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ALASKA MIGRATORY BIRD CO-MANAGEMENT COUNCIL
EXTENSION OF THE MIGRATORY BIRD SUBSISTENCE SEASON

SPECIAL MEETING, VOLUME I

DIMOND CENTER HOTEL
Anchorage, Alaska

SEPTEMBER 24, 2009

- Doug Alcorn, U.S. Fish and Wildlife Service, Chair
- Dale Rabe, Alaska Department of Fish and Game
- Sandy Tahbone, Kawerak, Incorporated
- Peter Devine, Aleutian/Pribilof Islands
- Joeneal Hicks, Copper River Native Association
- Molly Chythlook, Bristol Bay Native Association
- Mike Pederson, North Slope Borough
- Lisa Kangas, Tanana Chiefs Conference

Fred Armstrong, Executive Director

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

2

3 (On record - 9:03 a.m.)

4

5 CHAIRMAN ALCORN: We're going to call
6 this meeting to order. It's September 24th. By my
7 watch it's three minutes after 9:00 a.m. Most of the
8 members are here at the table.

9

10 We have an agenda that's passed out and
11 we will begin with the call to order, which I've just
12 done, and we will begin with a moment of silence and
13 proceed into our agenda.

14

15 (Moment of silence)

16

17 CHAIRMAN ALCORN: Thank you very much
18 for that. Let's begin by going around the table and
19 around the wings and introducing ourselves. I'll
20 start. I'm Doug Alcorn. I'm the assistant regional
21 director of the U.S. Fish and Wildlife Service in the
22 Alaska region for migratory birds in state programs and
23 I'm the current chair of the Alaska Migratory Bird Co-
24 Management Council. I'll start to my left here.

25

26 MR. RABE: I'm Dale Rabe with Alaska
27 Department of Fish and Game. I'm the deputy director
28 for wildlife programs within the department and
29 responsible for a number of the programs including
30 representation on the Flyway Council and the Co-
31 Management Council.

32

33 MR. ARMSTRONG: Good morning. I'm Fred
34 Armstrong, the executive director of the council and
35 with Fish and Wildlife Service.

36

37 MS. TAHBONE: Good morning. I'm Sandy
38 Tahbone with Kawerak, Incorporated.

39

40 MR. DEVINE: Peter Devine, Jr.,
41 Aleutian/Pribilof Islands Association.

42

43 MR. HICKS: Joeneal Hicks, Copper River
44 Native Association.

45

46 MS. CHYTHLOOK: Molly Chythlook,
47 Bristol Bay Native Association.

48

49 MR. PEDERSON: Mike Pederson, North
50 Slope Borough.

1 MS. KANGAS: Lisa Kangas. I work for
2 Tanana Chiefs Conference and I will be sitting in for
3 Mike Smith.

4
5 CHAIRMAN ALCORN: Thank you, Lisa.
6 We're going to go around the wings here. Let me
7 introduce Cathy Rezabeck. She works for the U.S. Fish
8 and Wildlife Service and she's going to facilitate the
9 discussion that we have for this to help us put our
10 ideas down on the flip chart. So I've asked her to
11 participate and if you have anything else to say to
12 introduce yourself, Cathy, go right ahead.

13
14 MS. REZABECK: I guess the only other
15 thing I..... (turned off microphone)

16
17 MR. ROSENBERG: I'm Dan Rosenberg and
18 I'm the state coordinator for the Alaska waterfowl.

19
20 MR. OATES: I'm Russ Oates and I'm
21 migratory bird division chief for the Fish and Wildlife
22 Service.

23
24 MR. SHARP: I'm Dave Sharp of the
25 Central Flyway representative for the U.S. Fish and
26 Wildlife Service located in Denver. A little out of my
27 flyway, but migratory birds have a way of finding
28 themselves around, so we see some of your birds in the
29 Central Flyway and probably from a flyway standpoint
30 our flyway is most interested in what goes on in Alaska
31 because we're probably the flyway which shares the
32 second most number of the birds when they come south in
33 the winter. We're especially interested in your
34 Interior White Breast. They're very important to us.

35
36 MR. FORD: Good morning. I'm Jerome
37 Ford. I'm the assistant director for the Migratory
38 Bird Program in Washington, D.C. and I'm here to learn
39 a lot and hopefully attend more of your meetings.

40
41 MS. DEWHURST: Donna Dewhurst. I'm
42 staff for the AMBCC.

43
44 MR. AHMASUK: Austin Ahmasuk.

45
46 CHAIRMAN ALCORN: Austin is one of the
47 former members as a matter of fact and he's back
48 working for Sandy.

49
50 MS. TAHBONE: He sits on our Bering

1 Strait/Norton Sound Migratory Bird Co-Management
2 Council, so I've asked Austin to join us today and
3 tomorrow.

4

5 CHAIRMAN ALCORN: Good. He's got a lot
6 of institutional knowledge. Then Joe is our court
7 reporter back there. If anybody has any questions of
8 him, you can talk to him.

9

10 I recognize that Herman Squartsoff is
11 not here and he's the voting representative of the
12 regional representatives. I'm wondering if there is a
13 desire to have a Native caucus to select a voting
14 representative at this meeting. Is that something you
15 all would like to do before we begin?

16

17 We'll call for a five-minute recess for
18 a Native caucus. Since you all are seated, most of us
19 can just walk out into the hall and maybe get a cup of
20 coffee and visit.

21

22 (Off record)

23

24 (On record)

25

26 CHAIRMAN ALCORN: Call back to order at
27 9:12. Does anybody want to speak for the group.

28

29 MS. TAHBONE: I will, Mr. Chairman.

30

31 CHAIRMAN ALCORN: Sandy.

32

33 MS. TAHBONE: In our caucus we've
34 appointed Molly Chythlook, who is our elder and is one
35 of our wisest members.

36

37 CHAIRMAN ALCORN: Welcome, O wise one.
38 Okay, Molly is the representative.

39

40 MS. CHYTHLOOK: I just had a cornea
41 operation on my left eye, so I'm kind of blurry, so I'm
42 going to depend a lot on my ears.

43

44 CHAIRMAN ALCORN: This meeting is one
45 that if you go back and you read the minutes, the
46 action items from the spring meeting, it was a result
47 of an action that we took to table. We actually tabled
48 a proposal from the Kawerak Region simply because it
49 was very consistent with an earlier proposal we had
50 from AVCP and consistent with a request that we had

1 received also from the North Slope Borough. The
2 genesis of this meeting was based on the principal that
3 subsistence hunting activities do not cease come
4 September 1st every year for migratory birds. The
5 activities continue while the birds are available.
6

7 The dilemma being that the agencies'
8 authorities by our read of the treaty protocol are for
9 establishing regulations through the AMBCC process and
10 the SRC process establishing regulations through the
11 end of what was formerly referred to as the closed
12 season, which was the 31st of August every year. That
13 was sort of the understanding we had, the way we sort
14 of approached this, and it's been pointed out that
15 maybe that's not the appropriate read of that. So
16 rather than debate that issue and rather than make a
17 decision on the proposal that we had from Kawerak last
18 spring, I suggested that we table it and convene this
19 meeting so that we could have a much more thorough
20 vetting of this issue and understanding.
21

22 Given sort of the reason for us needing
23 to get this meeting going, there was a motion made, I
24 believe Sky made it, at the spring meeting, and it was
25 to convene this group with representatives from the
26 other flyway councils that potentially could be
27 affected by recommendations that come out of this
28 meeting and to kind of reach agreement on the best way
29 to approach this issue once we all feel like we
30 understand the issue well.
31

32 The way the motion read in the spring
33 meeting, it was something to the effect of we would
34 have sort of almost like an informal meeting here. Not
35 necessarily make a decision, but we would wait for the
36 subsequent AMBCC meeting to actually make a decision.
37 So it may be that the need for a voting representative
38 is unnecessary. We may not even need to have a vote or
39 necessarily make a decision that goes on the record.
40 The actual decision-making I think is going to be
41 deferred. By the way that motion read, it will be
42 deferred until next week's meeting that we have in
43 Nome.
44

45 So as long as we all understand that.
46 I think we actually do have that motion, so we'll go
47 back into that for the background portion of this. So
48 we can begin with item 3, background. I've given you a
49 little bit of the flavor of why we're here. We can
50 discuss the outcomes that I proposed when we were

1 beginning to develop this agenda. This is not written
2 in stone. It was just my ideas of what I perceived as
3 potentially some outcomes and the issues. I think it
4 would help us if we settle on what those outcomes are
5 first before we get into the discussion under item 5.

6

7 To give us some background Fred is
8 going to take us through that actual motion. Is that
9 what you're going to do, Fred, item A? Am I reading
10 that correctly?

11

12 MR. ARMSTRONG: Sure, Mr. Chair. The
13 blue divider paper and on the second page is basically
14 when we were discussing regulations. It was a motion
15 by Kawerak to extend their hunt past August 31st and I
16 think it was to October 31. There was a motion made to
17 adopt it. It wasn't agreed to by consensus, so there
18 was a subsequent motion by Doug to host a workshop and
19 invite members from the Pacific Flyway Council,
20 Washington D.C. management division, State of Alaska or
21 Alaska Native Partners to get together to discuss the
22 proposal and see what -- discuss it at length to see
23 where we can go in terms of trying to accommodate this
24 proposal. Basically that's where we stand, Mr. Chair.

25

26 CHAIRMAN ALCORN: Thanks, Fred. What
27 motion he's talking about is on Page 2. It's the third
28 motion on the page. The first motion was to adopt the
29 proposal from Kawerak and then that motion was not
30 approved by consensus. The third motion that's listed
31 on the page then was as Fred described. So that's the
32 reason that we are here.

33

34 I'm going to suggest that in order to
35 comply with the way this motion was read and approved
36 that we not make a decision at this meeting, but we
37 forward any results of this meeting to our agenda next
38 week when we meet in Nome. That holds true to the
39 original motion. Does everybody agree with that?

40

41 MR. NANENG: Mr. Chairman. What action
42 would be taken at the meeting next week if we're just
43 talking about it today? I know that in many of the
44 meetings as state representative and the federal
45 representatives are always saying that we don't have
46 the authority to adopt that motion or recommendation
47 because we have to go to someone in the higher-ups. In
48 this case, State of Alaska still has to recognize the
49 Migratory Bird Treaty protocol amendment. If they
50 don't consent to promotion, then we're still in the

1 situation where we're at.

2

3 I don't think State of Alaska has
4 formally adopted or recognized the Migratory Bird
5 Treaty protocol amendment as far as I know because that
6 was one of the requirements, that the State would, in
7 one form or another, recognize the Migratory Bird
8 Treaty protocol amendment even though it's an
9 international treaty. It still puts us back to where
10 we're at, just talking about it.

11

12 CHAIRMAN ALCORN: I'll answer that,
13 Myron. It's a good question. The way that regulations
14 are made, the Flyway Councils, just as the AMBCC is
15 advisory to the Service Regulation Committee, the
16 Flyway Councils are advisory to the Service Regulation
17 Committee. The Service Regulation Committee makes
18 recommendations through the director to the Secretary
19 of the Interior to promulgate regulations.

20

21 The authority still lies with the
22 Secretary of the Interior regardless of whether the
23 State recognizes the treaty amendment, the protocol
24 amendment, or not. The authority to establish
25 regulations still is vested with the Secretary of the
26 Interior. Then it's up to the State to establish
27 regulations for, at this time, the fall and winter
28 seasons and that's the way the system is designed.

29

30 I think your comment is a good one.
31 That might require some official recognition, I'm not
32 sure, for the State to make a regulation in the fall
33 and winter months. I would think that the authority
34 still lies with the Secretary of the Interior. That
35 question I think is a good segue into discussing the
36 outcomes. You're saying why would we need to make a
37 decision at this meeting or the next meeting.

38

39 The fact is I personally don't see us
40 necessarily as making a decision to expand, but one of
41 the outcomes that I saw was settling on the correct
42 questions to ask. We, as an agency, the Federal
43 government, makes decisions based on consultation with
44 our legal advisors, our legal counsel. It seems to me
45 that because of the complexities of this issue that one
46 of the things the Federal agency would do would be to
47 consult our counsel and I suspect the State would do
48 the same thing.

49

50 So I saw as an outcome for this meeting

1 an agreement by this Council to formulate the right
2 questions and agree on who we would want to submit
3 those questions to. If this Council wants to rethink
4 those outcomes and have a discussion, I'm fully open to
5 that right now. Your question is timely and is sort of
6 a good segue into maybe discussing outcomes.

7

8 MR. RABE: Mr. Chairman.

9

10 CHAIRMAN ALCORN: Dale.

11

12 MR. RABE: Myron, I can't speak to the
13 historical context for the State recognizing or failing
14 to recognize the amendments to the treaty, but as I
15 understood the goal of this meeting was to explore
16 various options in terms of how we could proceed to
17 accommodate the intent of what the proposal has put
18 forward even if the methodology or the process to get
19 there doesn't involve any legal changes. To consider
20 all the possibilities how we can get to a solution that
21 would be accommodating to the intent of the proposal.
22 I should just leave it at that.

23

24 CHAIRMAN ALCORN: Any other questions
25 or thoughts. Sandy.

26

27 MS. TAHBONE: Mr. Chairman. I think my
28 understanding and one of the outcomes is that there, in
29 a lot of opinions, there are processes in place to
30 provide for a fall/winter subsistence hunt. One of the
31 outcomes of this gathering today and tomorrow is to
32 identify what those processes are and to start mapping
33 out how we're going to reach a consensus to provide for
34 a fall subsistence hunt. That's my understanding.
35 There already are processes in place to provide for it.
36 We just need to identify what those are and to come up
37 with a plan to accomplish it.

38

39 CHAIRMAN ALCORN: If we're going to
40 begin to put new ideas out here, it seems to me that it
41 might help us if we could get those listed so that we
42 can agree what our outcomes are so that we can always
43 kind of refer back to what those outcomes are after
44 we've settled on those. I'm going to ask Cathy if she
45 wouldn't mind helping us kind of get through this
46 because I think this is really important.

47

48 I think Sandy's observation and
49 recommendation is a good one and it's something that we
50 need to all reach agreement on before we proceed in

1 these discussions or we're going to be going in so many
2 different directions we won't be able to make much
3 sense of this. If that's all right with everybody.
4 Cathy, do you want to write that one down and we can
5 have discussion of that one and these that I've
6 written.

7

8 MS. TAHBONE: Mr. Chairman.

9

10 CHAIRMAN ALCORN: Sandy.

11

12 MS. TAHBONE: I think right within the
13 motion itself it says to provide for an effective means
14 to implement any customary and traditional
15 (fall/winter) subsistence season. I think that is our
16 goal in my opinion of the meeting today and tomorrow,
17 to come up with those effective means, as it says, to
18 implement the fall hunt.

19

20 CHAIRMAN ALCORN: Does she have that
21 written down, develop a means to implement fall
22 subsistence hunt?

23

24 MS. TAHBONE: Yes.

25

26 CHAIRMAN ALCORN: So that's a goal. Do
27 you see that as an actual outcome of this meeting, is
28 that we would settle on how we would achieve that goal?

