe
11 figure out how they could fish or is this -- I mean
12 where is the window of opportunity to allow the
13 Ninilchik to try and get their subsistence allocation
14 as opposed to we just can't do it with what you've
15 given us. Is there -- I mean do you understand what
16 I'm saying?

17
18 MR. ANDERSON: Right now the rural
19 residents of Ninilchik have the opportunity to harvest
20 any species except chinook salmon in the Kenai River.
21 They also have, you know, they can be fishing right now
22 for chinook salmon and all other species in the Kasilof
23 River through established rod and reel, dipnet,
24 fishwheel and a community -- an experimental community
25 gillnet fishery as well so there are opportunities for
26 rural residents of Ninilchik to harvest fish in either
27 river. Right now the only restriction is through my
28 special action to conserve early run chinook salmon has
29 closed harvest of chinook salmon in the Kenai River.
30 And within the Kenai River Federal -- you know,
31 management of Federal subsistence fisheries for early
32 run chinook salmon has always been conservative.
33 Basically the only fishery -- the only Federal
34 subsistence fishery in the Kenai River authorized to
35 harvest early run chinook salmon is the rod and reel
36 fishery, even with the Federal subsistence dipnet
37 fisheries in the Kenai River, it required -- Federal
38 subsistence users are required to release early run
39 chinook salmon.

40
41 MR. FROST: So maybe I didn't ask the
42 right question.

43
44 So I understand that.

45
46 But what the Ninilchik is asking is to
47 allow gillnet in the Kenai for coho.....

48
49 MR. CHRISTIANSON: Reds.
50

1 MR. FROST: Reds, sorry. And -- but
2 there might be some bycatch from chinook, which is the
3 concern, right, so the question is, they can't -- using
4 the rod and reel, using all the techniques you talked
5 about, they're still not making their allocations, so
6 is there a way to allow them to try and reach their
7 allocations with a gillnet on the Kenai -- so going
8 back to my question, is there a way to help them reach
9 their allocations using all of the available methods or
10 is it just no because it's -- because the Kenai is just
11 -- it just won't work? And maybe I'm not articulating
12 that very clearly.

13
14 But my question is, what I've heard is,
15 you can't do this, you can't do this, you can't do
16 this, you can use some of these methods but these
17 methods aren't as efficient, potentially as gillnet, is
18 there a way to use a gillnet to help them reach their
19 allocation as opposed to just saying -- just -- as
20 opposed to just saying no. Is there some way that you
21 could envision an opportunity for gillnet use to help
22 the tribe reach their allocation on the Kenai.

23
24 MR. HASKETT: So before he answers.

25
26 CHAIRMAN TOWARAK: Go ahead, Mr.
27 Haskett.

28
29 MR. HASKETT: So before he answers,
30 just, I guess a couple of things, Bert, with the way
31 you asked that question.

32
33 I think it's good, I'm looking forward
34 to the answer on the gillnet question, but just the way
35 you phrased it, we just say, no, no, no, no, no, what I
36 heard from him is there's lots of places we're saying
37 yes, there's some specific areas, so what you meant to
38 ask was, just specific as a way to use the
39 gillnets.....

40
41 MR. FROST: Right.

42
43 MR. HASKETT:then I just wanted
44 to clarify that.

45
46 MR. FROST: Yeah, no, absolutely, no, I
47 understand you can use rod and reel, you can -- there's
48 a fishwheel available, did I hear you say dipnets, too,
49 so there are methods. But for the gillnet -- but,
50 again, they're not reaching -- being able to reach

1 their allocation, right, is that a correct statement?
2 They're asking to reach up to their 4,000 fish limit
3 and they can't -- they can't get to that level using
4 those other methods; is that a correct assessment?

5
6 MR. ANDERSON: To date, I think the
7 maximum harvest with all communities and all gear types
8 in all fisheries in the Kenai River has been about
9 1,800 fish so it's not -- it's, you know, the fishery
10 is not being fully, you know, realized to its full
11 potential using existing gear or any other gear type at
12 this point and I don't know that it's a specific
13 allocation limit that, you know, but anyway I can
14 answer your question about.....

15
16 MR. FROST: Okay, yeah, go ahead.

17
18 MR. ANDERSON:the gillnets. And
19 we were able to, you know, develop modified regulatory
20 language to implement an experimental community gillnet
21 fishery on the Kasilof River because we could identify
22 a time and area where the fishery could occur and could
23 take place without having adverse impact on species or
24 stocks of concern and avoid fishing in important
25 spawning areas. However, for the Kenai River, you
26 know, we could not identify a window of time or area
27 for the gillnet fishery that would provide opportunity
28 to harvest any salmon species while avoiding fishing
29 gillnet on important mainstem spawning grounds for
30 chinook, sockeye, coho, and avoid impacts of non-target
31 rainbow trout and Dolly Varden stocks or to address the
32 longterm sustainability of early run chinook salmon and
33 Kenai River rainbow trout and Dolly Varden populations
34 all which have specific harvest limits and size
35 restrictions to meet management goals and objectives.

36
37 CHAIRMAN TOWARAK: Go ahead, Mr.
38 Haskett had a question, but what I'd like to point out,
39 too, I wished we had had this early on when we started
40 our discussions, to have a map of the rivers and, you
41 know, it would clearly show us where the boundaries
42 are, you know, it's just like hunting in rural Alaska,
43 you don't know if you're stepping on Federal land or
44 State lands, which regulations to follow. I think
45 we're having the same problem with the Kenai. We --
46 you know, it sounds like the intent on the Kenai for
47 chinook would sit right in the middle of spawning
48 grounds and, you know, I don't think any of us would
49 support that if they're going -- if they were allowing
50 themselves to catch spawning chinook. Anyway that's

1 what -- a map would have really helped a lot.

2

3 Geoff had his hand up first, and then
4 you Mr. Loudermilk.

5

6 MR. HASKETT: Well, just a
7 clarification and I'll ask you if this is correct.

8

9 So it's my understanding that the
10 Ninilchik Traditional Council didn't request to harvest
11 sockeye, they asked to harvest all salmon, and the
12 4,000 limit we keep talking about is not just for them,
13 it's for Hope, Cooper Landing and Ninilchik, it's not
14 just for Ninilchik, correct?

15

16 MR. ANDERSON: That's correct, sir.

17

18 MR. HASKETT: So I just thought that's
19 worth clarifying for everybody as well.

20

21 CHAIRMAN TOWARAK: Okay.

22

23 MR. LOUDERMILK: A question for you,
24 can you tell me about some of the outreach and some of
25 the communication steps you took to work with the
26 subsistence users when you were, you know, making this
27 decision or when you were contemplating and the process
28 you went through and the input that they may or may not
29 have had.

30

31 MR. ANDERSON: Sure. Actually it
32 started -- I think I received draft operational plans
33 at the end of May and, you know, through some initial
34 email and phone call back and forth, we had a face to
35 face meeting on, I believe it was June 8th I actually
36 went down to Ninilchik and met with Mr. Ivan Encelewski
37 and Mr. Greg Encelewski and we discussed operational
38 plans, specifically focusing on the Kasilof River. And
39 at that point in time I had also discussed I would
40 likely be issuing a special action to restrict the
41 chinook salmon fishery for Federal subsistence users
42 and, you know, I think at that point both Ivan and Greg
43 expressed their concerns -- or asked if it was
44 necessary and asked, you know, other -- all other users
45 be restricted as well and at that point the State had
46 issued their emergency order that closed the early run
47 chinook salmon sportfishery since, I believe, February
48 or March -- it had been in place for a long time at
49 that point in time and when I was in Ninilchik we, you
50 know, the discussion came up about, well, what about

1 the fisheries that are occurring out in Cook Inlet
2 right now that are targeting those stocks and I
3 mentioned that, you know, my delegated authority was
4 within Federal waters of the -- you know, the Federal
5 conservation units and in this case it's the Kenai
6 National Wildlife Refuge, so my authority was limited
7 to freshwater and not extended to those other
8 fisheries.

9

10 And that's when the consulta -- the
11 consultation started their initial -- yeah.

12

13 MR. LOUDERMILK: So -- and excuse me
14 for my candor here and my directness here, but is it my
15 understanding then that your decision was already made
16 when you made that initial contact with the subsistence
17 users? Did I understand that correctly or am I not
18 correct?

19

20 MR. ANDERSON: I think the conservation
21 concerns existed prior to my even going down to
22 Ninilchik, yes, based on the forecast for the early run
23 and how the run was coming in, it was, you know, it was
24 coming in a little bit early and it looked like at that
25 point it was still small fish and there was a question
26 on whether the escapement goal was going to be
27 achieved.

28

29 MR. LOUDERMILK: And that was
30 articulated to them at that point in time?

31

32 MR. ANDERSON: It was -- it might have
33 been articulated the day after I left because at that
34 point I was waiting for another update from the Alaska
35 Department of Fish and Game, they usually crunch their
36 numbers.....

37

38 MR. LOUDERMILK: So their.....

39

40 MR. ANDERSON:and come up with
41 things on Tuesday.

42

43 MR. LOUDERMILK: Okay. I apologize for
44 interrupting. So their take on it is that after the
45 initial contact, you know, they were still hopeful that
46 something could be done; is that correct? Maybe I'm
47 putting words in your mouth or something like that but
48 they were probably still holding out hope then after
49 that initial meeting that they had with you?

50

1 MR. ANDERSON: No, I think I was fairly
2 clear that I would likely be issuing a Federal special
3 action that would close the early run fishery.

4
5 MR. LOUDERMILK: Thank you.

6
7 MR. HASKETT: May I?

8
9 CHAIRMAN TOWARAK: Yes, go ahead,
10 Geoff.

11
12 MR. HASKETT: Thank you. So, Jeff, I
13 thank you for -- you're not done yet, but I thank
14 you.....

15
16 (Laughter)

17
18 MR. HASKETT:for doing, I think,
19 an excellent job of laying out what your concerns are
20 and giving more information to the Board on what you're
21 dealing with on this, and it feels a little bit like
22 you're on trial here to me, so thank you for dealing
23 with it the way you are.

24
25 Bruce, one of your questions, I guess
26 I'd like to answer is that the in-season manager, their
27 job -- in-season manager, any part of the state is to
28 be making predictions on what those levels of fish are
29 going to be and they actually have pretty good ideas
30 ahead of time about what it's going to be, that's not
31 unusual or something different, I mean that's across
32 the board, everywhere in the state, every in-season
33 manager. So the fact that Jeff had some kind of idea
34 about where he might be is not an unusual thing.

35
36 CHAIRMAN TOWARAK: Mr. Frost.

37
38 MR. FROST: So I'm going back to my
39 former line of questioning, sorry.

40
41 (Laughter)

42
43 MR. LOUDERMILK: Good man.

44
45 (Laughter)

46
47 MR. FROST: Well, I'm just trying to
48 understand.

49
50 So given the circumstances we're here

1 today, there's no way you could see a gillnet being
2 permitted on Federal waters for -- for any reason.
3 There's no way to make a gillnet work; is that correct?

4
5 MR. ANDERSON: Not with the regulations
6 as they've been adopted and the other -- regulations
7 that do exist for established fisheries on the Kenai
8 River which include size selective harvest of early run
9 chinook salmon and size selective harvest of rainbow
10 trout and Dolly Varden. Gillnets are a non-selective
11 gear type that regardless of how well they're fished I
12 mean there's going to be unintended mortality of fish
13 that are not legal to harvest under existing
14 regulations.