29

30 MS. TAHBONE: Process to achieve it,
31 yes. It is written in here.

32

33 MS. REZABECK: Would you like that
34 word, process?

35

36 MS. TAHBONE: The way the motion reads
37 is specify the workshop that would be held by Fish and
38 Wildlife Service would be to focus on the coordinating
39 of the process between AMBCC, the Flyway Council, the
40 Service Regulatory Committee and the State of Alaska
41 process to provide for an effective means to implement
42 any customary and traditional subsistence season.
43 We're talking about the fall and winter season.

44

45 CHAIRMAN ALCORN: Anyone have any other
46 ideas to compliment that or to compliment these here or
47 wish to strike some of these as potential outcomes?
48 Myron.

49

50 MR. NANENG: Thank you, Mr. Chair.

1 Implementation of the Migratory Bird Treaty protocol
2 amendment and especially the opening of the summer and
3 spring migratory bird hunt there have been other laws
4 or rules and regulations that have popped up that were
5 not in consideration at the time of the negotiations of
6 the protocol amendment.

7
8 Like solicitor's opinion on requiring
9 duck stamps and state hunting license. Those are big
10 concerns that are raised by many of our people in the
11 villages because they can't afford to buy shells at 25
12 to 30 bucks a box of 25 shells, then they're requiring
13 like maybe for each of the hunters at least a duck
14 stamp. That's additional. Depending on how many you
15 have in your family, it could go up to like about two,
16 three hundred bucks.

17
18 I think one of the things that we need
19 to take a look at while we're looking through this
20 process is try to eliminate any of those barriers that
21 will cause more restraints or efforts to restrain by
22 the agencies or the State or law enforcement people to
23 prevent our people from hunting. One of the main
24 objectives is to recognize our customary and
25 traditional hunting practices during spring and summer.

26
27 Under the secretary of discretion that
28 was implemented back in 1980's, we may not have had to
29 pursue the protocol amendment, but the Canadians were
30 so concerned about the population of geese and the
31 midwest were concerned about their crops and all that,
32 that kind of forced the states that were at one time
33 opposed to the protocol amendment to move forward with
34 it.

35
36 But we need to identify some of these
37 things that will end up as being barriers because it
38 seems like every time we step forward, move forward on
39 some of these things that would allow for continued
40 recognition or a continued practice of our customary
41 and traditional hunt either the State of Alaska or the
42 Federal government finds a way to further regulate it.
43 We need to keep that in mind as we move on this
44 process.

45
46 CHAIRMAN ALCORN: Any other ideas.
47 We've got time. I'm not going to rush us through this.
48 This is a really important topic that we've been
49 discussing in my eight or nine years' involvement with
50 the Council. That's why we scheduled a couple days.

1 I'm not going to push us through this very quickly.
2 Myron.

3
4 MR. NANENG: Another process to follow
5 because even if we as the Alaska Migratory Bird Co-
6 Management Council might agree to move through with
7 this process and trying to establish the customary and
8 traditional hunt, we need to involve our villages. I
9 think that consensus from our villages needs to be
10 done. Right now there's no consensus on the duck
11 stamps and/or State hunting licenses, especially from
12 the village level. They always say to us why is it in
13 the regulations, spring regulations hunt, when you guys
14 have never agreed to it as the Alaska Migratory Bird
15 Co-Management Council. You know, Fish and Wildlife
16 Service law enforcement as well as State wildlife
17 protection officers are going to come and ask for if I
18 have a Federal duck stamp or State hunting license just
19 to hunt birds and that's causing concern. At some
20 point in the future it's going to create an issue big
21 enough where some of our people are just going to go
22 hunting in disregard to any plans or whatever that we
23 might come up with, especially out in the Y-K Delta.

24
25 CHAIRMAN ALCORN: Joeneal.

26
27 MR. HICKS: Thank you, Mr. Chairman.
28 Just a comment. I'm kind of confused I guess you could
29 say as to why it wasn't considered prior, like several
30 years before, this idea not tackled back then. I know
31 I've been on the Council for three years now, but
32 before that. Why was the issue of a fall subsistence
33 hunt not considered back then? I mean we all know that
34 subsistence begins in the spring and lasts through the
35 fall. I mean that's a given. Why is there a cut-off
36 date at the end of August wherein a whole new set of
37 regulations then take over that disregards subsistence?
38 I'm confused in that regard.

39
40 CHAIRMAN ALCORN: That's a good
41 question and I think it's related to the interpretation
42 that the Federal agency has in implementing the treaty
43 protocol. I'll just give a brief answer now because
44 Fred is on the agenda to take us through the protocol
45 amendment. Formerly, prior to 1997, ever since 1918
46 with the passage of the Migratory Bird Treaty Act, it
47 was illegal to hunt from March 11th through August
48 31st. It said the peoples of North America can hunt
49 migratory birds from September 1st through March 10th.
50 After that it's the nesting season or the brood rearing

1 season, fattening season, and we're going to lay off
2 those birds.

3
4 That was done in 1918 and that was when
5 the peoples of the north really weren't considered in
6 that deliberation. They were essentially ignored. So
7 there was a failure to recognize that birds fly north
8 in the spring and the summer and that's when the birds
9 are here for the use of Alaska Natives, other
10 occupants, Inuits of Canada.

11
12 To rectify that problem that for 80-
13 some odd years there was no legal opportunity to
14 harvest birds in the spring and summer, the Congress
15 amended the protocol, amended the act, and said we
16 hereby authorize the Secretary of the Interior to
17 establish regulations that will allow for the
18 legalization of the hunt in what was formerly the
19 closed period. So that's how we as an agency have
20 interpreted it. Our authorities begin March 11th of
21 every year and expire midnight August 31st. From
22 September 1st through March 10th those dates hunting is
23 allowed and there are processes in place to establish
24 regulations that allow hunting to occur.

25
26 Where it seems like the disparity
27 exists is that our regulations that we, through the
28 AMBCC have put in place, are focused on subsistence
29 activities, focused on subsistence methods and means,
30 and they are in general much more liberal, less
31 restrictive than the fall and the winter regulations.
32 The fact is there are mechanisms through this treaty
33 protocol to allow a legal hunt throughout the season
34 and our purview by our reckoning and our legal
35 counsel's reckoning ended on August 31st of each year.
36 So that way the fall and winter regulations and the
37 processes that were already in place could accommodate
38 those needs.

39
40 MS. REZABECK: Doug, there were a few
41 people along the wall here.

42
43 CHAIRMAN ALCORN: Okay. I'm going to
44 re-introduce Dave Sharp. Dave Sharp is the Central
45 Flyway Council's equivalent of our very own Bob Trost.
46 We all know Bob. Bob comes to most of our meetings.
47 He was unfortunately unable to be here. Dave is the
48 technical consultant to the Central Flyway.

49
50 MR. SHARP: I'm Dave Sharp and I

1 listened to what Doug just said in trying to answer
2 your question and I think he did a good job. I had my
3 hand up. I was going to say not much different than
4 what he did. In 1997, when the protocol came about,
5 which you all know, it wasn't like an act that just
6 happened in 1997. There was a lot of discussion over
7 the years on how to legalize subsistence take.
8 Decades, in terms of what led up to that. That's not
9 an easy thing to get done, dealing internationally to
10 get a protocol done. So it was a lot of thought
11 process that was in place.

12
13 It focused on what we call the
14 traditional closed period of time, which Doug just
15 talked about, and why we were focused on that. Because
16 at that point, and this goes back I think to the very
17 essence of your question and his comment about things
18 popping up, in 1997 there was focus exclusively on that
19 closed period because it was believed that we had
20 processes in place to handle the take, the harvest of
21 birds, after that time frame going back to 1916 when
22 the treaty was signed.

23
24 So there was a belief, right or wrong,
25 that we indeed did have a process in place to handle
26 that. When it comes to duck stamps, when it comes to
27 State permits and so on to take birds, those are things
28 that popped up after 1916. It wasn't until 1934 that
29 we actually put a duck stamp in place in requirement to
30 take birds. It was a \$1 stamp in 1934. It popped up
31 later because there was a need for someone, the users
32 of this resource, to help protect the habitat of which
33 these birds actually need to live on. So it popped up
34 later and it was handled.

35
36 So the regulations and restrictions and
37 permits and duck stamps and so on popped up later after
38 the signing of the treaty in 1916. But go back to 1997
39 when that was put in place, it was believed that -- and
40 all the protocol focuses on the closed period because
41 it believed the process would handle the take of birds
42 after that point.

43
44 I think the problem you have today, and
45 I'm coming in from the outside, so beat up on me if you
46 want to, I don't understand at all very well, but it's
47 not unlike what I deal with in the Central Flyway and
48 have dealt with for the last couple decades. That
49 Flyway Council is also very interested in the take of
50 birds the other way.

1 They want to look at the take of birds
2 going back -- not starting September 1, they want to go
3 into August, and there's a reason for that. Many of
4 the doves that we harvest in the Central Flyway are
5 gone from our northern states very early. They would
6 really very much like to hunt birds into August. They
7 come up against a brick wall that says they can't
8 because that's the traditional closed period and the
9 protocol is what takes place there. They have no right
10 to take the birds during that period of time. So they
11 also would be very interested in amending the protocol
12 amendment to go the other way. So I fight in that
13 battle.

14
15 Let me tell you this. When it comes
16 down to it, your word up there, subsistence fall hunt,
17 I believe there's a place and an ability to take birds,
18 whether it is as you call it a subsistence hunt or if
19 it's a sport harvest hunt, the take of birds that is
20 seamless through time into the fall. I believe that
21 your people have not only the ability but the right to
22 be able to come across that manmade date of August 31
23 of which the birds don't care about August 31 or
24 September 1. They do what they want to do on those
25 dates and they have always done it on those dates.

26
27 My point is I believe there's a way
28 that our people can continue to take birds the way
29 they've traditionally done and the way the process will
30 allow them. It's just that we, as people, have to
31 figure out how to make that seam unzip and make it
32 seamless and I believe we can. Then you've got to deal
33 with the things that popped up and we'll have to deal
34 with those because that's part of the process.

35
36 In my view, the species may be
37 different, I'm being very honest with you, but when it
38 comes to those magic dates there are some birds that
39 simply probably should not be taken outside those time
40 periods. We, as people, have to put those regulations
41 in place to protect the wildlife and we will do so and
42 have done and will continue to do that because that's
43 what's important, is to maintain this resource for
44 future generations.

45
46 My point is, let's go back to it, and I
47 think you put your finger right on it, in 1997, right
48 or wrong, it focused as Doug said on that closed
49 period, but today that doesn't mean that we can't deal
50 with that procedure that's in place to help arc across

1 it. Species may be different. The structures on those
2 hunters that are out there may be different. Let's
3 deal with those one by one.

4
5 I think it would be unfair for any of
6 us at this meeting or any future meeting to come in and
7 say there's a brick wall and there is absolutely no way
8 that you can cross that brick wall. I think that's
9 wrong. I think there's a way to do it. It's just that
10 we're going to have to be a little more creative and we
11 have to deal within the guidelines and the protocols
12 that are there.

13
14 Anyway, that's just a thought. I just
15 wanted you to know that in our flyway we look the other
16 way also and we have found ways to tackle some of those
17 issues.

18
19 CHAIRMAN ALCORN: Thanks, Dave. We
20 have Austin and then -- I'm going to let Joeneal go
21 first, Austin, to respond to the answer that I think
22 Dave and I both provided.

23
24 MR. HICKS: Thank you. Your name
25 again?

26
27 MR. SHARP: Dave Sharp.

28
29 MR. HICKS: Thank you for the
30 explanation. I really appreciate that and I'm glad
31 that you understand or have an idea of where we're
32 coming from at this end. Just for clarification for
33 me, let's say, the AMBCC since its creation has been
34 operating under the auspices of just a spring season
35 hunt, let's say. We've never dealt with the issue of
36 the fall season hunt, and we're asking ourselves at
37 this particular meeting whether our authority can
38 extend into that and what we can do to make it work.
39 Am I correct in that? Is that the best way to say it?

40
41 CHAIRMAN ALCORN: I think that's a
42 pretty concise assessment of what it is that we're
43 doing here for discussion sake.

44
45 MR. HICKS: Thank you.

46
47 CHAIRMAN ALCORN: Any other questions.
48 Austin, you had a comment. Come to a mike, if you
49 would, and introduce yourself.

50

1 MR. AHMASUK: Thank you, Mr. Chairman.
2 For the record, Austin Ahmasuk. There are barriers to
3 people asking for or proposing things in the fall
4 season. When people have proposed changes for the fall
5 season through the Board of Game, it's never been very
6 clear how people's proposals for changes in the fall
7 season ever are addressed or whether action is taken.

8
9 The problem and the barrier is that the
10 system for the fall is not the same as the system for
11 the spring because I have experienced actually
12 proposing fall season regulation changes and it's not
13 like approaching this Council where you expect some
14 sort of reason for approval or denial. With the Board
15 of Game they throw their hands up and they say that's
16 not within the purview of this body. So there are real
17 barriers for it to be addressed.

18 In regards to maybe another bullet
19 point, I guess I would urge some folks here to think
20 about -- there will be some discussion on the protocol
21 amendments. The procedural regulations though
22 implemented some of that wording in the protocol
23 amendments and there's seven provisions within the
24 procedural regulations. Several of those provisions it
25 seems that they speak to or address this Council's
26 ability to take on other actions besides things other
27 than the spring and summer season.

28
29 What I think we might want to consider
30 is that Fish and Wildlife Service, maybe the State, may
31 very well develop an answer via their solicitors on
32 something. They can't avoid that probably. If we get
33 that answer, we still won't know the functioning or the
34 mechanism of how this Council, if it did something in
35 the fall, how the SRC would react. You get a legal
36 opinion. Would it be different from how the SRC would
37 interpret it? You wouldn't know that unless this
38 Council took some kind of positive action on a
39 regulation for the fall. From my experience, the only
40 way to test that would be to forward some kind of
41 motion to the SRC.

42
43 Thank you.

44
45 MS. REZABECK: Austin, are you
46 suggesting we here develop a motion.....

47
48 MR. AHMASUK: Just a bullet point
49 because it seemed like the outcomes -- one of those
50 sidebars is, you know, an answer to the why, why isn't

1 the fall season something this Council can consider.
2 If the agencies or even the Native component just
3 internally ask themselves why, but the answer isn't
4 realistic in terms of the processes that there is from
5 this Council to the SRC to the Secretary of the
6 Interior. We'll only know perhaps what might be
7 considered like a rhetorical question of ourselves, how
8 will this work without actually doing any kind of
9 action.

10

11 CHAIRMAN ALCORN: I think maybe what I
12 heard you say when you said why couldn't we just test
13 it and why couldn't we ask a question of establishing
14 the regulations. Is that what you're saying? We would
15 formulate a recommendation that would be submitted to
16 the SRC, which would actually be something akin to the
17 motion that was tabled from Kawerak to establish a
18 regulation for the fall or winter season and then
19 anticipate a response from the SRC. Is that what
20 you're suggesting?

21

22 MR. AHMASUK: Yes.

23

24 CHAIRMAN ALCORN: Sandy and then Myron.

25

26 MS. TAHBONE: You had raised that --
27 I'm not sure how you put it, but regarding AMBCC and we
28 don't recognize or provide for fall/winter subsistence
29 season, but one of the things that we do do is we
30 gather harvest information on the fall subsistence
31 hunt. I mean we do, even though it's not on our books
32 or we don't have regulations for it, this Council does
33 recognize that through the gathering of that data. I
34 think we need to keep that in mind.