15
16 MR. FROST: And those types of concerns
17 aren't there on the Kasilof, you don't have those same
18 constraints?

19
20 MR. ANDERSON: We were able to identify
21 a time and area where we could fish a gillnet on the
22 Kasilof River that did not impact species of concern
23 which were late run chinook salmon and steelhead for
24 the most part, and we could avoid fishing on known
25 spawning grounds for salmon. And we were able to
26 identify a site where I think it's working.

27
28 CHAIRMAN TOWARAK: Mr. Cribley.

29
30 MR. CRIBLEY: Playing games here. If
31 you got into a situation where you had a real strong
32 early run, unusually strong early run of chinooks,
33 would you then consider gillnets or would the other
34 concerns still override your decision to not allow
35 gillnets regardless of the size of the chinook run?

36
37 MR. ANDERSON: I think regardless of
38 abundance, what Federal waters represent on the Kenai
39 River below Skilak Lake are primarily spawning grounds
40 for chinook salmon. We do not think fishing a gillnet
41 on known spawning areas for chinook or other species is
42 a good thing. And I don't -- I don't see any easy way
43 to, right now, to -- the size selective regulations for
44 early run chinook salmon, you have to release a fish,
45 you know, within 46 and 55 inches. I don't know how
46 you release a 50 inch chinook salmon and expect it to
47 survive without, you know, without having unintended
48 mortality that, you know, does not allow us to manage
49 the fishery at that point.

50

1 CHAIRMAN TOWARAK: Go ahead, Tony.
2
3 MR. CHRISTIANSON: And then when we
4 were getting our briefing part of it was a, you know,
5 little bit of success with the management plan being
6 put in place on the Kasilof, what type of numbers -- I
7 know they have a, what, a 24 hour reporting requirement
8 with that as well, and how many fish to date in general
9 do you know they've caught?
10
11 MR. ANDERSON: I think to date, I got,
12 this morning, Darryl Williams, their science
13 coordinator has been in charge of operating the net and
14 he's been emailing me data sheets basically every
15 evening when he gets off the water, I think last
16 night's harvest -- or yesterday's harvest was six
17 sockeye salmon and I think to date they've harvested
18 about I want to say 171, 175, somewhere in that
19 neighborhood, sockeye salmon. They've also released
20 quite a few sockeye salmon, like was mentioned during
21 the tribal consultation they released a Dolly Varden,
22 it was a small Dolly Varden successfully. They also
23 harvested a lake trout that could not be released
24 successfully and they've released a few pink salmon as
25 well, about 170 sockeye to date.
26
27 CHAIRMAN TOWARAK: Just -- I've got a
28 question and it doesn't have to be from you -- or maybe
29 it could be you, is Kasilof the only tribe that's
30 eligible to fish in the Kasilof?
31
32 MR. ANDERSON: It's qualified rural
33 residents of Ninilchik and I think the Ninilchik
34 Traditional Council or the Ninilchik Tribe is the only
35 ones.
36
37 CHAIRMAN TOWARAK: But on the Kenai
38 there's other communities.
39
40 MR. ANDERSON: The communities of Hope
41 and Cooper Landing are also eligible.
42
43 CHAIRMAN TOWARAK: Okay.
44
45 MR. ANDERSON: Have customary and
46 traditional use determinations for salmon and resident
47 species on the Kenai River as well.
48
49 CHAIRMAN TOWARAK: Thank you.
50

1 MR. ANDERSON: But Ninilchik -- or
2 excuse me, the Kasilof River is exclusively for
3 Ninilchik rural residents, those fisheries.

4
5 CHAIRMAN TOWARAK: Thank you.

6
7 MR. FROST: So the Federal waters
8 within the Refuge, is that all spawning grounds, I mean
9 does the spawning grounds encompass the entire -- I
10 mean we just draw lines on a map but I'm sure the
11 spawning grounds go -- they taper off, there's high
12 concentrations and low concentrations, but the waters
13 within the Refuge is it all considered the spawning
14 grounds for salmon or are there -- I'll just stop.

15
16 MR. ANDERSON: In one form or another,
17 yes, salmon spawn throughout all of the Federal waters.
18 There are higher density areas than others and I think
19 there's a few areas below -- a few miles of river below
20 Skilak Lake that are some of the highest density
21 chinook salmon spawning in the entire river. They also
22 spawn throughout the Moose Range Meadows area, which is
23 the lower stretch between Stop Mile 26 and 29, in that
24 area, although the densities are not as high. But
25 chinook salmon spawn in both of those area, sockeye,
26 coho, and pink salmon also spawn in those areas as
27 well.

28
29 MR. FROST: And are there areas outside
30 the Refuge that are also spawning grounds?

31
32 MR. ANDERSON: Yes, there are.

33
34 MR. FROST: And I don't know who to ask
35 this question, but on those spawning grounds, maybe
36 that's Sam's question, outside on those spawning
37 grounds, what's the harvest regime on those spawning
38 grounds, outside the Refuge?

39
40 COMMISSIONER COTTEN: I think I might
41 have to have our fish scientist, Charlie Swanton, come
42 up here and help out with that. We've got.....

43
44 MR. HASKETT: You need to hit your
45 microphone.

46
47 COMMISSIONER COTTEN: Would it be
48 acceptable to have Charlie come up.

49
50 CHAIRMAN TOWARAK: Yes.

1 COMMISSIONER COTTEN: Do you have the
2 question.

3
4 MR. SWANTON: Thank you, Mr. Chairman.
5 For the record my name is Charlie Swanton, I'm the
6 Deputy Commissioner for the Alaska Department of Fish
7 and Game.

8
9 I believe that the question had to do
10 with what the regulations were in and around areas of
11 spawning that were outside of the Refuge boundaries.

12
13 MR. FROST: Yes.

14
15 MR. SWANTON: Well, recognize the fact
16 that, you know, we could spend an inordinate amount of
17 time discussing this, not measured in minutes or hours
18 or days, possibly into years with regards to the
19 complexity of this situation, but recognize the fact
20 that by and large we consider it from a biological
21 standpoint that the early run are typically tributary
22 spawning fish. There are some mainstem spawning fish
23 for the early run whereas the late run is typically, on
24 general, is mainstem spawning, so they're spawning in
25 the Kenai River, mainstem. And the concentrations,
26 larger or smaller concentrations are all related to the
27 quality of spawning habitat exists for that particular
28 species.

29
30 So for example, areas where you have
31 spawning habitat for chinook salmon, larger chinook
32 salmon, you know, you're looking at fist size or better
33 cobble for chinook salmon, and then it degrades down
34 from that for sockeye, pinks, and so forth, so you can
35 have them commingled and spawning in the same general
36 area because of the habitat from the main channel to
37 the off channel to, you know, more of the shallower
38 areas.

39
40 So I don't know if I directly answered
41 your question but there's restrictive regulations for
42 each one of those species, probably more so on that
43 river than any other river in the state that I can
44 think of.

45
46 Mr. Chairman.

47
48 CHAIRMAN TOWARAK: Go ahead.

49
50 MR. FROST: So just to followup, so

1 there's no fishing for the early run inside on Federal
2 waters; is that correct, did I hear that numerous times
3 today?

4

5 MR. ANDERSON: This year the fishery
6 for early run chinook salmon has been closed to all
7 users throughout the run, yes.

8

9 MR. FROST: Throughout the run, both
10 State and Federal?

11

12 MR. ANDERSON: Yes.

13

14 MR. FROST: I was going somewhere but I
15 lost my train of thought so I'll have to come back.

16

17 CHAIRMAN TOWARAK: Go ahead.

18

19 MR. SWANTON: Mr. Chairman. In answer
20 to that question, I believe in 2015 and also in 2014
21 that the fishery was closed pre-season for the early
22 run. So well in advance based upon general ideas with
23 regards to production that had existed since
24 essentially 2009/2010, that it was determined in both
25 years relative to the pre-season forecast that existed
26 for the early run that the prudent thing to do was to
27 close it to all fishing, so that's what we did, pre-
28 season. So it was done March, early April.

29

30 CHAIRMAN TOWARAK: Go ahead, Bruce.

31

32 MR. LOUDERMILK: I guess I have a
33 different question here and different line here, but,
34 you know, we had the consultation with Ninilchik and
35 one of the things they talked about was the impact of
36 the gillnets on the chinook and their contention or
37 their thoughts are is that it was minimal, if I
38 understood that correctly, and if somebody else
39 understands it differently please let me know, do we
40 have any kind of information on that, one way or the
41 other, what that impact is from those gillnets, or that
42 gillnet?

43

44 MR. ANDERSON: Could you please
45 clarify, are you speaking affects of gillnets in
46 general on chinook salmon and other species or a
47 specific?

48

49 MR. LOUDERMILK: I guess I'm talking in
50 regards to the gillnet on the Kenai, that Ninilchik is

1 using. During our consultation that was one of the
2 things that they brought up as a point, that the
3 impact, that they believe the impact was not as severe.
4 So I guess I don't really know, I mean that's one thing
5 I guess I'd like to get some clarification on.

6

7 MR. ANDERSON: I guess a lot of the
8 research I've been looking at and that we've been
9 considering has been done on some sport -- or
10 commercial fisheries in the Lower 48 and even with fish
11 friendly tangle nets, which is a small mesh gillnet of
12 about two and -- you know 4.5 inch mesh size is
13 designed to catch a fish in its mouth and avoid getting
14 on the gills, even using, you know, a small mesh tangle
15 net, fish friendly handling techniques, short soak
16 times and using live recovery wells of one sort or
17 another to revive a non-target fish and able to release
18 it, even under the best case scenario, I mean the
19 research is showing about a 30 percent mortality which
20 is not acceptable for management of an in-river
21 fishery.

22

23 CHAIRMAN TOWARAK: Any further
24 questions.

25

26 MR. BROWER: I have one.

27

28 CHAIRMAN TOWARAK: Go ahead.

29

30 MR. BROWER: Is that a concern -- when
31 you mean closed for all fishing, does that mean sockeye
32 too for when there's no concern of conservation but
33 conservation of chinook, that sockeye is closed too,
34 right.

35

36 MR. ANDERSON: Sir, the sockeye -- the
37 only fishery that's been restricted on the Kenai River
38 is Federal subsistence fishing for -- excuse me, the
39 only Federal subsistence fishery that's been restricted
40 is for chinook salmon, all other fisheries for all
41 other species are open so dipnet fisheries for sockeye
42 are opened, rod and reel fisheries for sockeye are open
43 in Federal waters of the Kenai River.

44

45 MR. BROWER: At the same time, when you
46 close that gillnetting, you didn't give the people a
47 chance to harvest their stock of sockeye salmon for
48 their use, they only got what 174 out of 4,000
49 allocated number.

50

1 MR. ANDERSON: I guess to date the
2 harvest on the Kasilof River has been about 170 sockeye
3 salmon. There has been other -- there's actually been
4 other -- rural residents of Ninilchik have harvested
5 about 65 fish with the dipnet fishery in the upper
6 Kasilof River. There's also been rural residents of
7 Ninilchik that have harvested fish, I'm not sure of the
8 exact number, but likely close to 35 or 40 on the
9 Russian River Falls dipnet fishery on the Kenai River
10 as well. And I know there are numerous rural residents
11 from Ninilchik who, as we speak, are participating in
12 the rod and reel fishery in the Moose Range Meadows
13 area on the Kenai River and it's.....