35

36 CHAIRMAN ALCORN: Myron, did you have
37 your hand up?

38

39 MR. NANENG: Yes. Thank you, Mr.
40 Chairman. The time we were talking about the Migratory
41 Bird protocol amendment there were no restrictions on
42 customary and traditional hunts for subsistence of
43 migratory birds during the fall time. No closed
44 season. But the formulation of the Alaska Migratory
45 Bird and the implementation of protocol, it became an
46 issue and it's an issue today. That's why AVCP made
47 the proposal to extend it further beyond August 31st.
48 But it seems like those in Washington D.C. that read
49 books rather than read lives of people and the
50 schedules of people and birds are the ones that are

1 making all these situations come up to the point where
2 we have to try and deal with them.

3

4 I appreciate what Dave Sharp has said,
5 that they too probably would like to have additional
6 time period to hunt for birds because next week some of
7 the birds are going to be gone. The four arctic
8 nesting geese are going to be gone by the middle of
9 October and our people are doing their best effort
10 right now to try and put some food aside for the
11 winter.

12

13 So it seems like the more
14 interpretations that come from D.C. it seems to be more
15 complicating the intent of why we pursued the Migratory
16 Bird Treaty protocol amendment. The protocol amendment
17 will recognize spring and summer hunt. Right now
18 within our region we also agreed to give up some of the
19 things that we have traditionally done, like gathering
20 eggs, driving birds. Those are customary and
21 traditional.

22

23 At some point in the future, as we take
24 some of these birds off what they call the conservation
25 concern list, we're going to be able to get back to
26 those practices so what we grew up with as young people
27 can also be passed on to our children because that is
28 part of an education for our young people and they can
29 understand that tradition and have a better idea and
30 understanding of why we may need to conserve some birds
31 at the time when they're in critical population status.
32 But if they don't experience it, they're not going to
33 appreciate it.

34

35 So a lot of things have been given up
36 by our people through the Y-K Delta Goose Management
37 Plan. The migratory bird person here behind me knows
38 pretty well all the issues we've gone through trying to
39 come up with agreements in working with both State and
40 Feds and even to try to get our people to comply with
41 some of these conservation steps that we've taken over
42 the years.

43

44 CHAIRMAN ALCORN: Dave Sharp, I'll
45 invite you to the mike.

46

47 MR. SHARP: What we're doing is
48 identifying the hurdles that are in front of you in
49 terms of what you need to tackle to take on this
50 September 1 date. One is the date because of what we

1 just talked about that's in the protocol and in the
2 Migratory Bird Treaty. So that's the first thing you
3 have to think about, is the date.

4
5 The second thing is what he was just
6 talking about is method and means of take during that
7 period of time after September 1.

8
9 There's a third thing and the thing I
10 was trying to point out. Its the species that you can
11 actually take.

12
13 Those are three major hurdles in doing
14 -- Austin was talking about putting forward some kind
15 of proposal. Those are three significant hurdles that
16 you have to take on before you could ever think about
17 developing a proposal. The proposal must contain ways
18 to take on some of those. Quite frankly, some of those
19 hurdles are so large, so difficult, so codified in law,
20 that I think you're going to have to work with those
21 that you have in front of you, is basically what I'm
22 saying. Those are difficult to change.

23
24 I think the wise thing to do for you,
25 if you're going to go the road Austin said, develop a
26 proposal, set in front of you the actual obstacles you
27 need to -- the hurdles you have to cross. Three of
28 them I can see are the three I just talked about;
29 method and means, species and then, of course,
30 obviously, the date that we're talking about because
31 you're going to be into a different process. There's
32 no other way around that I don't think.

33
34 CHAIRMAN ALCORN: Thanks, Dave. I
35 think Myron might have a response to that and then I'll
36 invite Russ to the mike.

37
38 MR. NANENG: I think it's not
39 necessarily the proposals that come up, but when we
40 come up with proposals there's a tendency of trying to
41 find the most restrictive interpretation of laws to be
42 able to implement what we're trying to attain. I know
43 that's in the past in history, but Governor Murkowski,
44 when he was senator, opened it to interpretation of the
45 indigenous inhabitants to everyone who lived in rural
46 Alaska when one of the objectives was not to cause
47 significant increases in the hunt. That was the
48 emphasis that kept coming up during the negotiations,
49 not to increase.

50

1 As more people move into the villages
2 from the outside, they're no different than you and I.
3 Is it going decrease the amount of waterfowl harvest
4 that is being done out in the villages now? No, it's
5 not. It's completely reversing the trend just with
6 that change because at the time we were negotiating the
7 treaty we were talking about -- the emphasis by the
8 International Fish and Wildlife Association who were
9 represented as well as the Audubon Society. We don't
10 want to see a significant increase of harvest. We want
11 to continue to limit you to what you've been reporting
12 as the numbers over the years through the surveys that
13 have been done prior to the protocol. That's three
14 percent of the total harvest of migratory birds.
15 That's what they wanted to limit us.

16
17 So that's one of the things that we
18 need to keep in mind as we move forward with this, is
19 that are they going to find ways to reach that
20 objective and further limit the harvest so that our
21 people after September 1st will not be able to harvest
22 as much as they need and we only have just a small
23 window of opportunity. Mostly one month of August or
24 September in many of our regions, but in some cases
25 there are some birds that stay longer. So October 31st
26 is a good time frame because by that time most of the
27 lakes, streams and waters are frozen and there's no
28 place for the birds to land.

29
30 I just want to state that it's not just
31 date, means or species, there's other things that were
32 added that were never in the discussion of the protocol
33 amendment.

34
35 CHAIRMAN ALCORN: Russ Oates.

36
37 MR. OATES: Russ Oates, Fish and
38 Wildlife Service. Just a couple comments. I wanted to
39 follow up on what Dave Sharp was talking about earlier.
40 If it indeed is the interest of this group to pursue a
41 trial balloon if you will of proposal relating to the
42 fall time period, I think we can help you construct
43 something that can remove at least some of the
44 obstacles.

45
46 The three that Dave referred to, the
47 date, the methods and means, and the species. I think
48 there are a goodly number of species. I mean I would
49 suggest possibly even a single species proposal just as
50 a trial balloon. There are a good number of species

1 that we have no population concerns about. I would
2 suggest we submit a proposal on one of those species.
3 That would be an obstacle that basically would be
4 removed using methods and means that we all agree are
5 consistent with a conservation of species. That would
6 be the other obstacle that would essentially be
7 removed. The third one being the date.

8
9 I think one of the big questions is
10 what drives the process through which you would submit
11 a proposal. If you view the proposal submission
12 process as being driven by the dates specifically, then
13 the proposal submission process from my perspective for
14 something after September 1st would be a proposal
15 submitted through, for example, the Pacific Flyway
16 during the regular Alaska waterfowl regulations period
17 for the fall season, the early season process. That
18 would be one approach.

19
20 The other approach, if you view what
21 would drive the process you would use as kind of the
22 nature of the hunt, then certainly the Co-Management
23 Council through the AMBCC process would be the way you
24 would do it. I think the question that has to be
25 answered somewhere up the line is which process really
26 would hold sway.

27
28 Because of the way the whole hunting
29 regulations process evolved, the fall hunting process
30 being one and the spring/summer, the subsistence
31 hunting being another, I think there's potential for a
32 successful submission of a proposal through either
33 process, but somebody with a better knowledge of the
34 legal ramifications would have to determine that. My
35 point is I think there's potential for a successful
36 proposal through either process.

37
38 I would like to just caution. We've
39 heard the information about what proportion of the
40 total harvest is subsistence and it's a very small
41 figure if you look at all species combined, but I think
42 we have to be cognizant of the fact that while there's
43 many species that the subsistence harvest takes a very,
44 very small proportion of, there are a few species that
45 subsistence hunting is the predominant hunting
46 mortality for.

47
48 We have to approach this on a species-
49 by-species basis and I think we want to take, you know,
50 for our example trial balloon regulation, we'd want to

1 take a species that potentially subsistence hunt is not
2 necessarily the majority. That may not be the driving
3 factor. Anyway, we'd want to use for our trial balloon
4 a species that we're very comfortable in terms of the
5 population status of and there are a number of them and
6 I think we could do it and remove at least some of the
7 obstacles.

8

9 I would say that we could help craft a
10 proposal that would have minimal obstacles and have
11 minimal concern from a conservation perspective. It's
12 just a question which process would we use. Thanks.

13 CHAIRMAN ALCORN: Thanks, Russ.
14 Joeneal, do you have a question of Russ?

15

16 MR. HICKS: I don't have a question of
17 Russ, but I would just like to expand a little bit more
18 on it. Again, I have to go back a little bit here.
19 Back when the AMBCC was created, et cetera, there was a
20 recognition that subsistence use, traditional use of
21 subsistence in Alaska was actually recognized to have
22 existed and therefore should be extended and be
23 applicable to Alaska Natives. I mean that was pretty
24 much understood and well deserved and given. It's just
25 that there was this particular blockage, let's say,
26 that said, okay, the window of opportunity only between
27 March and August, it did not extend because they
28 figured that the State season took care of it.

29

30 The question here is that is the State
31 fall season consistent with subsistence use by Native
32 Alaskans or let's say Alaska Native take of those
33 particular birds. The answer in my opinion is no. The
34 State of Alaska fall season is primarily sport hunting.
35 It does not take into any consideration subsistence use
36 and, therefore, our demand is therefore limited.

37

38 I would have to agree with Myron in
39 that October 31 might be a good deadline as a good
40 point of discussion. I would also suggest that instead
41 of formulating a recommendation, make that more
42 stricter in that we make a motion in that it tells the
43 SRC or the AMBCC at our meeting in Nome to take action
44 on this particular issue. As it reads right now, it
45 seems to be kind of lenient.

46

47 CHAIRMAN ALCORN: Joeneal, just for
48 clarification, we make recommendations to the SRC.
49 We're advisory to the SRC for regulations. So if we
50 were to say from now on we see our authorities

1 extending through October 31st, that's a little
2 different from the way we currently work with them,
3 which is advisory. We advise the SRC on what we
4 believe locally are the best suite of regulations for
5 the subsistence hunt activities. So it's stepping a
6 little bit out of character in the way I think the
7 relationship is, at least at this point, understood by
8 both the agency and the director and the AMBCC.

9

10 MR. HICKS: Thank you for the
11 correction, but you get the idea what I'm trying to say
12 though.

13

14 CHAIRMAN ALCORN: Yeah, I fully
15 understand it. Dale.

16

17 MR. RABE: Thank you, Mr. Chairman. I
18 really appreciate Dave's comments in terms of breaking
19 down the problem into components, focusing on the date
20 issue, the method and means, and the species issue, I
21 think all of which have separate potential discussion
22 points associated with each one of those.

23

24 From my own edification and maybe so
25 that we have a common basis for moving forward on any
26 type of proposal construction, would be to look at the
27 authorities that are recognized by law for each one of
28 those components in terms of where they currently rest
29 because if we're trying to remove barriers, it seems to
30 me we need to know where those barriers exist within
31 our structure of laws and organization to be able to
32 focus and then consider what potential actions might be
33 appropriate on each one of those. Some of that has been
34 alluded to.

35

36 My suggestion to the Chairman would be
37 whether we take each one of those and have a little bit
38 more detailed discussion to see if there is common
39 agreement. I know there has been references made to
40 the State season and, Joeneal, I don't know if you were
41 implying that the State of Alaska set those
42 restrictions or set up, quote/unquote, a sport hunting
43 season, but the State of Alaska is working within a
44 process too that acknowledges many other partners or
45 members in that process.

46

47 So within the State and the
48 acknowledgement that Myron was asking about, whether or
49 not acknowledging the protocol previously, that I think
50 needs to be all evaluated within context of what are

1 the processes and authorities that even the State
2 acknowledges rather than a unilateral authority in most
3 of this. I don't think the State does believe that it
4 has authority except within a context of a larger
5 framework. Anyhow, I'll go back to my primary point.
6 I think it might be useful to look at each of those
7 elements and the authorities associated with them.

8

9

10 CHAIRMAN ALCORN: Myron.

11

12 MR. NANENG: The reason why I state
13 that the State of Alaska has a hard time recognizing
14 the migratory bird protocol amendment is because of the
15 current position on the subsistence issue. Not only on
16 the migratory bird but overall on the subsistence
17 resources that exist within the State of Alaska.
18 That's why they're having a tough time recognizing the
19 spring and summer hunt because it recognizes customary
20 and traditional subsistence hunting of migratory birds.

21

22

23 The other suggestion, as we work
24 through this process, that I'd like to make, you know,
25 it's an international treaty between Canada, Mexico,
26 Russia and the United States, and if we could take a
27 look at the other things that have been formed, like
28 the Eskimo Whaling Commission, that's an international
29 treaty, instead of a format -- if there's a possibility
30 of setting a format with that kind of thing, I think
31 that would bypass some of these limitations and
32 restrictions that we may have.

33

34 It probably wouldn't be any different
35 than sitting with the Federal agencies at the same
36 level and possibly with SRC, the Service Regulation
37 Committee, and would be sitting at the same level as
38 Fish and Wildlife Service saying, you know, you expect
39 us to conserve at a time when some of these species has
40 become of conservation concern. If you do that, well,
41 why don't you treat us in the same manner or the same
42 level as the Federal or State government and work with
43 us on these issues. You know, that has been in
44 existence with the Y-K Delta Goose Management Plan
45 since 1984 where the State of Alaska and Fish and
46 Wildlife Service agree with the people in the Y-K Delta
47 for the conservation concerns. States of Washington,
48 Oregon and California signators stood that agreement.

49

50 When there's an issue that's raised by

1 Fish and Wildlife Service or any of the states, we try
2 and work with them to address that. California would
3 like us to see harvest like over 100,000 White Fronts
4 because of their impacts on their farmlands, their rice
5 fields. Isn't that right, Russ?

6

7 MR. OATES: It's actually Oregon.

8

9 MR. NANENG: No, California said that
10 they're impacting.....

11

12 MR. OATES: California as well.

13

14 MR. NANENG:White Fronts. You
15 know, that was listed as a conservation concern back in
16 the early '80s and today there's over 400,000 White
17 Fronts. So we can gather eggs at any time if we happen
18 to come upon any of the eggs within the areas they're
19 nesting out there and we could probably make drives
20 again like we used in the past of these birds.

21

22 Those customary and traditional
23 practices, because of the fact we're put a limitation
24 on them, have caused some of these species to increase
25 in numbers where the other states are raising concerns
26 that there are too many of them. We still have
27 concerns about other species, like Black Brant and
28 Cacklers and Emperor Geese. Emperor Geese have forever
29 been a problem.

30

31 I think that if there's a way as part
32 of the outcome is to try to get some type of a system
33 like that where our people are sitting not just on a
34 consensus basis but being able to agree to some of
35 these things like even moving back the date instead of
36 going through that process where we have to put up
37 proposals, but be recognized for our customary and
38 traditional hunts. Our hunts don't end on August 31st,
39 12:00 midnight. Maybe moose hunting closes at 12
40 midnight on the 20th of September because they're not
41 migratory in some areas of the state.