14
15 MR. BROWER: I'm referring to Kasilof
16 when there was a concern for conservation for chinook
17 and they closed gillnetting, it wasn't open for sockeye
18 gillnetting, we never allowed it, I mean there's no
19 conservation issue, they were not allowed to fish with
20 gillnet to get their stock; is that right?

21
22 MR. ANDERSON: The Federal subsistence
23 fishery for chinook salmon has not been restricted on
24 the Kasilof River this year, and the gillnet fishery
25 for sockeye salmon is occurring, the experimental
26 community gillnet fishery is occurring as we speak.
27 It's authorized to run through the end of the month.

28
29 MR. BROWER: The way I understood it it
30 was closed though, right?

31
32 MR. ANDERSON: No, sir it was not.

33
34 MR. BROWER: No. They still would have
35 fished then.

36
37 MR. ANDERSON: The Federal subsistence
38 fishers?

39
40 MR. BROWER: Yes.

41
42 MR. ANDERSON: Yeah, NTC is the gillnet
43 owner. You know, we approved their operational plan on
44 July 13th and they were fishing the same day.

45
46 MR. BROWER: Thank you.

47
48 CHAIRMAN TOWARAK: Well, thank you.
49 The trial of Jeffrey Anderson is over.

50

1 (Laughter)
2
3 MR. HASKETT: Thank God.
4
5 (Laughter)
6
7 CHAIRMAN TOWARAK: Thank you. Again, a
8 lot of information and this map helps me a lot in
9 understanding some of the issues.
10
11 Mr. Haskett.
12
13 MR. HASKETT: So this may not be
14 appropriate and only if the Board's willing to do it,
15 Bud's giving me a weird look.
16
17 (Laughter)
18
19 MR. HASKETT: So, I mean as everybody
20 knows, I just checked my flight it's a little bit late
21 so I'll be able to stick around a little bit longer
22 than I thought but.....
23
24 CHAIRMAN TOWARAK: I'd like to have you
25 wait for a second.
26
27 We've got on line some people from
28 Ninilchik.....
29
30 MR. HASKETT: Okay.
31
32 CHAIRMAN TOWARAK:and they would
33 like to speak to the Board while we're on open -- the
34 public testimony.....
35
36 MR. HASKETT: So.....
37
38 CHAIRMAN TOWARAK:and from the
39 ADF&G.
40
41 MR. HASKETT: So I can reserve after
42 that.....
43
44 CHAIRMAN TOWARAK: Yes.
45
46 MR. HASKETT:to suggest what I
47 was going to suggest, yes?
48
49 CHAIRMAN TOWARAK: Yes.
50

1 MR. HASKETT: Okay, thank you.

2

3 CHAIRMAN TOWARAK: Okay. We'll go to
4 Greg in Ninilchik and Sky, I don't know who wanted to
5 speak first.

6

7 (No comments)

8

9 CHAIRMAN TOWARAK: Is there anyone in
10 Ninilchik or representing Ninilchik that's on line.

11

12 MR. I. ENCELEWSKI: Can you hear us?

13

14 CHAIRMAN TOWARAK: Yes, go ahead.

15

16 MR. I. ENCELEWSKI: Okay, you can hear
17 us now?

18

19 CHAIRMAN TOWARAK: Yes.

20

21 MR. I. ENCELEWSKI: Okay, thank you,
22 Mr. Chairman. This is Ivan Encelewski here with the
23 Ninilchik Traditional Council and I'm here with Greg
24 Encelewski.

25

26 And I appreciate the opportunity to
27 provide some comments here today and I think it's very
28 important, and with the indulgence of the Board, to
29 hear -- we'll try and keep it short, but there's a lot
30 of misinformation that was provided in the previous
31 testimony and I'd like for you guys to hear us out on
32 some of these issues. And with that I will just go
33 ahead and start.

34

35 You know, one of the comments that -- I
36 listened for the last 45 minutes and I just want to
37 respond to a few things here. One, the idea that we,
38 you know, these designated areas, it's almost like US
39 Fish and Wildlife is saying, you know, that we have
40 other opportunities in the Kenai River say for, you
41 know, sockeye and stuff like that, the other
42 opportunities like this gillnet, they simply haven't
43 worked. And I think the idea that the allocation, we
44 don't get the allocation -- you know, when the
45 information of 1,800 fish, as you're aware there's zero
46 chinook taken on the last two -- for Federal
47 subsistence fishing -- I mean since the inception of
48 this there's almost zero chinook take at all. So, you
49 know, the Kasilof River was approved but that didn't
50 even get close to our allocation, so you can see that

1 the other fishery -- by them saying, oh, well, that's
2 -- that's almost like saying there's another Safeway to
3 buy fish too but that doesn't hold any water because
4 we're not able to get our allocation through the
5 existing methods and means of pole, dipnet, and so
6 that's why this gillnet is absolutely paramount to our
7 ability to get those fish. You're talking about a
8 4,000 allocation, Ninilchik residents took 187 sockeye
9 in 2013 and 214 in 2014, so we're not even getting a
10 minuscule amount of our fishing opportunity,
11 allocation.

12

13 Another thing that was brought up that
14 is completely wrong is, is that there's this idea of
15 saying that there's no other fisheries going on. Well,
16 they're kind of arguing semantics because there are
17 other fisheries that are going on. The trolling --
18 sportfishing trolling occurs here in Ninilchik by
19 hundreds and thousands of boats and they're all taking
20 chinook salmon in the Cook Inlet and all those fish go
21 up to the Kenai and spawn. They go to Kenai and
22 Kasilof. There is a commercial fishery operation for
23 setnetters that begins before the last week of June so
24 the commercial setnetters are fishing. The drift
25 fishermen fish about halfway into June, so they're
26 fishing for two weeks in the Inlet taking those fish.
27 Those fish don't drop out of a helicopter and get from
28 the Cook Inlet into the upper mainstream of the river,
29 they have to go to there. So if you've taken a fish out
30 of the lower stream through trolling, sportfishing,
31 commercial fishing, you're taking out a potential
32 Federally-spawning early run king. And so their
33 argument is that it's okay, that those aren't really
34 Federal fisheries or fisheries in-river, yeah, that's
35 correct, but they're still harvesting and taking out
36 tons of fish that would escape otherwise if those
37 fisheries weren't occurring. So it's a little
38 disingenuous to say everybody wasn't fishing, that's
39 not true, everybody was fishing in different areas,
40 those stocks are being targeted just in saltwater, not
41 in freshwater.

42

43 You know, I heard the analysis of this
44 net, you know, Jeff makes a comment about the net, the
45 State of Alaska runs a net in the Kenai every day and
46 so it'd be interesting to say Jeff is basically saying
47 it's high mortality with a net and, yet, I don't think
48 the State of Alaska views that every fish, that every
49 king salmon they catch dies in their test -- in that
50 fishery. So what's good for the goose is good for the

1 gander. If they can have a net and not kill fish in
2 the lower stream, certainly we can have a net in the
3 upper stream and not kill fish. This idea of high
4 mortality rate is not really -- it really doesn't come
5 to fruition.

6
7 I'm a little bit concerned here from
8 Ninilchik's point, is, what we're trying to do is
9 absolutely wrong in the discussion today, we're trying
10 to rehash the whole fishery. This is not about the
11 whole fishery. We're talking today about whether a net
12 can go in the water or not, that has already been
13 decided. This discussion and what not was hammered
14 away at the Federal Subsistence Board. The US Fish and
15 Wildlife, the in-season manager were adamantly opposed
16 to it, said that it couldn't be done, but, yet the
17 Federal Subsistence Board approved this fishery 5/3.
18 There's a thing called rule of law, and the rule of law
19 is that this regulation and this fishery has been
20 approved by the Federal Subsistence Board and it's
21 almost like what we're doing today is talking about
22 like a request for reconsideration, rehashing the whole
23 argument of whether a net can go in the water or it
24 can't, when it shouldn't -- specifically germane to the
25 actions that we're requesting today, which is, is this
26 a conservation, did the in-season manager make a proper
27 decision, not whether this fishery should happen or
28 not. That's already been decided. The Federal
29 Subsistence Board said, yes, this fishery will move
30 forward, and they will work with the Ninilchik
31 community to develop an operational plan.

32
33 Now, the US Fish and Wildlife Service
34 is basically on record now in saying that they are
35 vetoing and usurping that authority and that rule of
36 law. They're saying that there is no way that a
37 commercial -- or a setnet [sic] can be in the river and
38 not cause harm, so basically they're saying they're not
39 -- never going to issue a permit or an operational
40 plan. That is usurping the authority of the Federal
41 Subsistence Board which has already said that this
42 fishery will go forward, it will exist, they heard
43 those arguments, they hashed them out at the Federal
44 Subsistence Board and that they can't come back now and
45 say we have a right to usurp the Federal Subsistence
46 Board by simply saying it can't be done. Because what
47 happened is a regulation was put into law and a
48 regulation, which mandated that the operational plan be
49 approved by US Fish and Wildlife, which essentially
50 then allows them to veto the entire Board's authority.

1 I want to get you a couple of things
2 real quickly about conservation. We've heard a lot
3 about conservation today. You know, the biologists and
4 scientists set the escapement goal, 5,300 to 9,000
5 fish, 6,190 was the escapement goal. They've been
6 trying to spin it one way or the other and say that's
7 lower than normal, or the lowest in years but that
8 meets their lower end of the threshold by over 1,000
9 fish. And so having say conservation, yet we met our
10 conservation goal, is an oxymoron, it's not correct.
11 And remember that the ANILCA subsistence fishermen have
12 an absolute priority.

13
14 The other thing is that their argument
15 completely fails because the whole premise for not
16 authorizing an operation plan is predicated on the fact
17 that we're going to take all these chinook. So their
18 sole reason for not authorizing the fishery is based on
19 we're going to take chinook. And so that's
20 posteriation and conjecture, that's not reality. And
21 so, you know, when we look at the actual harvest
22 numbers and one of the things that we opposed
23 adamantly, the special action request to close down the
24 fishery for chinook was there's been zero harvest, even
25 when the fisheries were open over the years there's
26 been next to very, very little chinook harvest for
27 Federal subsistence. So, you know, that just really
28 doesn't, you know, hold water to us.

29
30 You know, we talk about the chinook
31 runs and they're talking about, yeah, they're strong,
32 you know, all the empirical evidence has shown that the
33 chinook run this year is stronger than ever. You know,
34 the headlines around here indicate or suggest the runs
35 of king salmon in the lower Cook Inlet streams are
36 arriving early and in better numbers than expected,
37 stronger early run of kings, more kings than reds and
38 topsy-turvy years. So, you know, this whole idea that
39 they can say, oh, we meet our escapement goals, but
40 it's a conservation concern because we postulate that
41 they're going to potentially catch kings, which we
42 don't know, because they haven't even allowed it. You
43 know that old saying, we can't even fail if we don't
44 try.