42

43 But I think that's got to be one of the
44 considerations, is how can we as Alaska Migratory Bird
45 Co-Management Council be able to sit at a table to
46 formulate rules and regulations at the same level and
47 coordinate with some of these agencies and states so
48 that some of the concerns that they have will be
49 addressed by the Native people who live in the nesting
50 areas where we hunt the birds. The same thing that

1 they do with the Eskimo Whale Commission. That's just
2 my thoughts.

3

4 CHAIRMAN ALCORN: Thanks. Let me do
5 this. Our facilitator has jumped up and she's got her
6 pen in her hand. Unless there are additional ideas,
7 and we can put those ideas on the flip chart as they
8 come up, it seems to me we have sort of a tiering of
9 outcomes as I see them. I think when you look at the
10 top two bullets, those are really outcomes of a pretty
11 extended process. We're not, in my opinion, going to
12 resolve those after a two-day meeting.

13

14 This is a very large and complex issue
15 we're talking about with the body of international law,
16 Federal law and State law that manages these two or
17 maybe three processes we're talking about. The third
18 process being the one that Myron is suggesting, which
19 is to establish a commission with authorities to make
20 regulations. That's a third process that we're sort of
21 envisioning here.

22

23 Lots of things would be required to
24 have that put in place. We all recognize that. It
25 seems to me that I'm not sure that I, as an agency
26 representative, am ready to jump right to that bullet
27 without having legal counsel and without having agency
28 discussion internally.

29

30 I have here from Washington, D.C.
31 Jerome Ford. He's our deputy assistant director that
32 is going to listen to what we discuss over the next
33 couple days and he will be the liaison to our service
34 directorate, the assistant director Paul Schmidt, whom
35 we've met before at past meetings of the AMBCC. He
36 will understand the issues hopefully after a couple
37 days of listening to this, the nuance of some of the
38 desires and the proposed outcomes and be able to then
39 engage in a discussion with our assistant director, who
40 is the conduit by which we make our request known to
41 the director and have these kind of processes thought
42 through.

43

44 It seems to me though going back to
45 this list of outcomes that we've described, developing
46 a process to implement fall subsistence hunt is an
47 outcome that's in the future, not necessarily resolved
48 by tomorrow afternoon. I think though what we can do
49 if you go to the ones listed on our agenda, I think we
50 can accomplish the first two certainly, better

1 understanding by the agencies about the desires and the
2 needs of the subsistence hunters during the fall hunt,
3 better understanding by the regional representatives of
4 the agencies' interpretation of the laws that regulate
5 or the laws that govern our activity and the way we do
6 our business.

7
8 I'm prepared to speak on the Service's
9 behalf on how we interpret the law at this point. I
10 think I've made that clear in the past, but I'm willing
11 to say that again. I think that before my agency,
12 we're to jump to the next bullet here of actually
13 supporting a process or supporting a recommendation for
14 the AMBCC to either make recommendations or to actually
15 make regulations for the fall and winter hunt, we're
16 going to have to ask a lot of legal questions about the
17 realities of that, the way we interpret the law and the
18 way we perceive the governance of those laws.

19
20 So I'm not ready to necessarily support
21 that, but I'm ready to discuss it. I'm ready to
22 formulate the right questions of our legal counsel and
23 whoever else. The Flyway Councils, as Dave Sharp said,
24 have a vested interest in the outcomes and the
25 recommendations that this group would make because it
26 certainly involves their current processes, the way
27 they make recommendations for the fall and winter
28 seasons. So I think the Flyway Councils need to be
29 consulted.

30
31 I think that we can maybe prioritize
32 these as outcomes and at least I'm willing to recognize
33 some of these are longer term, some of these are
34 shorter term and I think we can accomplish some of
35 these at the finish of this meeting. Myron.

36
37 MR. NANENG: I recommend that the last
38 comment I made be put as one of the bullet points.
39 Because you're objecting to it does not mean that it
40 should not be considered as one of the potential
41 outcomes of how to deal with this issue.

42
43 CHAIRMAN ALCORN: Which one?

44
45 MR. NANENG: The one that I made where
46 the Alaska Migratory Bird Co-Management Council be
47 considered as part of the group to come up with
48 regulations regarding what is directly impacting our
49 people in Alaska, the subsistence fall hunt. I think
50 that should be part of one of the potential outcomes.

1 I would not keep it off the list. I'd put it down. I
2 know that it's possibly going to have a lot of
3 resistance, but I would write it up as something as a
4 potential objective.

5
6 MS. REZABECK: Myron, the reason I
7 didn't put that down is that I think there are several
8 processes that have been discussed. So that's one of
9 them. The other one is through a State process, is
10 that correct? Then the third one is something like the
11 Eskimo Whaling Commission process. Have I got that
12 right?

13
14 MR. NANENG: Yeah, but I would still
15 recommend that you write it down. The fact that you
16 did not write it down has already shown resistance to
17 the recommendation.

18
19 CHAIRMAN ALCORN: You said that I've
20 already expressed objection. If I did make it sound
21 like I was opposing it, then I'll correct myself right
22 now and say I'm not opposing any solution at this
23 point. I'm willing to entertain all the ideas. As a
24 matter of fact, that is why we have item D under 3, the
25 North Slope Borough's request to establish and
26 authorize a regulation making body modeled after the
27 Alaska Eskimo Whaling Commission. We'll get into that
28 in detail.

29
30 So it's certainly on the table for
31 discussion. I'm not in any way trying to take things
32 off the table at this point. I think the purpose of
33 this meeting is to vet all of those ideas and to have
34 that discussion and to formulate the right strategy or
35 the right requests at some point.

36
37 Austin, you had your hand up.

38
39 MR. AHMASUK: Thank you, Mr. Chairman.
40 For the record, Austin Ahmasuk. Way back when in 2000
41 the procedural regulations got on the books. It might
42 help or you might think it might hinder, the procedural
43 regs were not expressed spring and summer regulations.
44 They're for the purpose of establishing them. I don't
45 remember how they got there, whether it was the
46 co-management council or Service initiated. I think
47 part of the answer lies in how the procedural
48 regulations were established. You said you would be
49 willing to explain some of that. Maybe you could
50 explain some of it.

1 CHAIRMAN ALCORN: I'll be glad to do
2 that. I don't think it's appropriate right at this
3 time. I think we can get there. Remind me to do that
4 and we'll come back. I think between Fred and I and
5 Donna and Russ, who are all around and involved in
6 different phases of that, I think we can explain how
7 the procedural regulations are what they are today and
8 how they were adopted.

9
10 Let me take us back to this list of
11 outcomes because that's what we're trying to maybe get
12 through before we get to the break. I'm going to
13 suggest that we get common understanding what these
14 outcomes are and then maybe we could take a break at
15 that point. It doesn't mean we can't come back and
16 revisit that through the course of the couple days if
17 our thinking begins to evolve.

18
19 I certainly would be glad to speak for
20 my State counterpart as an agency representative are
21 always open to understanding the issues better and
22 that's what I think the reason we all agree to table
23 the original motion and to come to the table so that we
24 as agencies could understand the requests and
25 understand the issues better and hopefully in this
26 dialogue over the course of the two days there will be
27 an understanding of why the agencies have taken the
28 positions that we currently have on some of these
29 issues. So there's that common understanding.

30
31 I think and I will speak not for the
32 State but for myself and for my agency that any time we
33 have a recommendation to change existing protocols,
34 meaning the processes that we have in place to make
35 regulations, which are two at this point, the one being
36 the SRC takes recommendations from the Flyway Councils
37 for the fall and winter season, and the second process
38 is the SRC takes recommendations from the AMBCC for the
39 spring and summer subsistence regulations.

40
41 Those two processes are recognized in
42 regulation and recognized in our interpretation of the
43 law, so we're talking potentially of a third process,
44 which would be to establish actual regulation making
45 body modeled after the Eskimo Whaling Commission or
46 some other autonomous body.

47
48 Those kinds of questions are going to
49 require some significant change in our agency
50 interpretation of law or change in the law itself. So

1 I am not authorized to say I'm going to support that
2 change. What I am authorized to say is I'm willing to
3 take that question or questions to the right
4 authorities for that discussion. That's what I'm
5 authorized to do. I presume that's what Dale is
6 authorized to do, but I won't speak for Dale.

7
8 MR. RABE: Doug, I think you did a fine
9 job in terms of sort of representing the position. In
10 this discussion, a big part of my role and the fact
11 that there are relatively few of us from the State
12 sitting here at this point in time is it's not clear to
13 me exactly where I need to take questions back into a
14 much bigger bureaucracy and organizational structure to
15 begin to get historical and legal opinion that would
16 help inform any of the desires of the group to move
17 forward.

18
19 I do fully share Doug's statement that
20 from the State standpoint at this point there's no
21 objection to any issue of discussion because I'm
22 considering everything to be exploratory in terms of
23 what are some potential avenues that we want to
24 consider and then from there what would be the
25 necessary information or other involvement that would
26 be required to make some of those things happen.

27
28 CHAIRMAN ALCORN: The fourth bullet on
29 our agenda is then to determine the process and next
30 steps. I think that then feeds into the process, the
31 next steps we would take at the close of this meeting,
32 which presumably, based on the original motion, would
33 be to take action at next week's meeting to take the
34 first step to begin to ask the correct questions. I
35 mean that's the way my agency works. That's sort of my
36 thinking about how we would begin to untie this very
37 complex knot that we seem to be involved in right here.

38
39 Ultimately those outcomes that are
40 described there, the first two certainly, would come
41 after some internal discussion, potentially discussions
42 of the AMBCC with senior officials in my agency.
43 Certainly potentially with senior officials in the
44 State and their legal counsel as well. So this is the
45 beginning of I think a pretty long-term process to do
46 this.

47
48 Does that make sense that we would try
49 to get through at least these first four, keeping those
50 alive, and if we have a need for subsequent meetings,

1 which I suspect we will, we keep those as our long-term
2 objectives or long-term goals? Peter.

3

4 MR. DEVINE: It wasn't an answer to
5 that, but, Mr. Chair, when this proposal first started
6 it was from Kawerak and at our spring meeting we were
7 all in favor of making this a statewide proposal, so
8 we'll just have to come back as another proposal
9 statewide. I'm in favor of this because in our region
10 we do not hunt spring and summer. We gather eggs.
11 Therefore, we would like to have a fall hunt. That's
12 my reason for supporting this.

13

14 CHAIRMAN ALCORN: Thank you. I fully
15 appreciate that, Peter, and I fully appreciate that
16 this is a very expansive state and that there are
17 different needs in the different regions. Myron
18 suggested a particular date. I suspect that date works
19 in his region but may not work in other parts of the
20 state. Those are the kinds of things that are very
21 complex, would have to be worked out. I think Russ had
22 a good suggestion that if we wanted to begin untying
23 this large and complex knot one string at a time, we
24 potentially could make recommendations for potentially
25 one species in one area at a time or something, but
26 that's getting ahead of myself in thinking through the
27 solution.

28

29 I think if we go through this model and
30 we go through the background information, I think we'll
31 have a pretty good understanding of the proposals and
32 for those that were not involved at the start of this
33 and involved in all of these discussions will have a
34 very good baseline of why this proposal is coming from
35 various regions and ultimately why it would be
36 appropriate for the entire state.

37

38 I would tell you that if the AMBCC were
39 to make a statewide recommendation at this point, I'm
40 not sure that I would support it today simply because
41 we've not begun to have these discussions through the
42 right chains of communication within my agency. This,
43 as Dale said, is a larger bureaucracy than me and a
44 larger bureaucracy than my program. So it takes time
45 to have those discussions and to reach consensus and to
46 meet with Jerome and to explain how this is a unique
47 issue and how potentially the existing processes may
48 not be accommodating the needs, but those things take
49 time. I hear what you're saying and I see where you're
50 trying to go with this and eventually we may get there.

1 Lisa.

2

3 MS. KANGAS: Thank you, Peter, for
4 asking that question. I wasn't here when the proposal
5 was first proposed, so I was a little confused as to
6 whether it was statewide or are we talking about two
7 different regions, so that really helped clear that up.

8

9 CHAIRMAN ALCORN: Myron. Thank you,
10 Lisa.

11

12 MR. NANENG: Yeah, there are currently
13 some issues that we have dealt with on a region-by-
14 region basis even though it had been proposed as
15 statewide proposals. I know that the closures for
16 birds are agreed to independently by each of the
17 management bodies in the region. With those summer
18 closures that we talk about that's within the
19 regulations. So even if it's a statewide proposal that
20 comes up it's going to have to be -- you know, the
21 regional management bodies are going to have to
22 determine their own dates of when they want to close it
23 and open it.

24

25 So just because it's a statewide
26 proposal does not mean that we're going to be
27 restricted as to when we may want to. I just picked
28 the date of October 30th thinking that people up north
29 have more birds to hunt by that time than our region in
30 the Y-K Delta. That's not a set date, you know. I
31 wouldn't want a date that's too close to September 30th
32 because the birds may end up staying longer than
33 October 15th.

34

35 If you follow the elders' comments
36 regarding when do the birds leave, in October there's a
37 full moon and right after that full moon in October the
38 birds in our region pretty much disappear. They look
39 at the full moon as a schedule of when the birds will
40 be leaving the region and migrate out south after that.
41 But there's still a few sea ducks left in the area that
42 can allow our people to still hunt some birds out there
43 on the coast.

44

45 CHAIRMAN ALCORN: Thanks, Myron.
46 Molly.

47

48 MS. CHYTHLOOK: Thanks, Mr. Chairman.
49 I just have a comment. I'm on the Subsistence Harvest
50 Committee and we're in the process of revising the

1 methodology and revising the survey process for the
2 migratory bird survey project. Some of the regions are
3 going to be up to do their survey in 2010 and I know
4 that Bristol Bay isn't up until 2011. In Bristol Bay
5 and probably in any other region we have been surveying
6 all the seasons, including fall.

7

8 I guess a question I've got right now
9 before I make any other statement is why is that fall
10 subsistence survey in the packet that's costing us
11 another \$11 in the old survey system. After you answer
12 that I'll make another statement. Thanks.

13

14 CHAIRMAN ALCORN: I think I know the
15 answer, but I'm going to see if Russ -- do you recall
16 the original discussion in the Harvest Survey Committee
17 on why there was a need to keep the fall data, continue
18 collecting the fall information?

19

20 MR. OATES: Russ Oates, Fish and
21 Wildlife Service. I am going to ask Fred and Donna to
22 help out on this, but if you go back to pre-AMBC days
23 to our subsistence harvest survey that we've done for
24 many, many years, I think the folks that organize and
25 develop that survey recognize that the date September
26 1st was not really all that meaningful in terms of when
27 the subsistence hunters were out hunting and gathering
28 food. So the survey was continued on through after
29 September 1st to capture the use by the subsistence
30 hunters.

31

32 My dim recollections of some of those
33 early meetings of the Harvest Survey Committee was that
34 -- and to keep with the intent of the regulations to
35 not result in an increase in the harvest whether or not
36 that harvest was occurring under the subsistence
37 regulations, it was harvest by subsistence hunters. I
38 see Austin nodding his head. He was on that committee
39 in those days. So it was felt that it was important to
40 continue to monitor that component of the harvest by
41 subsistence hunters, thereby defined as subsistence
42 harvest no matter what the date was. So that's my
43 recollection.

44

45 CHAIRMAN ALCORN: Did that answer your
46 question, Molly?

47

48 MS. CHYTHLOOK: Yeah, thanks. I guess
49 this meeting, this process right now, is going to be a
50 good component to the process of the revisions of the

1 subsistence survey. To my understanding we haven't had
2 any changes to the four season survey process to date
3 except I think some of the regions were requested to
4 see if there were some seasons that they literally
5 don't harvest migratory birds if I'm not mistaken.
6 That's what the new process is going to encompass. By
7 keeping that fall harvest survey in the packet and the
8 surveyors going to households to ask and request to
9 have them document the fall harvest, I think it
10 confuses some to think that the fall harvest is okay.
11 We're being surveyed for those months and it must be --
12 the season must be okay, so I think we need to think
13 about that before the revision of the survey
14 methodology is in place.

15

16 Thank you.

17

18 CHAIRMAN ALCORN: I'm going to suggest
19 that we -- this is sort of the final list of outcomes
20 that we've talked about now for an hour and a half or
21 so and I'm satisfied with them and if there are any
22 ideas that come through the course of the day we can go
23 back and revisit these. I believe the list is
24 sufficient and I think that if we were able to get
25 through the next couple of days and begin to develop a
26 strategy to address these and to begin to move forward,
27 I'd consider this meeting a success.

28

29 With that, I'm going to call for a
30 break and after the break then we will come back and
31 get through presumably the -- I'm thinking we'll get
32 through the background information before lunchtime and
33 then that will set the stage for I think a good
34 discussion and we'll have Cathy facilitate that
35 discussion probably after lunch.

36

37 So, with that, let's take a 10-minute
38 break and come back at five of.

39

40 (OFF RECORD)

41

42 (ON RECORD)

43

44 CHAIRMAN ALCORN: We're going to call the
45 meeting back to order. Everyone take your seats,
46 please. We're ready to start. Thank you for this
47 morning's discussion. I think we are ready to go
48 through items B through E. Some of these will be
49 quicker than others. But this will result in hopefully
50 a common understanding of all of us in this room of why

1 we are where we are and how we dealt with the proposals
2 to date.

3

4 We have item B, the Kawerak proposal.
5 That's an extension of the migratory bird subsistence
6 season. I believe it's behind the pink sheet of paper
7 in our resource book here. Sandy, not to put you on
8 the spot, would you like to speak to that proposal and
9 kind of in general what it was designed to do.

10

11 MS. TAHBONE: Basically, Mr. Chairman,
12 it was to provide for the fall hunt, recognizing that
13 our people clearly do have a fall subsistence hunt and
14 the reason for putting it forth is the request was to
15 legalize that hunt and to provide for the methods and
16 means that are in line with our spring season. It was
17 pretty much the gist of it.

18

19 CHAIRMAN ALCORN: Okay. We, as a
20 Council, then tabled that so that we could have this
21 discussion. That's part of the reason. We've already
22 discussed that, so it's not really new. Any questions
23 of Sandy from the group?

24

25 MS. TAHBONE: Mr. Chairman. Maybe for
26 the record I could just read why is it necessary to
27 adopt this regulation by special action. Extending the
28 migratory bird subsistence regulations beyond August 31
29 fits with mandates in the Migratory Bird Treaty Act to
30 allow for subsistence by indigenous people living in
31 rural areas. Extending the migratory bird subsistence
32 regulations beyond August 31st will allow for methods
33 and means that are prohibited under the current fall
34 sport hunt regulations. If the Secretary of the
35 Interior does not extend the subsistence regulations
36 beyond August 31 the Secretary will disenfranchise
37 subsistence users, which is not the intent of the
38 Migratory Bird Treaty Act.

39

40 CHAIRMAN ALCORN: Any questions of
41 Sandy. Lisa.

42

43 MS. KANGAS: This is Lisa Kangas. What
44 kind of species are you targeting?

45

46 MS. TAHBONE: All species that we are
47 currently allowed to hunt within our region.

48

49 CHAIRMAN ALCORN: I think, Lisa, that
50 number is about 97 different species by my count.

1 Those species are listed in the regulations under --
2 Donna, is it part D?

3

4 MS. DEWHURST: Keep in mind that a lot
5 of our non-game species, like shore birds and sea
6 birds, are gone pretty much from after the first of
7 September. Now, in some cases, what I saw is the main
8 body of the state and they're down in Peter's area
9 wintering, at least sea birds are down wintering in the
10 Aleutians. Shore birds pretty much leave Alaska and
11 they leave early. So most of what we have after
12 September 1 is waterfowl. A lot of our non-game species
13 are gone. Waterfowl and some of the water birds, like
14 loons, cranes and things like that. But shore birds,
15 sea birds pretty much are gone by September 1.

16

17 CHAIRMAN ALCORN: Okay. Thank you.
18 Does that help?

19

20 MS. KANGAS: Yeah. I was just asking
21 because with all species if you were going to try to
22 extend this hunt, maybe it would be easy to target five
23 or 10. I'm not sure of the number, but just so that
24 this can go through and set a precedence. Then in the
25 future you can extend that range of species targeted.

26

27 CHAIRMAN ALCORN: That's one strategy
28 that could be used in the future, so something to
29 consider. Myron.

30

31 MR. NANENG: The last few winters and
32 falls we've noticed that the winters have set in or the
33 ice does not form until almost Thanksgiving out in the
34 Y-K Delta. I know the birds try to stay as long as
35 they can possibly stay before winter sets in. Even
36 though I support the October 31st, I'd rather say till
37 Thanksgiving. Maybe somebody will have a migratory
38 bird for Thanksgiving dinner if there's one available.
39 It's happened before.

40

41 CHAIRMAN ALCORN: Okay. If there are
42 no further questions, and I don't see any, let's move
43 to item C and D and maybe we can take these in
44 succession. Mike Pederson here from the North Slope is
45 probably the most knowledgeable about those. I will
46 introduce where this is held sort of as a placeholder
47 both of these ideas. We entered a memorandum of
48 understanding with the North Slope Borough, UIC,
49 Ukpeagvik Inupiat Corporation, ICAS, Inupiat Community
50 of the Arctic Slope, and the Native Village of Barrow.

1 There were four North Slope entities and the U.S. Fish
2 and Wildlife Service. We entered into an MOU this past
3 season for Steller's Eiders conservation.

4
5 One of the things we agreed to as an
6 agency when we were talking about the MOU there were
7 some things that the North Slope Borough and other
8 signatories to the MOU wanted to continue to have
9 discussions on two of these items that were appended to
10 the MOU and put on sort of as placeholders are these
11 two issues. So, Mike, I'm going to let you talk about
12 both of those ideas and what the requests are.

13
14 MR. PEDERSON: Thank you, Doug. Yeah,
15 when we met with our hunters to discuss the MOU process
16 for the protection of Steller's Eiders over last fall
17 and the winter time, other issues kept creeping up into
18 our discussions and one of them was to extend our
19 subsistence migratory bird season. Same reason as
20 Ms. Tahbone had stated for their region. Our birds are
21 still there after August 31. We did have a lot of
22 people who continued to hunt after August 31, but they
23 were hunting under the sports hunter guidelines.

24
25 Last week, me and my staff drove around
26 the shooting station and the Gaswell Road and we still
27 saw birds that we harvest for subsistence uses, so
28 they're still there. Our discussion, when we were
29 talking about these different rules and stuff, they did
30 ask us to work on extending the subsistence season. We
31 didn't have a date in mind, but just to be conservative
32 we thought maybe two weeks after, but even last week we
33 noticed birds still there. So I like Myron and Sandy's
34 suggestion of October 31, but we didn't have a set
35 date.

36
37 As far as a mechanism to a regulation
38 body making stuff, there were a lot of people in our
39 discussions when we were doing the MOU that were not
40 really familiar with the AMBCC process. I think Doug
41 and Fred realized that when we traveled to the villages
42 for the public hearings related to this issue, so
43 everybody thought, well, maybe why don't we work on
44 something like the AEWG, Alaska Eskimo Whaling
45 Commission, where they've been really successful in the
46 international arena in conserving bowhead whales by a
47 quota system.

48
49 I think in that commission the whaling
50 captains, who are the commissioners, are chosen by

1 their local whaling captains and there's 11 villages
2 now. They all sit at the table to decide on the quota
3 for each village. They receive research funding from
4 NOAA and their management agencies, the National Marine
5 Fisheries Service. So at the table they don't have
6 like we do here with the State and Feds. The State and
7 Feds at the whaling commission level sit at the side,
8 but they're always invited to the meetings. The
9 ultimate authority for subsistence bowhead whaling lies
10 with the board of commissioners, which are all whaling
11 captains, and amongst them they choose a whaling
12 chairman among the whaling captains.

13
14 Once every four years when a new quota
15 is negotiated at the international level, there is a
16 big conference with other whaling captains from all the
17 11 villages. They all come to Barrow with their wives,
18 the co-captains, and they all discuss science quotas
19 and oil industry stuff that's happening offshore. So
20 there's a lot of pride from us in the North Slope that
21 the Whaling Commission is looked at as a model of
22 co-management because it really does work. That
23 commission first started in 1977 when co-management was
24 barely heard of.

25
26 So, in our discussions under the MOU in
27 dealing with migratory birds, there was a lot of stuff
28 coming up in our discussions. We couldn't address them
29 all with the rule-making thing that had to be done by
30 April 1 or so. We decided with the Feds to just append
31 some items for further discussion and that's how we got
32 to where we are today.

33
34 Thanks.

35
36 CHAIRMAN ALCORN: Thank you. Any
37 questions of Mike? Correct me if I'm wrong, but didn't
38 the North Slope Borough submit a proposal in the past
39 very similar to Kawerak's?

40
41 MR. PEDERSON: If they did, I'm not
42 aware of it. Since my time on there I know we haven't
43 done that. I mean since my time on this body. But if
44 they did it in the past, I wasn't aware of it.

45
46 CHAIRMAN ALCORN: Okay, maybe I'm
47 mistaken then. Any questions? Sandy.

48
49 MS. TAHBONE: I believe, Mike, along
50 with several others, I think North Slope Borough was

1 the first one that wanted to be added to be considered
2 along with Kawerak within the proposal and then I
3 believe at that point there was Peter and others,
4 everybody started wanting to. I think that's probably
5 where you're getting it from.

6
7 CHAIRMAN ALCORN: Okay. The idea is
8 the same. I mean the concept is that we accommodate
9 the needs of the subsistence season beyond September 1.
10 Okay. Any questions of Mike regarding the Alaska
11 Eskimo Whaling Commission? That tends to be kind of
12 the third process that we've kind of thought of today
13 and at least discussed it to some degree.

14
15 I have a question about that, Mike.
16 Does the Whaling Commission -- who enforces the
17 regulations for the seasons or the number of strikes
18 per village?

19
20 MR. PEDERSON: Thank you, Doug. What I
21 forgot to mention is that the whaling captains have
22 developed a management plan and in that management plan
23 it details on how the hunt is going to be done and
24 completed. Each whaling captain's association has
25 their own little rules and regulations, but overall the
26 management plan guides the hunt and it's overseen by
27 the National Marine Fisheries Service.

28
29 In that plan, if there are mistakes or
30 if a crew doesn't follow what's in the management plan,
31 that community's whaling captains will get together to
32 decide any consequences that may have occurred that was
33 not in the management plan. Say harvesting a whale
34 that's less than 23 feet. Those are considered calves
35 and research has indicated that if there's milk still
36 in the calf's stomach, that's still considered a
37 yearling and we're not allowed to hunt those. So there
38 are certain aspects in the management plan that govern
39 how whaling is done and it is overseen by NMFS. Every
40 time a whale is struck or landed, a report is given to
41 NMFS. Prior to me working for the North Slope Borough
42 -- our department serves as the science arm for the
43 AEWC and from 1990 to 1994 I was working at the AEWC.

44
45 So there are a lot of things in place
46 that allows that co-management body to work effectively
47 not only with our national reps in D.C., mainly NMFS
48 people, but also in the international level. I think
49 we've gone to great lengths to prove that our science
50 works and we're getting ready to do that next spring

1 too because we're going to do a new count of bowheads
2 passing Point Barrow this spring.

3
4 The management plan is the real good
5 thing about it and the cooperative agreement between
6 NOAA and the Whaling Commission is signed, I think,
7 once every four years after the International Whaling
8 Commission gives us our quota.

9
10 CHAIRMAN ALCORN: Thanks. Any other
11 questions for Mike? All right. An overview of the MTA
12 protocol amendments just as background. I think Fred
13 was going to give us a little bit of background on
14 that.

15
16 MR. ARMSTRONG: We've dusted off Bill
17 Ostrand's PowerPoint that he gave early in the
18 beginning of the formation of the Council. He went
19 over the protocol, the letter of submittal and tried to
20 summarize the requirements we had to follow. There
21 were three mandates. The first one was conservation of
22 migratory birds. The second was provide for the
23 customary and traditional taking of certain species by
24 indigenous inhabitants of Alaska. And, as Myron noted,
25 we're not going to increase harvest levels based on
26 continental populations.

27
28 Article one talks about the list of
29 birds and, as Doug noted to, we have 97, I think it is,
30 birds that are listed in this; geese, ducks, swans,
31 cranes, shore birds, sea birds, grebes and loons.
32 Early on there was a request to add the great horned
33 owl basically as a last resort. If there was no birds
34 around and there was only one bird left, they wanted to
35 be able to harvest it. So that list totals about 97.

36
37 The next aspect of the protocol talks
38 about the goals. First and foremost is conservation of
39 the birds. We're supposed to manage them
40 internationally. Sustainable uses, healthy
41 populations. There's some aspects of it that we
42 haven't gone into yet and that's habitat, protect
43 habitat for the birds. Depleted populations. I think
44 we're quite into that exercise this year with the
45 Steller's Eiders on the North Slope.

46
47 Monitoring, regulation, enforcement and
48 compliance. Basically we had to monitor the harvest
49 levels when we decided to expand our harvest survey
50 program and going from three regions, Y-K Delta,

1 Bristol Bay and I believe it was Aleutian Islands. And
2 then expand it statewide. The only problem is we had
3 the same pot of money and that was 300,000. Do you
4 have a question, Sandy?

5
6 MS. TAHBONE: No.

7
8 CHAIRMAN ALCORN: She told me to turn
9 my mike off.

10
11 MR. ARMSTRONG: I&E or information and
12 education. We tried to do that with grants. We
13 include a requirement that each of the grantees provide
14 information and education to their residents. We're
15 down to two people now in our office. To do that
16 statewide is pretty difficult. We try to do that using
17 the grantees.

18
19 Protection of nesting birds and that
20 pretty much was a 30 day closure period. Early on we
21 had this interesting exercise where we have this time
22 frame of April through September and each region sort
23 of identified what time frame they should have a 30 day
24 closure. Each region wrote down their dates and then
25 they compared their biological data and it turned out
26 that it was unique that every region was the same
27 biological data they had as far as when the birds
28 started nesting. So that's how we got that.

29
30 Designation of harvest areas. That's
31 defined in the protocol by the language in the letter
32 of submittal. It said anything north and west of the
33 Alaska range would be the included areas or harvest
34 areas. Management of birds on a population basis. So
35 we have to consider each species population levels and
36 kind of work with our different flyways to make sure
37 that what we do in Alaska won't adversely affect them
38 in the Lower 48 and vice versa.