45
46 So one of the other things that we can
47 do and as part of the conservation methods which was
48 designed for this fishery was 24 hour reporting. So
49 the fishery manager with the Kasilof plan implementing
50 a 24 hour reporting requirement, how can you say

1 there's conservation concerns when you have the only
2 user group that has a finite limit of fish and that
3 they have the ability to shut it down in one day. So,
4 you know, and out of all postulation and conjecture we
5 go in there one day and take 10 kings he could close it
6 down that day and say, you know, I was right. But when
7 you have a 24 hour reporting period where the plan can
8 be shut down immediately how can you say in one breath,
9 we met our escapement, yeah, they're smaller, whatever,
10 but we can't even allow you to go one day fishing for
11 what the Federal Subsistence Board has legally and the
12 rule of law said, that we absolutely have the right to
13 do and then they think they can usurp that.

14

15 Now, I do want to say one thing real
16 quickly on the issue of Jeff, and I don't want to start
17 anything but Jeff has not been forthright in the
18 assessment of the plan when he talks about whether we
19 -- known whether there would be a plan or not, and if
20 you look at the special action request of July 17th it
21 includes emails between Jeff and I. And he's correct,
22 on the 8th we met with Jeff and I, we did indicate
23 those concerns, on the 9th he emailed us -- he emailed
24 me directly. He said that he would be drafting an
25 emergency special action to close the Federal
26 subsistence fishery for chinook salmon and not
27 authorize a gillnet. So I would point to future
28 emails, where we talked about -- I emailed him back and
29 said, so -- he emailed back later July 6th and said,
30 special action request 10-KS-15-01 prohibits
31 subsistence fishing for chinook salmon using a gillnet
32 in the Kenai River but did not preclude development of
33 an operational plan for a community dipnet fishery.

34

35 (Teleconference warbling)

36

37 MR. I. ENCELEWSKI: So then I emailed
38 back, thanks, Jeff, can you provide comments on the
39 Kenai operational plan that we submitted, like he did
40 originally for the Kasilof, because we were looking at
41 getting that plan moving forward on the Kenai as well,
42 also maybe we can make the final approved Kasilof plan
43 as a good example for a starter on the Kenai when we
44 get this plan approved here today. So we were
45 absolutely under the assumption that we were still
46 working towards a Kenai operational plan. On July 8th
47 Jeff emailed, Hi Ivan, I suggest waiting until we
48 finalize the Kasilof plan first. So this does not
49 indicate that he specifically told us on June 8th that
50 there was no (phone cutting out) no further communication.

1 So I'd also point to the letter from
2 July 16th, 2015. The second paragraph, first sentence.
3 We have not provided feedback to date on the
4 operational plan for the Kenai River. So they admit
5 that they just simply never -- never made any plan or
6 attempt to comment or work towards the operational
7 plan.

8
9 And lastly on the process part. So the
10 second part of this is process. If the US Fish and
11 Wildlife Service refuses to issue -- has refused to
12 issue an operational plan or work towards a plan in
13 direct conflict with what the Federal Subsistence Board
14 has said, they basically, once, again, they're trying
15 to usurp that authority and so we worked -- we felt
16 like we would put it forward, ideas for Kenai, from the
17 Kasilof (phone cuts out) working on the Kasilof first,
18 but we were never given an opportunity -- and it's
19 contrary to the process, whereby the Federal
20 Subsistence Board expected that the Kasilof in-season
21 manager would work with us to develop that plan. But,
22 yet, you know, the fish caught were either caught up
23 river or before they get up river is semantics, so
24 basically we're being punished and we're the only user
25 group. And we feel like under the Katie John Decision,
26 if you're going to -- if there's a conservation concern
27 then the Feds should be closing down those other
28 fisheries which are taking fish that would spawn under
29 the early run kings, and so that has to be done before
30 there's closing of Federal subsistence fishing.

31
32 So, anyway, I'm going to let Greg make
33 a comment or two and we'll go from there.

34
35 MR. G. ENCELEWSKI: Yeah, this is Greg
36 Encelewski. If I've got a chance I just want to speak
37 on behalf of the tribe. I am representing the tribe.
38 I'm the president and chairman. And, you know, we
39 worked this very hard and we feel we're being just
40 completely slapped in the face. Everyone is enjoying
41 bumper years of harvest and fishing and we're the only
42 user group -- I just want to give you a little mental
43 picture and you could take all the semantics you want
44 about spawning grounds and all this BS, you know, you
45 start off with Ninilchik, you got all the charter
46 boats, you got all the rod and reels in the streams,
47 you go up along, you got setnetters all the way up, you
48 got drift boats all the way up, you got dippers in the
49 Kasilof, you got dippers in the Kenai, you got rod and
50 reel fishermen here and there. We asked for a

1 meaningful preference that we're totally entitled to,
2 totally approved and we finally got our operation plan
3 in the Kasilof, we got one year left, a couple locals
4 from the tribe and the community, you see them up there
5 with a box with a half a dozen (phone cutting out) we
6 proved that it works, we proved we didn't take
7 incidental kings, we didn't even get a chance to even
8 try this a little bit -- when you talk about these
9 nets, it's such incidental, it's a small gillnet, we
10 could pull it, we have to pull it, 30 minute soak
11 times. It's absolutely ludicrous what's being done
12 here. It's shameful. It's disgraceful. And we're
13 just totally disgusted. And I can't say much more but
14 my board is on me, it's just -- we're fit to be -- to
15 no end. It took my whole day -- I'm a very busy guy at
16 this time, like every one of you are, and days and days
17 and days fighting this for -- for what, for being just
18 totally what we feel is discriminatory and of no cause.

19

20 Thank you.

21

22 MR. I. ENCELEWSKI: And this is Ivan
23 again. And I want to follow up on that, what Greg
24 said.

25

26 You know, we really feel like this is
27 a, you know, a push to stymie the process for our Kenai
28 plan because what we believe it will show is just like
29 it showed on the Kasilof, that we haven't caught or
30 harmed any fish. Think about this, we were told, and
31 you've heard that from many people, that the nets would
32 kill everything, that we would catch all the fish, you
33 know. Well, look at the Kasilof. We haven't caught
34 one king, we haven't caught one steelhead. And here
35 when you look at the numbers there's about 177 fish
36 harvested in the Kasilof gillnet, that's been fishing
37 for two weeks. So for two weeks we've had our net in
38 the water, we left the weekends, we haven't fished the
39 weekends, we caught 177 reds. So even using this
40 gillnet, it doesn't even provide -- and they told us,
41 well, we're going to set a gillnet, we're going to
42 catch all of these fish, it absolutely didn't come to
43 fruition. So now the basis of denying our Federally-
44 mandated subsistence right is based on postulation and
45 conjecture. And it's based on postulation that we're
46 going to take and harvest and hurt these chinook
47 salmon. We wouldn't be here talking, there'd be an
48 operational plan approved if it wasn't for these early
49 run chinook. So the only reason that this fishery is
50 being denied is based on that postulation, well, it

1 didn't come true on the Kasilof.

2

3 And so, you know, not even allowing an
4 opportunity for one or two days to try it out, and, in
5 fact, when we talked with Jeff Anderson at our in-
6 person meeting, that was something he mentioned. He
7 specifically mentioned his opposition, of course their
8 opposition to conservation concerns, but he asked
9 specifically, well, why didn't you put that plan in for
10 at least for a day or two, and we still don't think
11 that that's necessary, that we should be able to fish
12 more, but, yeah, why are we being denied an opportunity
13 to fish, even to try it out when we know the anecdotal,
14 empirical evidence shows on the Kasilof that there's no
15 harvest and no harm to the incidental fish. So it
16 really is just -- it runs contrary to, you know, to sit
17 there and make all the postulation and conjecture that
18 we're going to sit there and harvest all these kings,
19 well it just didn't come to fruition, isn't going to
20 come to fruition.

21

22 We've said it for two decades, every
23 time we've gone to the Federal Subsistence Board, we've
24 told them time and time again we're not going to create
25 a conservation concern.

26

27 When the moose, the cow moose, they
28 told us we were going to create a conservation concern,
29 we didn't even take the limit.

30

31 They told us that with the rod and
32 reel, the fisheries from Kasilof, the Kenai, they told
33 us that with black bear, brown bear. They told us that
34 with this community gillnet for the Kasilof. And not
35 once has it come to fruition.

36

37 And so, you know, I think it would be
38 high time for the Federal Subsistence Board to say
39 look, the rule of law says we passed a motion to pass
40 to allow a Federal fishery. The in-season manager was
41 delegated with that authority to work in good faith,
42 and that was not done, it was already made, a decision,
43 that they would not issue any sort of plan that's
44 evidenced by their statements today that they've
45 basically said that a community gillnet can't occur,
46 and won't occur, so they've already made up their mind
47 that this won't occur. So they've vetoed the process.
48 And they won't even allow a fishery which can be closed
49 in 24 hours to even try it to see if it works.

50

1 It's really disappointing.

2

3 MR. G. ENCELEWSKI: And if I may make
4 one last comment. This is Greg Encelewski again.

5

6 You know, we have our limit, as you
7 know, 4,000 total fish in all of the type of
8 subsistence uses, in all the different areas, which is
9 a very small minute matter, and you got 5,000
10 dipnetters in the mouth of the Kenai, neither here nor
11 there, you know, we have a finite number and we have
12 our limit also on the kings and the fact is we have not
13 taken those kings. The fact is we don't have an
14 opportunity to even try to take the kings. The fact is
15 if we even took up to 1,000, which probably wouldn't
16 even initially be that outrageous but we would be shut
17 down anyway. So we're going to be shut down if we take
18 any kings anyway. So I think if you really look at it
19 and really judge the truth and the merit of what's been
20 worked so hard for such little for the whole community
21 to get it's rural preference, it's just not coming to
22 pass.

23

24 Thank you.

25

26 MR. I. ENCELEWSKI: And this is Ivan
27 once again. I just want to close with this, and I
28 closed with this in the tribal consultation and I'm
29 sorry, but it is what it is, and we feel -- this is how
30 we feel and, you know, this is a bottom up approach,
31 Federal subsistence is a bottom up approach. The
32 users, you know, are supposed to be able to put in
33 proposals, the OSM and people are supposed to be
34 working with us to get these things, and to get our
35 fish for the community. What we know right now is
36 everybody's fishing. Everybody from around the world,
37 from sportfishermen, to drift boats, to commercial
38 nets, to everybody on the river, they opened it up to
39 bait and we're the only ones not fishing, and we're the
40 only ones who have zero harvest. And, yeah, okay, it's
41 the upper river, it's the upper river, well, that's
42 predicated on the fact that we're going to take
43 chinook, which we say we're not, and if we do let's
44 find out, you know, let's put it up then for a day or
45 two.

46

47 But I want to close and read something
48 that I always say. I mean this -- our last time that
49 we filed a lawsuit with the Federal Subsistence Board
50 and Judge John Sedwick, this is a United States

1 District Court Judge's words, not our words, and he
2 states at the end; viewing the larger picture there can
3 be no doubt the plaintiffs have been shabbily treated
4 for more than 50 years from those responsible for fish
5 and game management on the Kenai. And it's also clear,
6 that despite plaintiffs diligent efforts the Board's
7 been slow to recognize and enforce their rights under
8 ANILCA. And we believe that this is just a
9 continuation of that and we apologize for any -- but
10 we're passionate about it and we do appreciate the
11 opportunity to comment.

12

13 I don't know if Sky has comments that
14 he wants to present on behalf of the Ninilchik
15 Traditional Council.

16

17 CHAIRMAN TOWARAK: Go ahead.

18

19 MR. STARKEY: Yes, Mr. Chairman, this
20 is Sky Starkey. Can everyone hear me?

21

22 CHAIRMAN TOWARAK: Yes, we could Sky,
23 go ahead.

24

25 MR. STARKEY: Thank you, Mr. Chairman.
26 I appreciate the opportunity to appear before the Board
27 to talk about this issue, and to follow Greg and Ivan.

28

29 First of all, as far as I can determine
30 from the advice of the Solicitor, the Board is clearly
31 within its authority to do what Ninilchik is asking,
32 and that is to take away the in-season management
33 authority, to open the fishery, chinook fishery and to
34 immediately implement the net plan that Ninilchik put
35 in a few months ago to the Federal manager.

36

37 The proposal that you all passed into
38 regulation was unanimously accepted by the RAC and
39 forwarded to you and there was a lengthy discussion
40 about all the issues that the in-season manager has
41 talked about today. And what's remarkable about what
42 we've heard today, and, thank you for the Federal
43 Subsistence Board members who drew this out, is that no
44 matter what the conditions of the fishery, and the
45 early king run, they will never, under his watch, be a
46 net implemented in the Federal waters of the Kenai
47 River. How that is consistent with your regulation is
48 beyond me.

49

50 The other remarkable thing about all of

1 this is, is that somehow the magic word, conservation,
2 turns out to be completely within the subjective
3 determination of the manager. All of a sudden the
4 escapement goal, which we assumed was arrived at, after
5 careful thought and determination by State managers,
6 and we hope Federal managers, turns out that escapement
7 goal only applies to everybody else. We now have a
8 different escapement goal for subsistence fishermen,
9 who rather than receiving a priority, now are on the
10 other end of the scale, where their escapement goal is
11 actually higher with some undetermined number and it's
12 because they are relegated to fishing a part of the
13 river on which spawning occurs. Well, the question
14 needs to be asked, and which the State avoided
15 answering is, those king salmon spawn all the way up
16 and down that river, there are many places where they
17 spawn, what exactly are the State regulations for
18 fishing right now on every area where that early run of
19 kings spawn, not just a few. According to the Federal
20 manager, every single one of those early run kings has
21 to make it so there's no leeway, so that would mean
22 every single part of that river where there's any early
23 king spawning should be completely closed. And I would
24 like to hear the answer to that question.

25
26 The other remarkable thing in the
27 analysis that we heard earlier, suggest is that all
28 targeted and all of the size targeted, early run king
29 fishing had been closed, which of course brings a very
30 important question I'm going to ask here, and that is
31 how about all of the bycatch from all the fisheries
32 that were opened, the Ninilchik, sportfishery,
33 commercial fisheries, all the different so-called non-
34 targeted fisheries, what was the indirect total, what
35 was the indirect total take of the early run kings.
36 Because if every single king is so important why were
37 any bycatch allowed. Because that's what's being put
38 on subsistence fishers, is that we don't know, got to
39 regulate subsistence fisheries so that no bycatch will
40 be allowed, we're going to close them down even if a
41 single king is caught and I doubt whether that standard
42 was applied across the board.

43
44 The fishery manager talked about
45 mortality in gillnets, he said a lot of things, even
46 the best case scenario, this and that, I have read
47 several studies that talk about mortality rates for
48 catch and release salmon fishing, trout fishing, king
49 fishing, what's the morality rate there, how much of
50 that fishing is allowed. And as Ivan said, rather than

1 read the study, how about allowing them to throw a net
2 in the river and let's see what happens. Let's see
3 what kind of conservation concerns there are and if
4 there are legitimate conservation concerns action can
5 be taken then, rather than making the worse case
6 conjecture about what Ninilchik will do, and not
7 allowing them the opportunity to even try.

8
9 It's a curious confluence of factors
10 here that's preventing this fishery from taking place.
11 It's curious that its Fish and Wildlife Service who's
12 filed a request for reconsideration and yet they're the
13 same agency that was charged with implementing it and
14 they're the same agency who admitted today that they
15 have no intention of implementing it under any
16 circumstance. It's curious that we have (phone cuts
17 out) which just happens to be right around the time
18 that we now find out that it's critical that there not
19 be one fish taken in the spawning grounds. No. No.
20 No. No. No. Is exactly right. Everybody said no
21 here, of course, except, the Regional Advisory
22 Committee that's in charge of making recommendations
23 and the Federal Subsistence Board and the whole -- and
24 the answer to the question about whether there's been a
25 (phone cuts out) people can just go dipnetting or
26 people can just go do this or people can just go do
27 that, they can turn into sportsfishermen. All these
28 subsistence fishermen can just grab a rod and reel.
29 Subsistence uses are customary and traditional uses.
30 They using efficiency. They try to feed people.
31 That's the point.

32
33 And in answering the questions, you can
34 see how hard and how difficult it is for that point to
35 be realized. It should be yes. Yes. Yes. Yes. Yes.
36 Except the real conservation concerns that are
37 consistent with escapement goals, because that's what
38 this priority supposed to be about.

39
40 The in-season manager said, he used the
41 example of, he couldn't reach out into saltwaters,
42 (indiscernible) the State management of early river
43 king -- he said my -- my authority is limited to in --
44 to freshwater, which begs the question, of course, if
45 the in-season manager did about the bycatch of the
46 early run kings in the non-directed fisheries that were
47 opened.

48
49 One also has to wonder whether the
50 timing of the early or late run king run is so precise,

1 that one can say with certainty that there's still not
2 some of that run left in stretches of the river where
3 fishing is wide open. What will the bycatch be there.

4

5 CHAIRMAN TOWARAK: Sky, this is Tim
6 Towarak, the Chairman.

7

8 MR. STARKEY: Yes.

9

10 CHAIRMAN TOWARAK: Could we ask you to
11 kind of sum up and if you have any legal opinions on
12 this process we'd like to hear some of that.

13

14 MR. STARKEY: Okay, thank you, Mr.
15 Chairman.

16

17 So I'm just going to wrap up and say a
18 couple things here then.

19

20 So if you're going through, from a
21 legal standpoint, and even from a broader standpoint,
22 is to misuse the idea of conservation. Conservation is
23 at the heart of ANILCA and so is subsistence uses. But
24 what we're seeing here is the use of conservation to
25 drive an agenda that is contrary to subsistence uses
26 and is not borne out by the facts, it's borne out by
27 the subjective view of the in-season manager. That's
28 very dangerous. It's very dangerous to have to
29 litigate that. It's very dangerous for subsistence
30 users to believe that conservation is a tool to be used
31 by the Fish and Wildlife Service and others to
32 frustrate their goals when -- that it is so important
33 that subsistence users believe wholeheartedly that
34 conservation is something, it's a mutual goal, rather
35 than a tool. You don't need that kind of mistrust.

36

37 You also need subsistence users to
38 believe that when the Board passes a resolution, it's
39 their intent for it to be implemented, not stymied.
40 And, therefore, you have the clear authority and we
41 believe it would be illegal to do otherwise, to do what
42 Ninilchik has asked, open the chinook fishery and to
43 order that permit to be issued. And we believe that
44 rather than leaving the authority to issue that permit
45 with the Fish and Wildlife Service directly, that
46 permit should go over to OSM and they should be in
47 charge of determining the conditions and the use of
48 that permit.

49

50 Thank you, Mr. Chairman.

1 CHAIRMAN TOWARAK: Thank you, Mr.
2 Starkey. We appreciate you taking your time to address
3 the issue.

4
5 I assume that there isn't anyone else
6 from the Ninilchik that.....

7
8 OPERATOR: There are no other questions
9 in the cue.

10
11 CHAIRMAN TOWARAK: Thank you, Operator.

12
13 We've heard from both sides of the
14 issue, do you want to take a five minute break before
15 we get back into session. I think we all need to go
16 out and get some fresh air and stretch and broaden our
17 minds a bit here.

18
19 Thank you.

20
21 (Laughter)

22
23 CHAIRMAN TOWARAK: We'll come back in
24 10 minutes, at 3:15.

25
26 (Off record)

27
28 (On record)

29
30 CHAIRMAN TOWARAK: We're all here and
31 we'll call the session back to order. The floor is
32 open for -- well, first of all, before we lose the guys
33 from Kenai, there was some powerful disagreements I
34 think and I would like to -- you know, if there's any
35 strong statements that you'd briefly like to present on
36 behalf of this management plan, the floor is yours here
37 for the next few minutes anyway.

38
39 MR. ANDERSON: If it pleases the Chair
40 -- again Jeff Anderson, Federal Cook Inlet in-season
41 manager. There is one thing I would like to correct
42 and I believe my response to Mr. Loudermilk was in
43 regards to if Ninilchik was clear that I would be
44 issuing a special action to close chinook fisheries and
45 I think I answered affirmatively. I think that was the
46 question. That was my answer. I think the response
47 from Ninilchik was that it was somehow related to an
48 operational plan at that point and that was not the
49 question I heard and that was not the question I
50 answered.

1
2 Other than that I know there was a lot
3 -- I tried taking notes and keeping up with some
4 things, but it was difficult. I think if there was
5 some specific -- there's still confusion I think in my
6 part -- or, excuse me, I think there's still confusion
7 about other fisheries and where they occur and what
8 they're targeting and maybe even the two different runs
9 still for chinook salmon on the Kenai River in the
10 early run fishery. I think based on all the great
11 information the Alaska Department of Fish and Game has
12 collected over the years with near certainty almost all
13 early run fish or I would even venture close to 100
14 percent of them are above the regulatory marker that's
15 below Slikok Creek. And all fisheries have been closed
16 to all users upstream of that marker, you know, for the
17 early run throughout their duration in the Kenai River
18 this year.

19
20 As far as bycatch goes, I think the
21 State's emergency order is similar to my special
22 action. All chinook salmon incidentally harvested in
23 all other fisheries are to be released immediately and
24 not remove them from the water and released
25 immediately.

26
27 I would like to highlight again that
28 one of the reasons that there likely has not been any
29 catch or harvest of other sensitive species or chinook
30 salmon or steelhead on the Kasilof River is because we
31 were able to identify a time and an area where a net
32 could fish successfully on the Kasilof River without
33 impacting those other species. I think so far, other
34 than the harvest of one lake trout that we weren't
35 anticipating, our assumptions have been correct. We do
36 not see an area or time on the Kenai River that would
37 allow similar conservation.

38
39 I think with that I'll stop and if
40 there are other specific questions.

41
42 CHAIRMAN TOWARAK: Tony.