39
40 One important aspect that we use in our
41 regulatory program is TEK, traditional ecological
42 knowledge. When we have a proposal, we normally ask
43 for regions methods and means of how they harvest these
44 birds. That's an important aspect of the regulatory
45 program.

46
47 Article 2 talked about seasons and
48 management bodies. It repealed a closed period March
49 10 to September 1, not to exceed three and a half
50 months. That was in the Mexican Treaty. Actually it

1 has different language in there. I was just reading
2 it. The Mexican Treaty says you'll have a season not
3 exceeding four months, 120 days. We have a longer
4 period, but within that we have to have a 30-day
5 closure.

6
7 Indigenous inhabitants afforded a
8 meaningful role in the development and implementation
9 of regulations. That's why we created this body. Some
10 of you remember we went down to Girdwood and put
11 together our bylaws, came up with AMBCC and decided
12 when we would meet. Shortly after that, after the
13 bylaws, I think is when the procedural regs were put
14 together and published. Basically they dictate how you
15 will -- as a Council what you will do. So far we've
16 been following it pretty much to the letter.

17
18 When the amendments were passed, the
19 Fish and Wildlife Service went around the state and had
20 statewide meetings to ask the public how they should
21 implement the amendments and they had a lot of
22 comments. The important player in this was RuralCap's
23 negotiating team that Myron was a part of and they
24 provided recommendations how the Council should be
25 formed and it was decided that it would follow the
26 ANCSA boundaries and the partners would be one
27 representative from each of those regions would sit on
28 the Council.

29
30 The language in the treaty says that
31 State of Alaska, Federal government and Alaska Natives
32 would act as equals. We had to figure out how that
33 would happen. So it was determined that it would be
34 one vote a piece; one from the State, one from the Feds
35 and one from the Alaska Natives. So that's why when we
36 come to when you guys have to caucus and come up with
37 the way you'll vote.

38
39 This came to an important aspect that I
40 think everybody had a problem with and that's the
41 definition of indigenous inhabitants. Permanent
42 residents of a village regardless of race. The intent
43 at the beginning of the amendments was for Alaska
44 Natives to continue their lifestyle as well as
45 aboriginals from Canada, but when it got to the Senate
46 it was redefined to say everybody regardless of race
47 and that's what we've had to live with.

48
49 The investigation talked about similar
50 language as a protocol, meeting nutritional needs,

1 passing down our cultural knowledge and in many cases
2 immediate family members can be invited after their
3 village and hunt if they got approval from the Council
4 there. We had a lot of discussions about that. I
5 remember when we tried to get by the term resident.
6 They took, I think, six months to define that term
7 because we were trying to make sure that everybody
8 that's in an included area would be eligible. We have
9 a long definition that we have to comply with.

10

11 CHAIRMAN ALCORN: Fred, you have a
12 question from Molly.

13

14 MR. ARMSTRONG: Sure.

15

16 MS. CHYTHLOOK: My question, as far as
17 I guess determining the residency, when it comes to
18 surveying households, what we've been using is if a
19 person has been in the community for 12 months then
20 they are surveyed, but if they were there to hunt and
21 they were just coming back to their community, there is
22 no community for temporary residents anywhere,
23 Anchorage or elsewhere, then those people that have
24 come in to harvest are left out.

25

26 MR. ARMSTRONG: Right. There's some
27 history behind that. I think the example that was used
28 was a doctor from Chicago who came to their home town
29 to hunt. I think the Council thought that they
30 shouldn't be allowed to do that, but we had to take
31 into exception that immediate family members was
32 already defined to aunt, uncle, cousin, could go back.
33 If they went back and they were surveyed, it would
34 impact the numbers more than normal, so it was
35 determined if that person went back to their community
36 they could be subject to harvest survey. They were
37 worried about inflating numbers.

38

39 Yes?

40

41 MS. KANGAS: What about when it comes
42 to taking the game out of the village?

43

44 MR. ARMSTRONG: To where?

45

46 MS. KANGAS: From what I heard this
47 summer, and it's just hearsay, but some of our tribal
48 members they didn't live in the village, but they went
49 back because they're members of the tribe. They'd hunt
50 and when they got back from Warbelows law enforcement

1 asked to search their bag and they got fined for that.
2 So that's kind of an issue in my area.

3
4 CHAIRMAN ALCORN: Let me respond to
5 that. We're going to get into the procedural
6 regulations after Fred is done at Austin's request. In
7 the procedural regulations it talks about who is
8 eligible to hunt. Permanent residents of generally
9 included areas and areas that we have included through
10 a deliberate process in Joeneal's region primarily,
11 permanent residents of those areas are considered
12 eligible participants.

13
14 If, for example, you have a tribal
15 member that lives in Fairbanks, which is expressly
16 prohibited from harvesting, if they go back to a
17 village, they can go back and help meet permanent
18 residents' subsistence needs, but their own subsistence
19 needs are not qualified under this protocol because
20 they live in a generally excluded area. That's
21 Fairbanks, North Slope, North Star Borough, Anchorage.
22 Generally it's the roaded system of Alaska. Those are
23 generally excluded areas in what the protocol amendment
24 allowed for. The idea being that subsistence needs of
25 those people that are living out in the rural areas
26 trump the needs of us that live in the city. That's
27 why there's basically a rural/urban divide.

28
29 MR. ARMSTRONG: Well, it's a transport
30 issue, technically what this is, and we did discuss
31 this on the Council. We know that the number one value
32 is sharing, you know, statewide between the three
33 ethnic major ethnic groups; Inuit, Eskimo and Aleut.
34 Normally we bring food from the villages to people in
35 the cities and that's been going on for years and
36 years.

37
38 It goes back to Federal law again where
39 they said that you can't transport from an included
40 area to an excluded area. That Council has to pass a
41 regulation allowing for that activity to occur. We did
42 try I think one year but got hung up on some
43 technicality. I can't remember what. The Council has
44 that authority to regulate the transport of those
45 foods. That was the reason why.

46
47 Myron.

48
49 MR. NANENG: At the time that this
50 proposal was discussed where the villages are able to

1 invite a member of their village who may be attending
2 school in Anchorage or Fairbanks, there was some issues
3 and concerns raised by others, some from the agencies,
4 some from international Fish and Wildlife Association,
5 the Audubon Society, saying that allowing these people
6 to come back home to hunt would increase the number of
7 harvest. We, at that time -- Solomon from Fort Yukon.
8 Solomon was the one that made the motion to have the
9 tribal councils being able to invite their membership
10 to come out and hunt at the village. So it's up to the
11 tribal councils to invite their membership so that they
12 can be able to continue their customary and traditional
13 hunts of migratory birds and be able to transport them
14 back to where they're at.

15

16 But because they felt the exclusion of
17 our people who survive on this -- you know, our culture
18 is not just eating at McDonald's. That's not our
19 culture. But eating some of these migratory birds that
20 we grew up on. We did not want to be exclusive of
21 these people that moved into the urban areas because of
22 jobs or because of their health conditions or other
23 things that they were pursuing, so that's why that
24 language came out the way it did.

25

26 MS. KANGAS: Thank you, Mr. Chairman.
27 Yeah, this issue is not only for migratory birds. It
28 can also be seen in salmon intake. You know, I grew up
29 in a fish camp and when I was 12 I moved for a better
30 education. I have my education now, but there's still
31 a part of me that yearns to go to fish camp and I do
32 every summer. This past summer, since the fish numbers
33 were so low, the Feds passed a law that said that
34 people who did not live in the village could not help
35 with the catch of the salmon. They could help cut it up
36 and they could take it out, but it just seems to me
37 that they're blocking me from joining and doing
38 something that I've been doing for years and just
39 because I live in Fairbanks.

40

41 I'm sure there are people that abuse
42 the system, but there has to be some way that people
43 who are trying to keep this alive in their background
44 and hopefully bring it down to their kids that can go
45 in and work around it. It just seems so hard to do
46 that though, understand.

47

48 CHAIRMAN ALCORN: Thank you. I'm not
49 sure -- this meeting is not the meeting to resolve that
50 issue and we certainly have plowed that ground before

1 and we've dealt with that in the development of the
2 procedural regulations and I can give you a reference.
3 If you want to write it down, you can look at it just
4 so you'll know how we've dealt with it, but it's in
5 your black binder. It's under Tab 9, Page 53518.

6

7 MS. KANGAS: Yeah, I don't mean to get
8 this meeting on a different course.

9

10 CHAIRMAN ALCORN: I understand that.
11 I'm just giving you a point of reference so that you
12 can understand where we are at this date. It's
13 subsection 92.5(d). So look that up when we take a
14 break and I think that might help you understand it.

15

16 Peter, go ahead. I'll entertain a
17 question from Peter.

18

19 MR. DEVINE: Thank you, Mr. Chairman.

20

21 CHAIRMAN ALCORN: If it's germane to
22 what Fred is presenting and not the other issue.

23

24 MR. DEVINE: Okay. I was just going to
25 speak on the inclusion/exclusion committee was given
26 the task of doing the invitation to tribal members and
27 stuff and we have not met yet. We were given that task
28 like two years ago and it's just a committee that's
29 there, but it's not doing anything.

30

31 MR. ARMSTRONG: Any more comments?
32 We'll just move on. The letter of submittal basically
33 was an instrument that -- I think it was the president
34 that submitted a protocol to the senate for
35 ratification. It basically echoed what the protocol
36 says and clarified some things, such as the fall
37 harvest season is 107 days but the subsistence season
38 is 122 days. It was 120, but I think they added two
39 more days because of a crow season was two days longer,
40 something like that, so we got an additional two days.

41

42 It spoke to indigenous inhabitants,
43 anybody regardless of race and it talks about some of
44 the prohibitions, sales not permitted except for
45 limited sale of handicrafts containing non-edible
46 parts. We had that discussion during the early
47 formation of the Council. I think there was an issue
48 about taxidermy and right away the Council agreed that
49 taxidermy wouldn't be a legitimate handicraft.

50

1 The submittal talked about management
2 bodies, regional management bodies, the 12 regions, and
3 how they were formed and how they operate basically.
4 We try to provide funding, although minimal, to at
5 least get you guys to meet either in person or in some
6 cases telephonically. I think in Peter's case they
7 have to meet telephonically it's such a large region.

8
9 The submittal talked about limited hunt
10 by Eskimos and Indians and was subsumed or basically it
11 was eliminated and that language came from the Japanese
12 Treaty and that didn't create any additional private
13 rights. It talked about permits. We still need
14 permits for education and other purposes.

15
16 I think the reason why the limited hunt
17 by Eskimos and Indians was basically because the
18 terminology or the re-definition of the term indigenous
19 inhabitants, so that clarified the implementation part.
20 And identified the areas Alaska Peninsula, Kodiak
21 Island, Aleutian Islands, areas north and west of the
22 Alaska range, invitation to hunt that we spoke about a
23 while ago where Councils can approve people going in to
24 hunt.

25
26 I spoke earlier about management bodies
27 and this body here having equal votes. There's a
28 Limitations Committee that was formed to look at
29 seasons and bag limits. That too I think had problems
30 trying to meet because of people's schedules.

31
32 Law enforcement policies, that
33 committee was just formed. Joe is the chair. They met
34 several times to try to discuss the development of
35 policies by the Council. Do you have anything to add
36 to that?

37
38 MR. HICKS: No.

39
40 MR. ARMSTRONG: Other than I think they
41 just met and discussed appropriate regulations that
42 they have to follow. There was representatives from
43 the State of Alaska, Federal government. There was one
44 specific issue that you guys had to meet about. What
45 was it?

46
47 MR. HICKS: I'm sorry, Mr. Chair. I'm
48 looking in the minutes here. I should see it in the
49 minutes.

50

1 MS. TAHBONE: We didn't have a report
2 at the last meeting.

3
4 CHAIRMAN ALCORN: Sandy, you need to
5 come to the microphone.

6
7 MS. TAHBONE: We had a meeting prior to
8 the April meeting, but we didn't have adequate staff
9 support to produce a report, so I gave something from
10 my notes or from my head, but we didn't provide a
11 report.

12
13 MR. HICKS: I'm sorry, Mr. Chair. Yes,
14 that is correct, we did not have a quorum.

15
16 CHAIRMAN ALCORN: Continue on then,
17 Fred. Excuse me, Myron has his hand raised.

18
19 MR. NANENG: Thank you, Mr. Chairman.
20 Under the Y-K Delta Goose Management Plan we have what
21 we call the enforcement provisions and we're currently
22 working them through with Stan Pruszenski with law
23 enforcement. When you come up with any law enforcement
24 policies, you have to do it with an open mind where you
25 involve the villages as participants and if they want
26 to participate in law enforcement.

27
28 Currently under the State and Federal
29 system if you get a citation you get removed to go to
30 Fairbanks to attend a hearing if it's issued by a
31 Federal law enforcement officer. Many of our people in
32 the villages in the Y-K Delta can't afford to go up
33 there to attend a hearing, but there seems to be really
34 restricted or a demand for them to pay for whatever
35 citation is issued. It's not the same as if you lived
36 in urban areas and you have an access to the court
37 where you could possibly say not guilty. But the
38 individual in the village is assumed to be guilty
39 because of the fact that he has been issued a citation,
40 which is not necessarily true.

41
42 So the reason why I say the enforcement
43 policies have to involve the villages is because I
44 think that more often than not when these citations or
45 crime happens the villages are never involved. It
46 gives the impression to the young people that if he did
47 not abide by the laws or something like that that
48 currently exist, even with the State programs, they
49 commit a major crime, they go to a State court, for
50 instance in our village to Bethel. A few days later

1 they're back in the village as if nothing happened.

2

3 But if you're here in Anchorage,
4 they'll arrest you right away and put you in jail and
5 wouldn't release you until such time as a lawyer is
6 able to argue on your behalf that you're innocent until
7 proven guilty. When there's a lot of young people that
8 witness this in a close-knit community, it kind of
9 gives the impression that, oh, he didn't do anything
10 wrong.

11

12 With the migratory bird issues and
13 enforcement, you definitely have to have the villages,
14 the tribal councils involved. I know that Stan doesn't
15 really like that, but at least it's a participation or
16 feeling that they're part of the solution rather than
17 part of the problem issue in dealing with some of the
18 conservation concerns that we have with the migratory
19 birds.

20

21 MR. ARMSTRONG: Thanks, Myron. Anybody
22 else? Okay. Moving on. It talks about birds taken
23 only for food. In certain circumstances you can make
24 handicrafts, but not taxidermy.

25

26 The list of species. I think it was
27 the Japanese Treaty that had listed the species, but
28 each of the regions identified the birds that they take
29 and the Council took that into consideration and
30 adopted its own list of 97 birds, I think, which is a
31 lot larger than the Japanese Treaty.

32

33 Then our proposal process. We have an
34 open season from November 1st through December 15 where
35 we solicit proposals. We send them out to the regions
36 for them to take up during their spring meeting. In
37 April we generally meet together as a Council to act on
38 the proposals. We submit recommendations to the
39 Secretary of the Interior or the SRC and the Flyway
40 Council.