43
44 MR. CHRISTIANSON: Through the Chair,
45 Anthony Christianson. We keep mentioning the marker
46 and we do have a map now and you said you're pretty
47 confident 100 percent of the early run gets up above
48 the marker, which is in your area of management, right?
49 Where on the river is that marker?
50

1 MR. ANDERSON: It's probably at about
2 river mile 17, somewhere down in that range.
3
4 MR. CHRISTIANSON: Is it below the
5 Moose Range Meadows?
6
7 MR. ANDERSON: It's below Moose Range
8 Meadows. It's below the bridge and where the Sterling
9 Highway crosses the Kenai River in Soldotna. So it's
10 down stream from there as well.
11
12 MR. CHRISTIANSON: And you have no
13 Federal land.....
14
15 MR. ANDERSON: That's correct.
16
17 MR. CHRISTIANSON:below the
18 markers? The markers basically are boundary marker?
19
20 MR. ANDERSON: Correct. It's a Fish
21 and Game management boundary.
22
23 MR. CHRISTIANSON: Thank you.
24
25 CHAIRMAN TOWARAK: Bert.
26
27 MR. FROST: So I have two questions.
28 So the first one is if a net were to be permitted, any
29 capture of non-target species would be unacceptable?
30
31 MR. ANDERSON: In the Kenai River, a
32 harvest of salmon, pink salmon, sockeye salmon, coho
33 salmon and chinook salmon at various times are legal to
34 harvest. There are certain size restrictions for the
35 early run chinook salmon and rainbow trout and Dolly
36 Varden that are not legal to harvest. So I guess I'm
37 not sure what the bycatch would be if they're
38 somehow.....
39
40 MR. FROST: Well, so the net would be
41 for reds, right? That's what they're trying to catch.
42 So if they caught any other fish other than reds, that
43 would be unacceptable.
44
45 MR. ANDERSON: I believe the regulation
46 and the proposal from Ninilchik was to harvest chinook,
47 sockeye, coho and pink salmon with a gillnet. It was
48 not just to target sockeye salmon. So, in regulation
49 it includes harvest of chinook salmon, coho salmon,
50 sockeye salmon and pink salmon. The regulation

1 specifies that rainbow trout and Dolly Varden greater
2 than 18 inches must be released.

3

4 MR. FROST: Well, I could ask a whole
5 bunch of questions based on that answer, but I'll go
6 back to my second question, which is -- and this kind
7 of goes back to my train of thought to begin with.
8 There's no scenario that you could come up with where
9 you could allow the Ninilchik to fish with a gillnet
10 under the current framework that we're in today.

11

12 MR. ANDERSON: With the current
13 regulatory framework, which includes size selective
14 harvest for rainbow trout, Dolly Varden and early run
15 chinook salmon, within Federal waters of the Kenai
16 River there's a high likelihood of catching a fish with
17 a gillnet that's not legal to harvest and there's
18 likely a high mortality associated with that catch.

19

20 MR. FROST: You wouldn't be willing to
21 run an experimental net to see if that likelihood was
22 really high or really low like you did at Kasilof on a
23 temporary basis. If it was going bad, cut it off.

24

25 MR. ANDERSON: I guess at what point is
26 going bad going bad.

27

28 MR. FROST: And that goes back to my
29 previous question, what's your tolerance. Is one king
30 salmon caught in a gillnet intolerable? Is that the
31 cut off or is it 10? I don't know. I'm not the
32 fisheries guy here.

33

34 MR. ANDERSON: I think the real answer
35 -- well, harvest of one rainbow trout, one 25-inch
36 rainbow trout is not legal within current regulations.

37

38 MR. FROST: But is it tolerable within
39 the scheme of a subsistence fishery to allow the
40 subsistence fisheries to try and meet their need? It's
41 not legal I understand, but is it tolerable? I mean I
42 don't know what the right word is.

43

44 MR. CHRISTIANSON: What's the
45 threshold.

46

47 MR. FROST: Yeah, what's the threshold
48 that would -- and that goes back to my question, is
49 there no scenario that you could come up with where
50 there's just no way a net could be in the river to try

1 and let the folks in Ninilchik catch the fish they're
2 trying to catch or are the limits so low or the
3 conservation concern so great and the limits are so low
4 that anything, any -- my term bycatch may not be the
5 right word, but any other species of fish other than
6 reds is -- it would shut it down. So they're kind of
7 two related questions.

8
9 I guess I'm trying to get is -- I mean
10 if you put a net in the river for an hour and you
11 didn't catch any chinook, would that be okay. I would
12 suggest it would probably be okay. If you put it in
13 for 12 hours and you didn't catch any chinook or
14 rainbows, would that be okay. Maybe. But if you put
15 it in for 24 hours and you caught one chinook -- and so
16 the question is, is there any scenario on an
17 experimental basis, on a temporary basis, on a -- pick
18 your adjective -- on a way that a net could get in the
19 river that would allow some ability to determine if
20 this is a viable method or not. What I think I've
21 heard is no, but I don't want to put words in your
22 mouth.

23
24 MR. ANDERSON: I'm sorry, I'm
25 considering my response. It was a pretty long
26 question.

27
28 (Laughter)

29
30 MR. FROST: I'm just trying to figure
31 out a way forward.

32
33 MR. ANDERSON: I think the difference
34 between tolerable and legal I'm not sure is mine to
35 make, I guess. As a manager, am I negligent in my
36 management if I knowingly allow a method that has a
37 high likelihood of incidental harvest of species that
38 are not legal to harvest.

39
40 MR. FROST: But if you did it on an
41 experimental basis you could stop that immediately and
42 if you saw that was happening, you could say, no, we're
43 not going to do this. Right now we have a high
44 likelihood. We don't have -- and based on the Kasilof
45 data from this year it seems like the way they are
46 fishing they're being able to do it in a way that
47 they're not having those unintended consequences.

48
49 So, again, maybe my real question is,
50 is there a way to get a net in the river to allow some

1 fishing to avoid the unintended consequences on an
2 experimental or temporary basis so that we can have a
3 more informed decision. It would be up to you to make
4 the decision on yes or no that intolerable catch was
5 made and when to shut it down.

6

7 I guess in my world view I have not
8 been in a process where there is just -- the cut off
9 point is zero. There s always room for negotiation
10 somewhere. I won't throw anybody under the bus, but I
11 could. Not individuals, but agencies. But I'm not
12 looking at you.

13

14 (Laughter)

15

16 CHAIRMAN TOWARAK: I think your
17 question is relative to how much fish there is. Right
18 now there s a shortage of chinook and that's partially
19 why I think the decision not to allow fishing in that
20 portion of the river. If there was an excess amount of
21 fish, then I think probably the State and the Federal
22 government would have a different management scheme if
23 the numbers would change. So it's a relative question.

24

25 MR. FROST: That's why you need the
26 flexibility to say yes or no. Anyway, I'll shut up.

27

28 MR. LOUDERMILK: Bert, you've brought
29 some information together that was pretty clear, so
30 thank you very much. Earlier you mentioned like 30
31 percent. I think you mentioned down in the Lower 48
32 where 30 percent of the catch they'd have the kill on.
33 I guess the thing is that, you know, that's 3 in 10.
34 Depending on how much they're catching, I guess the
35 statistics and when you get down to whether there's a
36 zero tolerance or not -- and I like where Bert was
37 going and I don't mean to drag you into my conservation
38 here, but, sorry, you're there. It's like, okay, what
39 is that number and what is that based on.

40

41 I mean conservation, I think we all
42 have conservation at heart. I think Ninilchik has
43 conservation at heart. So what is that happy medium,
44 you know, to where it's just all or nothing and I don't
45 know. I am not pretending to be a fisheries guy. I'm
46 not pretending to be an expert. I'm a Board member
47 that's trying to interpret and understand the
48 information and that's it.

49

50 Thank you.

1 CHAIRMAN TOWARAK: Mr. Haskett.

2

3 MR. HASKETT: Just to kind of bring it
4 back to where we're heading to and that's the three
5 issues that we're looking at right now. I think part
6 of what we're talking about here is there's a
7 reconsideration request from the State and the Fish and
8 Wildlife Service and a lot of other people that we're
9 actually going to look at a lot of these questions.

10

11 So I think we need to kind of pull it
12 back and realize that there's three things we need to
13 vote on here. There's been a lot of conversation.
14 The first one is whether we remove the authority to
15 delegate to the Federal in-season manager. The second
16 one being reverse the existing special action to close
17 Federal subsistence fishing in the Kenai River. The
18 next one, negate the decision of the Service and not
19 authorize an operational plan for gillnet on the Kenai
20 River. So I think we really need to vote on those
21 three things.

22

23 Again, remembering that we do have a
24 reconsideration process and this Board has a lot of
25 those requests in front of it. So we'll be looking at
26 a lot of these questions again in the not too distant
27 future.

28

29 CHAIRMAN TOWARAK: Go ahead, Tony.

30

31 MR. CHRISTIANSON: To kind of follow
32 what Geoff's saying there though, to follow the process
33 that we set forward in passing the regulation, I think
34 it would be all right to -- like I said, where do we go
35 from here. Develop the operational plan. Move forward
36 like the fishery is going to happen sometime in the
37 future. Get the area people working together. Maybe
38 those answers will come through that process. It's
39 already closed. I don't anticipate an opening this
40 year. Just from the discussions we've had here, it
41 gives a year for the next round of trying to figure out
42 those answers to those questions.

43

44 Maybe another agency here at the table
45 who has some fishing management ability can step in and
46 maybe we can find an opportunity there as well since
47 that one is wide open. But I would think that since
48 the Board set a directive and passed a regulation that
49 at least what was set forth at the minimum a management
50 plan be drafted and move from there. I mean at least

1 that puts the people together on the ground and not --
2 because I'm not 100 percent in favor of taking away
3 somebody's authority.

4

5 CHAIRMAN TOWARAK: I'm going to say
6 that the floor is open for deliberations on any
7 questions brought to the floor. Just leave it at that.
8 Mr. Haskett, if you want to lead the discussion or lead
9 the movement or Mr. Christianson or any Board members.
10 Go ahead.

11

12 MR. HASKETT: Again, I don't know if we
13 make motions here to ask these three questions or if we
14 just throw them out to the Board. It's a little bit
15 different than our usual process. I can certainly make
16 a motion to take these up to vote. I can do that.

17

18 CHAIRMAN TOWARAK: Individually?

19

20 MR. HASKETT: They need to be done one,
21 two and three.

22

23 MR. FROST: Yeah, that's what I was
24 going to say, we need to do them one at a time.

25

26 CHAIRMAN TOWARAK: Mr. Cribley, you had
27 a question.

28

29 MR. CRIBLEY: Well, I don't know if
30 it's a question or just random thoughts. We're in a
31 very difficult and delicate situation right now in
32 trying to figure out a path forward that is a win-win.
33 Looking at the current situation, the way we are with
34 the fisheries and everything from the standpoint that
35 we have met our chinook escapement goals or at least
36 that's what I understand and that we have successfully
37 done the gillnetting on the Kasilof. From what I
38 understand, the numbers of fish caught has not been
39 overwhelming or beyond what people had anticipated. As
40 a matter of fact, from what I heard, I was surprised
41 how slow the catch was.

42

43 Just wondering if there's not a way and
44 what we heard from the testimony from the folks from
45 Ninilchik is that they would -- at a minimum they
46 would like to have at least the opportunity to develop
47 an operations plan and at least try it for a day or two
48 just to see if it would work. With the understanding,
49 and the reporting as it was done on the Kasilof, that
50 it would be shut off at any time if it isn't

1 reasonable. To at least try it for this season. Give
2 them the opportunity to either make it or not make it
3 work. At least try it.

4

5 Understanding there may be some catch
6 that's unacceptable, but understanding also that we're
7 not -- I would not suspect that it would be large
8 enough to destroy the fisheries, but would provide
9 information for the RFR that we're going to be
10 considering here in the near future as kind of a
11 compromise point for this year as opposed to going
12 through these four items and rescinding the authorities
13 and such.

14

15 I think that would be -- it seems to me
16 that would be a better position and it would also
17 provide valuable information to us in making that
18 future decision too, whether we want to stay the course
19 or not. I don't know how to throw that out or if we
20 can negotiate or how we can discuss that from the
21 standpoint of what's been brought forward, but it's an
22 idea that would get us out of the situation we're in
23 right now and maybe provide information to Fish and
24 Wildlife Service on their position, but also give
25 Ninilchik an opportunity to prove or show that it can
26 or cannot be done. Just an idea.

27

28 CHAIRMAN TOWARAK: Go ahead, Mr.
29 Haskett.

30

31 MR. HASKETT: I don't think we can not
32 take up the question that we've been asked to remove
33 the authority. I think we need to vote on that.

34

35 MR. CRIBLEY: Right.

36

37 MR. HASKETT: And then reversing the
38 existing special action to close Federal subsistence
39 fishing on the Kenai River, I think maybe we can defer
40 that one. Four though is actually what I think you're
41 asking for. The Board has asked whether we should
42 negate the decision of the Service not authorize an
43 operational plan for gillnet on the Kenai River. But
44 you know the way that's worded -- I mean the Board can,
45 I think, instruct us to continue to work on the
46 operational plan, but I don't think you can instruct
47 the person working on that operational plan to come to
48 a pre-determined answer. Follow me?

49

50 So we vote on number one and say

1 whether the in-season manager is going to be removed.
2 If you all do that, then I'm not sure who is going to
3 work on the plan. You guys will have to figure that
4 out.

5
6 MR. CRIBLEY: Right.

7
8 MR. HASKETT: Again I think we should
9 defer number two based upon going through this and
10 reconsideration request. Then number four actually
11 asks that question, but it can't be in a way that
12 dictates what the answer needs to be if we're working
13 on it. Does that make sense?

14
15 MR. CHRISTIANSON: I think that pretty
16 much sums up everybody's comments today.

17
18 CHAIRMAN TOWARAK: Go ahead, Mr.
19 Haskett.

20
21 MR. CHRISTIANSON: I was just going to
22 make a motion to what Mr. Haskett just said. I'm not
23 in a position right now, Mr. Chairman, to rescind
24 somebody's authority. You know, these guys have some
25 pretty solid science behind them. I think everybody is
26 on the same page. I wish we were in a better position
27 to help Ninilchik get this fishery. In my mind, I had
28 a different view. That's why I was thinking if we
29 moved it down the river a little bit and out of the
30 Kenai Mile 48 and maybe down the river a ways and get
31 it out of that key habitat he's talking about and then
32 do it on an experimental basis like they've suggested.

33
34 I think we can reasonably do what
35 Bert's talking about. Give it a little opportunity to
36 fail and prove yourself right or either that or it's
37 going to work. But at least provide them the
38 opportunity they're asking for to develop the plan and
39 get the net wet. It's probably not going to happen
40 this year. That's already been decided by the in-
41 season manager and you have to value his opinion on
42 that. So I would just be in favor of moving forward
43 positively with developing a plan to make this happen
44 at some time in the future.

45
46 CHAIRMAN TOWARAK: You're saying put it
47 in State lands, State waters?

48
49 (Laughter)

50

1 MR. CHRISTIANSON: Give them a 600-foot
2 gillnet.

3
4 (Laughter)

5
6 MR. LOUDERMILK: I don't know if this
7 is appropriate or not. Can I make a motion that we go
8 forward on item number one. Geoff, I think that's kind
9 of what you're looking at. I mean I know items two and
10 three we may have more discussion, but I would like to
11 move forward on one and make the motion that we take a
12 vote on that.

13
14 MR. HASKETT: Second

15
16 CHAIRMAN TOWARAK: You heard the motion
17 and the second. Any discussion. Go ahead.

18
19 MR. BROWER: I just think we need to
20 know are we voting yes to remove him or yes to retain
21 him. We need to make clear what the motion is.

22
23 MR. HASKETT: I think we need to go
24 with what Ninilchik proposed and the proposal is to
25 remove the authority to delegate the Federal in-season
26 manager. So if we don't agree with that, the response
27 would be no. If we want it removed, then the answer
28 would be -- him, not it -- it would be yes. I'd be
29 more than willing to vote first.

30
31 CHAIRMAN TOWARAK: We have a deliberate
32 process here. Our scribe knows the process. Go ahead.

33
34 MR. PELTOLA: Sorry about that. So the
35 motion was to rescind the authority to delegate to the
36 Federal in-season manager. Fish and Wildlife Service.

37
38 MR. HASKETT: No.

39
40 MR. PELTOLA: National Park Service.

41
42 MR. FROST: No.

43
44 MR. PELTOLA: BIA.

45
46 MR. LOUDERMILK: No.

47
48 MR. PELTOLA: BLM.

49
50 MR. CRIBLEY: No.

1 MR. PELTOLA: Forest Service.
2
3 MS. PENDLETON: No.
4
5 MR. PELTOLA: Public member
6 Christianson.
7
8 MR. CHRISTIANSON: No.
9
10 MR. PELTOLA: Public member Brower.
11
12 MR. BROWER: No.
13
14 MR. PELTOLA: Mr. Chair.
15
16 CHAIRMAN TOWARAK: No.
17
18 MR. PELTOLA: The motion fails.
19
20 CHAIRMAN TOWARAK: Mr. Haskett.
21
22 MR. HASKETT: So I think my suggestion
23 on four, the proposal is to negate the decision of the
24 Service to not authorize an operational plan for a
25 gillnet on the Kenai River. The only thing I would ask
26 that needs to be clear there is the Board I don't
27 believe should be in a position where it directs the
28 in-season manager what that answer ought to be. What
29 we'd actually be requiring is the continued work on the
30 operational plan.
31
32 MR. BROWER: That's just for this year,
33 right?
34
35 CHAIRMAN TOWARAK: Is there a second to
36 the motion?
37
38 MR. FROST: I would ask for a restate
39 of the motion to make sure we're clear what we're
40 doing.
41
42 CHAIRMAN TOWARAK: Go ahead, Mr.
43 Haskett.
44
45 MR. HASKETT: So the motion would be to
46 direct the Service to work on an operational plan for a
47 gillnet on the Kenai River.
48
49 CHAIRMAN TOWARAK: Is there a second to
50 the motion.

1 MR. BROWER: Second.
2
3 MR. CHRISTIANSON: Second.
4
5 CHAIRMAN TOWARAK: Seconded by Mr.
6 Brower. Discussion. Mr. Christianson.
7
8 MR. CHRISTIANSON: Just on a timeline,
9 how long did it take to get the Kasilof one from the
10 time you guys initiated the plan to say authorized the
11 plan?
12
13 MR. ANDERSON: Through the Chair. We
14 received the draft plan on May 27th. I think we had an
15 in-person meeting on June 8th. I provided some written
16 feedback on June 9th or 10th. We got a draft back from
17 Ninilchik on like June 26th and it took basically two
18 weeks of steady work between then and July 13th to
19 actually get a final product.
20
21 MR. CHRISTIANSON: Six weeks?
22
23 MR. ANDERSON: About that, yes.
24
25 CHAIRMAN TOWARAK: Further questions.
26 Go ahead.
27
28 MR. CHRISTIANSON: So if we're going to
29 be dealing with these RFRs or whatever they are
30 sometime in the near future, what date is that going to
31 happen? The January meeting? I mean I'm looking for a
32 timeline here because I'd like to have something done
33 sooner than later so that it looks like we're still
34 following through with what we expect to happen on the
35 Kenai as a Board as we voted to support a subsistence
36 fishery there and we would hope that the area biologist
37 would follow through with what it is we're asking.
38 Whether or not they authorized the fishery itself, it
39 is an authorized regulatory fishery method and mean in
40 the Federal waters and it should be ready to go. I
41 mean maybe next year there's 200,000 kings.
42
43 MR. PELTOLA: Mr. Chair, if I could
44 address that. If you look at the recent history of
45 RFRs, like earlier I mentioned Red Sheep Creek that
46 took up to a year. We could have shortened that up by
47 a couple months, but we had a deferral at the April
48 meeting. So you're looking at nine to ten months for
49 that one request.
50

1 The Kenai Kasilof RFR requests are a
2 bit more complicated than that just by sheer numbers.
3 We have 900 to 1,000 categorize, then we have to group
4 them up by like requests, then we have to go through
5 and do an analysis of those. I would hate to give you
6 a date, but it would probably be similar if not longer
7 than the last request the Board dealt with.

8

9 MR. CHRISTIANSON: Through the Chair.

10

11 CHAIRMAN TOWARAK: Go ahead.

12

13 MR. CHRISTIANSON: We might still be
14 sitting here next year while the fish are going up the
15 river trying to figure out if they could fish or not.

16

17 CHAIRMAN TOWARAK: Go ahead.

18

19 MS. PENDLETON: Through the Chair. So
20 is it realistic, Gene, that we could take this up with
21 the consideration of the analysis of what we've heard
22 to date around the RFR that we could take this up in
23 January or in the spring?

24

25 MR. PELTOLA: That would be our hope.
26 One thing I did not mention is that -- knowing that
27 this was coming up, we requested assistance from other
28 bureaus through OSM to at least initiate the portion of
29 the documents on the analysis, which we have a little
30 jump ahead. Beth, you helped us out on that. We would
31 do the best we could to have something -- have OSM
32 finalize prior to that date. We have a good start on
33 it.

34

35 Like I said, the one thing that would
36 complicate things is the sheer number. Right now we
37 have Staff that is -- you know, the comment period is
38 already closed. We have Staff that is reviewing those
39 900 to 1,000 requests and grouping up in common themes
40 and that's the first step we're going through. That,
41 in itself, is a large database.

42

43 CHAIRMAN TOWARAK: Mr. Haskett.

44

45 MR. HASKETT: But the question is,
46 regardless of all that, is whether the Board wants the
47 in-season manager to be working on an operational plan.
48 So it's a fairly simple question regardless of all
49 those other things. We need to work on those. So I
50 still think that -- I don't know if I made a motion or

1 not, but my motion is to -- we can't approve the plan
2 -- to direct the Service to work on the operational
3 plan for gillnet on the Kenai River.

4
5 CHAIRMAN TOWARAK: And you're leaving
6 the date open.

7
8 MR. HASKETT: Yeah.

9
10 CHAIRMAN TOWARAK: Go ahead, Tony.

11
12 MR. CHRISTIANSON: Through the Chair.
13 Mr. Christianson here. I just hope that it would be
14 ready in the event there was
15 fish to fish next year. That would be the only time
16 and I would see, per the discussion here, that we don't
17 let this lapse into
18 another season. At least the plan and the relationship
19 between the tribe and the area biologist be
20 strengthened through the planning process and a plan be
21 developed before next season.

22
23 CHAIRMAN TOWARAK: Go ahead, Mr.
24 Haskett.

25
26 MR. HASKETT: I'll defer to Bert first.

27
28 MR. FROST: I was just going to say I
29 think it's also important that we couch this as an
30 experimental plan or a temporary plan or something,
31 some caveat in it, so that there's an understanding
32 that if things go bad that it can be shut down based on
33 whatever, similar to the Kasilof, so it's not a once
34 the net is in it's always in, but we're doing a little
35 bit of adaptive management here.

36
37 CHAIRMAN TOWARAK: Mr. Haskett first and
38 then Mr. Loudermilk.