41

42 We're trying to document traditional
43 knowledge. In the case where we have proposals that
44 people can't understand, like the Yellow-Billed Loon,
45 where we had Mike Driscoll go with us and do a real
46 nice PowerPoint. He was able to educate the Flyway and
47 SRC about the Yellow-Billed Loons and enable the SRC to
48 adopt that particular regulation.

49

50 That's pretty much it of the PowerPoint

1 and the overview of the protocol amendments.

2

3 CHAIRMAN ALCORN: Okay, thanks. Molly,
4 do you have a question?

5

6 MS. CHYTHLOOK: Yeah, I have a
7 question. I purposely waited until the end of the
8 presentation to ask this. Is there any C&T
9 determination process? Does any of the committees work
10 on that or has there ever been any C&T determinations
11 on any of the species?

12

13 MR. ARMSTRONG: For gathering?

14

15 MS. CHYTHLOOK: Well, any species for
16 any migratory bird. Is there one of the committees that
17 would be able to or can work on C&T if there was ever
18 any request for a C&T determination from any of the
19 regions?

20

21 MR. ARMSTRONG: C&T in Title VIII is I
22 think a little bit different than how we use it here.
23 I think we have a much more broader use of traditional
24 knowledge than the criteria that's involved under Title
25 VIII. The Council can direct us to form a committee to
26 look at determining C&T. I don't know if I want to go
27 there though. It's really up to the Council.

28

29 CHAIRMAN ALCORN: I think I have a hand
30 from Sandy first and then Myron.

31

32 MS. TAHBONE: I know the Bering Straits
33 region quite a few years ago, and then we just stopped
34 asking, but we wanted to be able to document with our
35 elders traditional knowledge, but no funding has been
36 available. Of course, you know that a lot of our
37 committee work is not done because there's no funding
38 available and the staff available. But we continue to
39 this day still would like to document our customary and
40 traditional use of migratory birds.

41

42 CHAIRMAN ALCORN: Thank you. Myron.

43

44 MR. NANENG: I think with the harvest
45 surveys over the years, especially in the Y-K Delta,
46 we've pretty much identified many of the customary and
47 traditional birds that we harvest out there. I think
48 that each regional management body should take it upon
49 themselves to determine what they harvest because not
50 everyone harvests the same species.

1 CHAIRMAN ALCORN: Sandy.

2

3 MS. TAHBONE: Just in closing. Just
4 like during our discussion at the spring meeting when
5 we discussed the driving proposal. When we receive
6 proposals like that I think it's real important that we
7 have that knowledge before us as it's anecdotal. So we
8 definitely need to be able to provide funding
9 opportunities to our regions in order for them to make
10 their methods and means acceptable western standards.
11 So I think it's important that we continue to look at
12 C&T.

13

14 CHAIRMAN ALCORN: Any other questions
15 of Fred before I call a break for lunch?

16

17 (No comments)

18

19 CHAIRMAN ALCORN: What I'm going to do
20 is call for a recess for lunch. We'll come back at
21 1:15 and we will take up a discussion of the
22 authorities that Austin alluded to as further
23 background. We would add an item F. It would just be
24 a review of the procedural regulations and I'll take
25 you to the specific nine tasks or functions,
26 authorities, whatever we want to call them, provided to
27 the Council and kind of what it is that we do, what we
28 see ourselves doing. Austin asked for a review of
29 that, so we'll do that after the break.

30

31 Sandy. Closing remarks?

32

33 MS. TAHBONE: Yeah. I would also like
34 to see if possible at some point if we get to it what
35 would be required as far as what we would need, whether
36 it would be through our congressional delegation
37 amendments or internationally.

38

39 I would also like to know Canada, do
40 they provide for a fall subsistence hunt and how are
41 they able to do that if they do.

42

43 CHAIRMAN ALCORN: One of the things
44 that Cathy, our facilitator, has suggested to me, I
45 think it was based on Myron's suggestion, that after we
46 finish our background information immediately following
47 lunch we will sort of divide the discussion into the
48 three potential processes that we've already talked
49 about here today. One is the existing process with
50 AMBCC and the way we recommend regulations to the SRC.

1
2 A second process would be working
3 through the Pacific Flyway Council to accommodate the
4 needs as we see them. That's the second in existing
5 process.

6
7 Then a third process would be to
8 establish something akin to the Eskimo Whaling
9 Commission that would actually authorize the regulation
10 or give us the authority to make regulations. We're
11 going to divide the discussion into those three and
12 maybe that will help us get to I think Sandy what
13 you're asking for, which is if we need additional
14 information on those three processes we can probably
15 get it.

16
17 Any other thoughts or comments before
18 we break for lunch? Okay. Thank you. Let's get back
19 together at 1:15 promptly.

20
21 (OFF RECORD)

22
23 (ON RECORD)

24
25 CHAIRMAN ALCORN: Austin is not here.
26 Let's reconvene. This is the discussion item that
27 Austin wanted us to discuss and that's the procedural
28 regulations. Those of you that are here, turn to tab 9
29 in your black binder. For those of you that weren't
30 around in 2002 or are not familiar with the procedural
31 regulations, when the Council was first established and
32 began meeting we needed to publish a suite of
33 regulations that described how we go about doing our
34 business and what authorities we had under the treaty
35 protocol and what our function and tasks would be.

36
37 So under Tab 9 turn to Page 53519 and
38 we'll look at subpart B. It's on the right-hand page.
39 It has the program structure, subpart B, and subpart
40 92.10 is the Alaska Migratory Bird Co-Management
41 Council. It has in it the establishment, of course,
42 and membership, who is represented on it and then under
43 subsection C, roles and responsibilities. So these
44 were the roles and responsibilities that Austin was
45 referring to and saying that these might be describing
46 some responsibilities that we might not be doing. I
47 think that was the point he was making, that we might
48 assume some authorities or responsibilities in the
49 context of what we're speaking about today and
50 tomorrow.

1 So let's go through these. If you look
2 at (C) (1), we will hold public meetings for the purpose
3 of conducting business relating to spring and summer
4 subsistence harvest of migratory birds.

5
6 Item (2), will develop recommendations
7 for regulations governing the spring and summer
8 subsistence harvest of the mig birds and their eggs,
9 which is kind of the way we've been conducting
10 business.

11
12 Under Item (3) develop recommendations
13 for, among other things, law enforcement policies,
14 population and harvest monitoring, education programs,
15 research and use of traditional knowledge and habitat
16 protection. So we can make recommendations to the
17 agencies along those lines.

18
19 Item (4), develop procedures and
20 criteria by which areas and communities can be
21 determined to be eligible or ineligible for a
22 spring/summer subsistence harvest. In fact, we have
23 done that. We've done it in Joeneal's region and we've
24 also included a couple communities in Southeast.
25 Hoonah being one and I think Craig being another.

26
27 Item (5), provide guidelines to the
28 regional management bodies each year for formulation of
29 annual regulations. We do convene twice a year as a
30 full council and then you all, as regional
31 representatives go back to your respective regions and
32 your Fish and Game Committees and presumably take back
33 with you the decisions that we've made at a statewide
34 body.

35
36 Item (6), consolidate regional
37 recommendations and resolve inter-regional differences
38 in order to prepare statewide recommendations. We do
39 just that.

40
41 Item (7), establish committees
42 together, review data, develop plans for co-management
43 council actions and coordinate programs with regional
44 management bodies. We do try to do that. As Sandy
45 pointed out today, we have been limited with very short
46 funding and limited staff capacity. We're down to just
47 two people in Fred's office now. We do intend to fill
48 behind Bill Ostrand, but filling government positions
49 takes quite a while. Six months to a year, I'm sorry
50 to say. It takes about that long to fill a position.

1 Molly.

2

3 MS. CHYTHLOOK: Not only that, I think
4 we have budget restraints too in meeting all the
5 committee responsibilities.

6

7 CHAIRMAN ALCORN: Right, we do. Our
8 budget for the Council is about \$1 million a year and
9 we've never been given an appropriation or an
10 allocation for this program. This funding was excised
11 out of existing base dollars for the national program
12 and the region and we've sort of cobbled together -- \$1
13 million sounds like a lot of money, but when you
14 consider the amount of work that is to be done and the
15 geographic expanse in the areas that the work occurs,
16 it's not much money, and that includes the statewide
17 harvest, annual harvest survey, it includes all of the
18 regional meetings that you all conduct and the two, if
19 not more, meetings that the AMBCC hosts and attends.
20 So it doesn't go very far I guess is the bottom line.
21 Anyway, we do have committees that make
22 recommendations.

23

24 Under (8), we send regional
25 representatives from the co-management council to
26 meetings of the Pacific Flyway Council and to meetings
27 of the other flyway councils as needed and to meetings
28 of the Service Regulation Committee. Patty, and I
29 believe Mike Pederson will be reporting back, and Sandy
30 will be reporting back from their observations at the
31 SRC meeting that they attended in July. They'll be
32 making that report next week.
33 So we do those things.

34

35 Under (9), we do elect officers and
36 hold various and sundry meetings and we have staff.

37

38 The remainder of these functions are
39 their own kind of stand-alone tasks and
40 responsibilities outside of the roles and
41 responsibilities section.

42

43 So that's sort of a review of the roles
44 and responsibilities that the Co-Management Council
45 has. Sandy, you and Austin pointed out that we had
46 some additional roles and responsibilities that might
47 be construed or viewed as allowing us authorities to do
48 some of the things that we've identified here and I
49 didn't know if you had additional comments or if Austin
50 might. He's not here right yet.

1 MS. TAHBONE: I'm sure Austin has some,
2 but he's not back yet.

3
4 CHAIRMAN ALCORN: We can certainly come
5 back and visit that if he wants to bring that to our
6 attention. I guess at this point I would entertain any
7 comments or discussion, questions about the roles and
8 responsibilities of the Council for background purposes
9 and then use that as a segway for discussing the three
10 processes that we've agreed to. Any questions?

11
12 Patty.

13
14 MS. BROWN-SCHWALENBERG: Thank you, Mr.
15 Chairman. Patty Schwalenberg, Chugach region, Chugach
16 Regional Resources Commission. I would like some
17 clarification on the authorities that are outlined in
18 this Federal Register as opposed to what's in the
19 protocols in the amendments to the treaty because this
20 is more specific where it says we're going to be
21 working on spring and summer subsistence harvest,
22 whereas as I believe the protocols aren't that
23 specific. So which trumps the other?

24
25 CHAIRMAN ALCORN: That's a good
26 question. Here's how it works. I don't mean to give
27 you information that you probably already know, but if
28 any of you don't understand the process, when the
29 Congress passes a law, usually laws are very generic,
30 not specific at all, and the agencies then are required
31 or frequently will establish regulations that show how
32 we interpret and will apply and implement the law given
33 to us. The laws are very general. Regulations are
34 more specific, but it's basically the Federal
35 government saying how we will implement those laws.

36
37 So taken the protocol amendment and the
38 treaty language and the letter of submittal and the
39 report language from the Senate when the Senate
40 ratified the treaty protocol, the ratification language
41 has the effect and impact of law. So we take the
42 language from those three documents, the protocol
43 language itself, which is very non-specific, and the
44 letter of submittal, which, as we all know, said some
45 things and then the Senate, in its ratification
46 processes, became more specific. One example I'll give
47 you is when the Senate ratified and defined indigenous
48 inhabitant as being those that lived permanently in
49 those generally excluded areas. It's a more narrow
50 description or a specific description and definition.

1 So that's how we, as an agency, so
2 about making the regulations. We basically say in the
3 Federal Register how we will implement and interpret
4 the law. That's what this procedural regulation is.
5 It went through a series of public reviews and it says
6 in here how it was actually established. We convened a
7 number of meetings, we considered three or maybe four
8 options on how to manage and run the process and what
9 those alternatives were. We took public comment and
10 then we, as an agency, made the decisions made on that
11 comment, which was a blend of one or two of the
12 options, I believe. We said this is the way this will
13 run and these are the -- based on the authorizing
14 documents that we have, those three documents, this is
15 our interpretation, this is how we will run those.

16
17 One of our outcomes on today's meeting
18 is better understanding of the agency's interpretation
19 of those laws. So I hope that our interpretation of
20 the law was that our authorities were constrained to
21 the formerly closed season, which was March 11 through
22 August 31. So that's how we interpreted it. That's
23 what went into the Federal Register and that's the way
24 we've interpreted it to this date.

25
26 You asked the question which trumps
27 which. The regulations, based on the definition I've
28 just given you, our interpretation of the law and our
29 explanation of how we'll interpret it are just those.
30 They are regulations and they are subject to change.
31 But they are our interpretation of the law. The law is
32 also subject to change and the law can be changed in
33 any number of ways as you well know. Until the law is
34 changed or until we are compelled to change our
35 interpretation of those laws, it's a status quo.

36
37 Through this process, if we want to
38 revisit our interpretation and ask the proper questions
39 of our solicitor's office, who advises us on how to
40 interpret, that's what I kind of saw as potential
41 outcome of this process, at least at this meeting.

42
43 Does that answer your question?

44
45 MS. BROWN-SCHWALENBERG: Yes, it does.
46 Thank you. I was involved in this process in the
47 beginning and I remember all the things that you had
48 just relayed and thanks for that history for those of
49 us that weren't there.

50

1 I think that when we were involved in
2 the procedural regulations we didn't anticipate the
3 fall subsistence, so that's something I think we are
4 going to need to do, is look up changing the law so
5 that these things can be addressed. Thanks, Doug.

6
7 CHAIRMAN ALCORN: I will say that Dave
8 Sharp, who probably knows the history much better than
9 I, has been in this business a lot longer certainly.
10 Dave, you look like you've got something to say about
11 this.

12
13 MR. SHARP: This comes up all the time
14 in terms of sort of what takes precedence and how this
15 whole thing works. This is a diagram that I use
16 sometimes in the flyways to help this out. There's
17 great confusion on what the treaty is and what the act
18 is, what the protocols are and then what Doug was
19 referring to in 50 CFR in terms of what the regulations
20 are.

21
22 This is what I tell people. There are
23 four conventions or treaties that are out there that
24 the United States has cut with different countries and
25 the years are different. This one in Canada is 1916
26 and everyone here can correct me on the years. It's
27 about 1930-something for the Mexican one. I think
28 Russia is in here in about '76. I can't remember what
29 Japan was. It's not important.

30
31 The important part is those are
32 treaties. Those are conventions that we have with
33 countries. They contain no law to no country at any
34 time. They are not laws for any of those countries to
35 abide by. They are conventions. We have congresses.
36 They have different types of bodies that put laws into
37 place. None of these are law. All they are is what
38 they say they are. They're treaties, they're
39 conventions. Countries have a way of even violating
40 conventions and treaties every now and then and people
41 don't like it when they do. But that's all they are.

42
43 What we have right here in 1918, and
44 this is where it gets confusing, MBTA, and people get
45 very confused in terms of using the act and the treaty
46 as interchangeable and they are not. They are nowhere
47 close. This wasn't done until 1976. What implements
48 that '76 convention? This 1918 act because that's law.
49 Law in United States. That's why the 1918 MBTA is
50 very, very important. It implements all of these.