39
40 MR. HASKETT: Okay, but I'm not
41 proposing what the outcome of that operational plan is.
42 What I'm saying is we're directing in-season manager to
43 work with Ninilchik on an operational plan. I guess
44 what I'm predisposing if we're unable to come to an
45 agreement, we still have the reconsideration process
46 we're going on and the Board still has the ability to
47 look at that plan regardless of what we may think on
48 it. So we're directing that we work on an operational
49 plan and get something produced that the Board is going
50 to look at.

1 MR. FROST: My point was I would
2 suggest it's an experimental operational plan.

3
4 MR. HASKETT: I don't know what that
5 means.

6
7 CHAIRMAN TOWARAK: Mr. Loudermilk, you
8 had your hand up.

9
10 MR. LOUDERMILK: I guess one of the
11 things -- and I don't know if this is prudent or not,
12 but one of the things that I guess I'd like to say is
13 when we talk about an experimental development plan, I
14 think the question came up about we don't know what the
15 catch is. We don't know what they're pulling in the
16 gillnets. So if there was an experimental operational
17 plan, maybe that would span next year's gillnet season
18 to where there could be observations of what's actually
19 going into the gillnets and what the impact actually
20 is. I think that would be probably a good observation
21 point that might help us by still allowing the
22 opportunity possibly for gillnet, but have your plan
23 based up until that time with maybe another phase of it
24 being the observation of what's actually going into the
25 gillnet. Just an idea.

26
27 CHAIRMAN TOWARAK: That will all be
28 part of the plan.

29
30 MR. LOUDERMILK: Well, and I was just
31 going to say I mean at that point in time then, you
32 know, you can still take those observations and then
33 make another determination.

34
35 CHAIRMAN TOWARAK: Go ahead.

36
37 MR. PELTOLA: If I may, Mr. Chair. I
38 just want to make a point of clarification on the
39 original proposal which the Board addressed and passed
40 5/3, which is a subject of request for reconsideration.
41 There was no mention of a temporal limitation nor
42 experimental as the Kasilof was.

43
44 CHAIRMAN TOWARAK: Further questions.

45
46 MR. HASKETT: So again my suggestion is
47 direct the Service to work on an operational plan with
48 Ninilchik for a gillnet on the Kenai River.

49
50 MR. CHRISTIANSON: And that was

1 seconded, right?

2

3 CHAIRMAN TOWARAK: Yes.

4

5 MR. CRIBLEY: Question.

6

7 CHAIRMAN TOWARAK: The question has
8 been called for. Roll call, please.

9

10 MR. PELTOLA: The motion is direct the
11 Service to work on an operational plan with Ninilchik
12 for a gillnet on the Kenai River. Roll call vote.
13 Fish and Wildlife Service.

14

15 MR. HASKETT: Me first? I was first
16 last time.

17

18 MR. PELTOLA: Okay. National Park
19 Service.

20

21 MR. FROST: Yes.

22

23 MR. PELTOLA: BIA.

24

25 MR. LOUDERMILK: Me third? I was third
26 last time.

27

28 (Laughter)

29

30 MR. LOUDERMILK: Yes.

31

32 MR. PELTOLA: BLM.

33

34 MR. CRIBLEY: Yes.

35

36 MR. PELTOLA: Forest Service.

37

38 MS. PENDLETON: Yes.

39

40 MR. PELTOLA: Public member

41 Christianson.

42

43 MR. CHRISTIANSON: Yes.

44

45 MR. PELTOLA: Public member Brower.

46

47 MR. BROWER: Yes.

48

49 MR. PELTOLA: Fish and Wildlife

50 Service.

1 MR. HASKETT: No.
2
3 MR. PELTOLA: Mr. Chair.
4
5 CHAIRMAN TOWARAK: Yes.
6
7 MR. PELTOLA: The motion passes 7 to 1.
8
9 CHAIRMAN TOWARAK: Mr. Haskett.
10
11 MR. HASKETT: Let me try the next one
12 because actually I think we can do number two still.
13
14 CHAIRMAN TOWARAK: The floor is open
15 for action.
16
17 MR. HASKETT: So the motion is to
18 reverse the existing special action to close Federal
19 subsistence fishing in the Kenai River, but I want to
20 remind everyone that this closes August 15th. It's
21 going away anyway. So I will be voting no against
22 this, but that's the motion.
23
24 MR. CRIBLEY: Second.
25
26 CHAIRMAN TOWARAK: The motion has been
27 made and seconded. Any discussion or questions on the
28 motion. Mr. Christianson.
29
30 MR. CHRISTIANSON: Just for
31 clarification. So he made a motion to rescind the
32 manager's decision, right, so this would be what
33 Ninilchik was asking so that they could go fish. I
34 mean that would be the intent of it. Geoff is going to
35 vote no because he's going to uphold his manager's
36 decision. So I think I'll just vote in favor of it.
37
38 CHAIRMAN TOWARAK: Go ahead, Mr. Frost.
39
40 MR. FROST: But if it were rescinded,
41 they still couldn't fish because there's not an
42 operational plan, is that correct?
43
44 MR. CHRISTIANSON: We're kind of in a
45 conundrum.
46
47 MR. FROST: I just want to make sure we
48 understand everything.
49 MR. HASKETT: That is correct, but as I
50 remind everyone August 15th.....

1 MR. FROST: It ends.
2
3 MR. HASKETT: It ends.
4
5 CHAIRMAN TOWARAK: Right. Further
6 discussion.
7
8 MR. CHRISTIANSON: Question.
9
10 CHAIRMAN TOWARAK: The question has
11 been called for. Roll call, please.
12
13 MR. HASKETT: I'll go first.
14
15 (Laughter)
16
17 MR. PELTOLA: The motion was to reverse
18 the existing special action to close the subsistence
19 fishery on the Kenai River. Roll call vote. Fish and
20 Wildlife Service.
21
22 MR. HASKETT: No.
23
24 MR. PELTOLA: National Park Service.
25
26 MR. FROST: No.
27
28 MR. PELTOLA: BIA.
29
30 MR. LOUDERMILK: Yes.
31
32 MR. PELTOLA: BLM.
33
34 MR. CRIBLEY: No.
35
36 MR. PELTOLA: Forest Service.
37
38 MS. PENDLETON: No.
39
40 MR. PELTOLA: Public member
41 Christianson.
42
43 MR. CHRISTIANSON: Yes.
44
45 MR. PELTOLA: Public member Brower.
46
47 MR. BROWER: Yes.
48
49 MR. PELTOLA: Mr. Chair.
50

1 CHAIRMAN TOWARAK: Yes.
2
3 MR. PELTOLA: The motion fails 4 to 4.
4
5 MR. HASKETT: So actually this has been
6 I think a difficult afternoon for everyone. The issues
7 are complex. They're ones that people obviously feel
8 strongly about. I do want to thank Jeff and Andy for
9 being here and Jeff for answering questions. I just
10 appreciate it. I think you did a really good job.
11
12 Number three we've already agreed we
13 can't do because it's regulatory in nature, so we've
14 actually pretty much finished what we can do on this
15 one. I think our next steps for this Board will be to
16 look at what happens in the process for the
17 reconsideration requests, what happens on what we come
18 up with with Ninilchik on the operational plan and I
19 think obviously there's going to be a lot more
20 discussion for the Board, but I think we've done
21 everything we can today on this issue. I appreciate
22 everyone keeping it very civil.
23
24 I think the discussions were very good
25 and I just appreciate it, so thank you.
26
27 MR. LORD: Mr. Chair.
28
29 CHAIRMAN TOWARAK: Go ahead.
30
31 MR. LORD: I'm a little confused about
32 what is being reconsidered. What reconsideration
33 request exactly are we talking about?
34
35 MR. HASKETT: So we have the
36 reconsideration request for the original Board decision
37 from the Fish and Wildlife Service, from the State of
38 Alaska, so that flavors everything that we're talking
39 about here that's an ongoing thing.
40
41 MR. LORD: I'm with you now. Thank
42 you.
43
44 MR. HASKETT: I have a plane to catch.
45
46 (Laughter)
47
48 CHAIRMAN TOWARAK: We will excuse Mr.
49 Haskett. He's got a plane to catch. We thought it was
50 earlier.

1 MR. HASKETT: It got delayed.
2
3 CHAIRMAN TOWARAK: Before Mr. Cotten
4 leaves I'd like -- and maybe the State knows. How did
5 you guys solve the Yukon question when there's the
6 Canadians that had the need for more king salmon and
7 you took it out of the allocation of the Alaska part?
8 How was that done? This reminds me of the same thing
9 that you guys did with the Canadians. Was that through
10 an international agreement or do you recall?
11
12 MR. COTTEN: Mr. Chairman, are you
13 referring to on the Yukon, are you referring to the
14 various transboundary arrangements in Southeast?
15
16 CHAIRMAN TOWARAK: To the Yukon
17 allocation of the number of kings that gets past the
18 border.
19
20 MR. SWANTON: Well, Mr. Chairman, you
21 know, not to continue to pass the spoon to my left, but
22 Hazel Nelson, the Director of Subsistence, is co-chair
23 of the Yukon Panel, so maybe she might be able to
24 answer that question.
25
26 CHAIRMAN TOWARAK: Ms. Nelson, do you
27 -- and I'm just curious because we're having a
28 monstrous decision to make on a small river compared to
29 the Yukon and I was just curious on how that happened.
30
31 MR. NELSON: Thank you, Mr. Chairman.
32 In the most recent years Alaskans themselves have
33 foregone harvest in hopes that long-term conservation
34 efforts would rebuilt the stocks because they recognize
35 that more chinook, especially females, that go across
36 the border, the more prospects they'll have down the
37 road to be able to fish.
38
39 If you're talking about the
40 negotiations, right now we have a negotiated escapement
41 goal. It's not a biological escapement goal. We are
42 starting to broach the topic again. We haven't quite
43 made headway on coming to an agreement on a biological
44 escapement goal. Until that occurs we're still a bit
45 in flux on how we reach it.
46
47 CHAIRMAN TOWARAK: Thank you. That to
48 me was more interesting than what we've gone through.
49 So that brings us to the end of today's agenda. I
50 think the consensus was for us to come back tomorrow

1 morning at 8:30 so we could be sure to be done by noon.
2 Mr. Christianson, you had a question?

3

4 MR. CHRISTIANSON: Oh, no. Sorry.

5

6 CHAIRMAN TOWARAK: We are going to
7 adjourn the meeting.....

8

9 MR. CHRISTIANSON: Recess.

10

11 CHAIRMAN TOWARAK: Recess the meeting
12 until 8:30 in the morning tomorrow and same room.
13 Thank you for everyone's patience.

14

15 (Off record)

16

17 (END OF PROCEEDINGS)

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C E R T I F I C A T E

UNITED STATES OF AMERICA)
)ss.
STATE OF ALASKA)

I, Salena A. Hile, Notary Public in and for the state of Alaska and reporter of Computer Matrix Court Reporters, LLC, do hereby certify:

THAT the foregoing pages numbered 2 through 134 contain a full, true and correct Transcript of the FEDERAL SUBSISTENCE BOARD WORK SESSION MEETING taken electronically by our firm on the 28th day of July 2015, in Anchorage, Alaska;

THAT the transcript is a true and correct transcript requested to be transcribed and thereafter transcribed by under my direction and reduced to print to the best of our knowledge and ability;

THAT I am not an employee, attorney, or party interested in any way in this action.

DATED at Anchorage, Alaska, this 5th day of August 2015.

Salena A. Hile
Notary Public, State of Alaska
My Commission Expires: 09/16/18