1 Then what happens? That's where Doug
2 was going. It's caused by regulations that are in
3 place, 50 CFR. You'll see that all the time, the Code
4 of Federal Regulations. Doug is exactly right. Their
5 interpretation of what these outside bounds say we can
6 do. They are shaped by courts over time. Court cases
7 can shape that. Some of them are annual. Some of them
8 last for a long time. Basic regulations are a good
9 example. Basic hunting regulations that are in place.
10 They're in place for a long period of time. They
11 rarely change. Then you've got annual regulations,
12 which is the normal process I deal with. Hunting
13 regulations and so on. Those are the parts that we can
14 actually deal with.

15
16 Up here, your protocol that you were
17 talking about, 1997, the protocol is actually a
18 protocol amendment to these treaties that are up there.
19 It's not a protocol to this act. The act is still in
20 place. What the protocol is, is a protocol that's
21 modifying those treaties.

22
23 If you'll look very carefully -- this
24 is where I need Fred, I think. I think the protocol
25 actually was just between Mexico, Canada and the United
26 States, not Japan and not Russia. Correct, Fred?

27
28 MR. ARMSTRONG: Yes.

29
30 MR. SHARP: So really it only affected
31 these three that are right there that protocol affected
32 -- or these two, I'm sorry. Not the Russian or Japanese
33 ones.

34
35 So what Doug was talking about down
36 here, 50 CFR, that is very confusing. When I tell
37 people MBTA implements these, they say it's impossible.
38 This wasn't even written until '76. It's very
39 possible. That's how that works. MBTA is a key
40 document.

41
42 CHAIRMAN ALCORN: That was very helpful
43 and I think it does give us all a real common
44 understanding now kind of how the hierarchy of treaty
45 to congressional law to regulations works and how we as
46 an agency and a bureaucracy have to function within
47 that hierarchy of controlling documents and controlling
48 legislation.

49
50 MS. BROWN-SCHWALENBERG: Is the

1 protocol amendment in our binder?

2

3 CHAIRMAN ALCORN: Let's look.

4

5 MR. ARMSTRONG: In the table of
6 contents it's the amended Canadian 3.

7

8 CHAIRMAN ALCORN: Tab 1.

9

10 MS. BROWN-SCHWALENBERG: That's the
11 protocol?

12

13 CHAIRMAN ALCORN: Yes.

14

15 MR. ARMSTRONG: Protocol amending the
16 1916 convention for the protection of migratory birds.

17

18 CHAIRMAN ALCORN: The first portions of
19 this photocopy are the letter of submittal that at that
20 time Secretary of State Warren Christopher forwarded to
21 the Senate with basically his or the White House's
22 understanding of what that protocol amendment was
23 designed to accomplish and then it went to the Senate
24 for ratification. It had as an attachment to that
25 letter of submittal the actual amended treaty. Then
26 the Senate ratified it and said we understand what was
27 negotiated and this is our definition or our
28 interpretation of that changed protocol and this is how
29 we defined our understanding and that's all in the
30 subsequent information under the same tab that you'll
31 see. It's the report language that has the effect of
32 law. When they say this is how we interpret it, that
33 is, in effect, law. They're writing law for us here.

34

35 Austin is here. We're just now kind of
36 finishing up the review of the eight or nine roles and
37 responsibilities that we had described in the AMBCC.
38 Some of those I think you were referring to as maybe
39 giving us some additional roles and responsibilities
40 for making recommendations or actually trying to
41 establish different processes and whatnot.

42

43 Did you want to add or embellish that
44 at all at this time, Austin?

45

46 MR. AHMASUK: Thank you, Mr. Chairman.
47 For the record, Austin Ahmasuk. Because I think the
48 procedural regulations you talked about 92.31.5 you
49 mentioned as well, all those talk about the major focus
50 of this Council and that's the spring and summer. It

1 was my point, and I apologize for being late and I
2 don't know how much you got into it, and that is
3 weather several of the major provisions give this
4 Council some ability to talk about things other than
5 the spring and summer. It defines subsistence very
6 broadly. It does not say that subsistence is just
7 spring and summer bird hunting. The procedural
8 regulations in fact say subsistence is everything in
9 very broad terms.

10

11 I guess this Council should take some
12 kind of action to further test those points because it
13 defines subsistence so broadly. It seems to give
14 provisions for this Council to talk about other things
15 other than spring/summer, such as national conservation
16 concerns, interregional management guidelines, things
17 like that. So it does give this Council flexibility in
18 the fall.

19

20 CHAIRMAN ALCORN: Thanks, Austin. If I
21 hear your question right, I think a lot of those
22 authorities or responsibilities are addressed in Item
23 (3), back again on Page 53519 under subpart B. Item
24 (3) says develop recommendations for, among other
25 things, law enforcement policies, population and
26 harvest monitoring, education programs, research and
27 use of traditional knowledge and habitat protection.

28

29 Going up further in Item (1), it says
30 hold public meetings for the purpose of conducting
31 business relating to spring and summer subsistence
32 harvest of migratory birds. I think Patty was sort of
33 getting on to this particular issue when she said based
34 on those procedural regulations does this trump the
35 protocol amendment, does it trump the language or the
36 letter of submittal and we were describing sort of the
37 process and how we interpret those laws. At this point
38 that's what we have interpreted our authorities to be;
39 we, as the Department of Interior and we as the Co-
40 Management Council at the time, even before the
41 Co-Management Council was even formed. Many of you
42 were at the discussion phases of this. It was vetted
43 through the public and the public commented and this
44 was sort of the result of that.

45

46 Now it's been brought to our attention
47 seven years later that perhaps the fall and winter
48 months, seasons, are something that we ought to explore
49 as being within our purview. The way the agency would
50 approach that, the way the Department of the Interior

1 would approach that, we would say we have regulations.
2 Regulations can be rewritten based on a proposal and
3 it's sort of then vetted through the process internally
4 and if it goes through that process and has the support
5 of the agency, the White House certainly, the support
6 of the stakeholders, which would include the states as
7 well as the subsistence hunters.

8

9 If it has those supports and follows
10 through it, then it's developed as a proposed rule.
11 Goes out for public consumption and commenting. We
12 basically in that process would say we have agreed with
13 the request from our subsistence-hunting constituents
14 and we believe that the purview of the AMBCC should be
15 expanded into the fall and winter seasons for the
16 reasons that we've all discussed here, that subsistence
17 activities don't necessarily change given the date, and
18 we are proposing to authorize the Co-Management Council
19 to make recommendations for those months. That's the
20 process and that's how it would work. Then the
21 regulations can then be changed. So that kind of gets
22 at Patty's question, I think. That's the legal or
23 formal way that we would expand our authorities.

24

25 Myron.

26

27 MR. NANENG: Thank you, Mr. Chairman.
28 I wish it was that easy. Some of the things that we
29 brought up as issues regarding the migratory spring and
30 summer hunt you won't get anywhere unless you have the
31 support of the regional director even if you make a
32 recommendation from this committee. If the regional
33 director has a personal opinion regarding either
34 supporting it or not supporting it, then it's not going
35 to get anywhere. The first question that will come up
36 from others is does the State of Alaska regional
37 director support it.

38

39 It may be written as such that the
40 process is so simplistic, but when you really get down
41 to start moving on it, it's the attitude of the people
42 that are in certain positions that will either move it
43 forward or kill it. If we have an anti-subsistence
44 governor, it's never going to go anywhere because we
45 still have to get the State of Alaska to support any
46 proposal that comes up that further recognizes our
47 subsistence hunting and/or fishing rights.

48

49 CHAIRMAN ALCORN: I think you're right,
50 Myron. You're explaining the political realities of

1 making public policy. I described in a perfect world
2 that's how it works. That's the process. But
3 certainly opinions of officials do matter. One of the
4 caveats that I put in that process is when it's being
5 vetted internally, the questions that are going to be
6 asked by our senior officials are what do our
7 constituents think. What do the stakeholders think.
8 The stakeholders are the states. The flyway councils,
9 which is a consortium of the states, in their
10 processes. What do our other programs within the Fish
11 and Wildlife Service or other agencies within the
12 Department of the Interior think? All of those kind of
13 questions have to be vetted. You're right, it is not a
14 simple process. That's why we're not going to resolve
15 it in two days, but this is the first of the steps that
16 it would take.

17

18 MR. NANENG: With the consensus basis,
19 if Dale goes back on a proposal that would come up and
20 says I can't make the decision and is not able to join
21 us in a consensus of any proposal that would come up,
22 then it's not going to move anyway. That's one of the
23 issues that we have related to the process.

24

25 After making a concerted effort to make
26 the changes to recognize a spring and summer
27 subsistence hunting of migratory birds, the
28 interpretation and process got so convoluted that it
29 makes it pretty much difficult to make the changes that
30 would further benefit the users out in rural Alaska. A
31 lot of people don't understand how our people live in
32 the villages. If you've never been to rural Alaska and
33 to travel to a village that's about 10 or 15 miles from
34 some major hub that you'd think you'd be able to drive
35 over, that the only way to get to that village is
36 either by boat, snowmachine or airplane.

37

38 So a lot of educational process to
39 make. I know we need to be educated about the traffic
40 system in major cities, but trying to educate the
41 person that's never been out in rural Alaska is a major
42 hurdle that we have to face too.

43

44 CHAIRMAN ALCORN: I think that Myron's
45 comment is probably a pretty good segway. We're kind
46 of getting into the weeds on one of the three processes
47 and that is the existing AMBCC and how we might use
48 that process to accomplish the end goal that we've
49 discussed, which is to expand the authorities of the
50 AMBCC into the fall and winter months.

1 I think if there are any other
2 questions about the background material, I'll entertain
3 those. If we want to start with a discussion now of
4 those three processes, I think it's a pretty good time
5 to do that. Any other comments about the background
6 material?

7

8 Molly.

9

10 MS. CHYTHLOOK: Thank you, Mr. Chair.
11 Somewhere along the way, probably in the very start of
12 this process, there was a determination made minus the
13 fall season. I guess I'm having a hard time
14 understanding. Once that fall season was not included,
15 was that set in stone so much that we can't revert it
16 back to become part of the subsistence harvesting
17 seasons.

18

19 CHAIRMAN ALCORN: I don't think it's
20 impossible. I think there are lots of ways that we
21 could go about that. What we're talking about is
22 changing public policy. Public policy making is based
23 on the authorizing law and then based on the
24 regulations that the agencies responsible for carrying
25 out those laws, the interpretation of those laws by the
26 agencies that are charged with that. We all agree that
27 that's a very complex and time-consuming process, but
28 it's not impossible.

29

30 Just like Myron can attest to having
31 these discussions about establishing spring and summer
32 or subsistence seasons way back in the mid '80s and it
33 finally resulted in a changed treaty and a law in 1997
34 or 1996, I guess. With 15 years or so of discussion at
35 the highest levels of government, ultimately you have a
36 change. Eight years, nine years later here we are --
37 or 12 years later here we are having discussions of
38 saying maybe it's time to fine tune what that original
39 treaty and legislation resulted in. Public policy takes
40 time and we're all in this for the long haul, if not
41 for ourselves, for our children. If it's a goal that
42 we have that is desirable, I think we commit to
43 spending that time that it takes to making that goal
44 achievable.

45

46 Any other comments on the background
47 material?

48

49 (No comments)

50

1 CHAIRMAN ALCORN: Okay. I'm going to
2 turn this over to Cathy, our facilitator, and she has
3 recommended that we go through the three processes that
4 we've identified and discuss potentially what outcomes
5 might be desirable under or within the context of those
6 processes.

7
8 MS. REZABECK: This morning we
9 identified these three as the possible venues to get to
10 the goal of creating this harvest for the fall and
11 winter. So my idea, and this is totally subject to
12 whatever you all want to do, but I thought I would just
13 give you one possible way of approaching this. If you
14 all can come up with a way that will work better,
15 that's fine. But to take each of the three ways one at
16 a time and explore them together.

17
18 By explore them, what I'm wondering is
19 the three ways -- understanding, first of all, the
20 processes involved, the mechanism, the way it works,
21 and we've just begun to do that for the AMBCC. Then,
22 Myron, you said the politics. That's a big piece as
23 well. The politics and how that might work. Identify
24 the barriers to using this mechanism; let's say the
25 AMBCC process. Talk about if we need to ask questions
26 to refine points. Then finally to whom we need to ask
27 the questions.

28
29 It could be that by taking each one one
30 at a time and looking at these things we could ferret
31 out one or two of them that don't seem as practical
32 today. Maybe not. It depends on kind of what happens
33 here. We may not have enough expertise in the room,
34 legal expertise, to get through the fine detail. But
35 this is one possible way to approach this afternoon
36 towards that goal of identifying the process, the
37 mechanism by which you want to move this forward.

38
39 So let me stop and let you think about
40 that. We want to spend quality time here getting to
41 where you want to go. Comments, suggestions. Yeah.

42
43 MR. SHARP: Cathy, I think I like what
44 you're proposing. I think that's the way to do it and
45 to think through the process. One of the things we
46 talked about this morning has to do with the three
47 hurdles that we must cross. I believe that those
48 hurdles somehow need to play into this when it comes to
49 timing because two of those processes focus in on a
50 different time of the annual cycle of these birds and

1 how we do it. The species in terms of the legality of
2 the take of birds during those periods of time are
3 different. Because they're different, possibly it may
4 affect the process ultimately this group would pick in
5 terms of which way they might want to go through that
6 hurdle in terms of crossing that.

7
8 Then ways and means because ways and
9 means are also different. They're codified in regs,
10 but they're also quite different. Because they're
11 codified in regs, those basic regs that I'm talking
12 about, then they cause also a constrict in terms of
13 selecting. I don't know how those work into your
14 process here. Maybe it's under understanding. Maybe
15 it's under the barriers that you're talking -- okay. I
16 didn't understand your -- that is the barriers you're
17 talking about?

18
19 MS. REZABECK: I don't think we have to
20 do this in a linear way. I think we can just include
21 it in the discussion.

22
23 MR. SHARP: Okay. I'm fine. I could
24 just see if we don't have that discussion and we just
25 start talking about process, we come back to all that's
26 fine, but it can't work because of this.

27
28 MS. REZABECK: Actually we've got
29 politics.

30
31 CHAIRMAN ALCORN: Cathy, let me just
32 for the record, I want the record to show that our
33 agenda says before we actually begin this discussion we
34 have public comment. I looked around the room and
35 there was only one individual that I didn't know. I
36 just asked her and she's actually affiliated with one
37 of the regions, APIA region. So there is no public in
38 the room. I'm not inviting the public to speak because
39 there is none. So just have the record show that. Now
40 we can start our discussion.

41
42 MS. REZABECK: I guess I'd like other
43 comments from you all who are much more aware of this
44 whole issue than I am.

45
46 CHAIRMAN ALCORN: Austin, come to the
47 table, please.

48
49 MR. AHMASUK: Thank you, Mr. Chairman.
50 For the record, Austin Ahmasuk. I think the system

1 there is fine. Laws first start off with a mission
2 statement or a finding. We can easily determine a
3 finding or a key statement to make about the fall. It
4 is part of subsistence as already indicated in the
5 procedural regulations.

6
7 I think where the next step needs a
8 little more work and that is like the gentleman over
9 there had mentioned, the AMBCC needs to establish slots
10 of time for these other fall considerations. The AMBCC
11 needs to become operational in carrying out those
12 proposals, whatever they might be. We already have
13 some pretty good biologists on staff that make us
14 operational. It's a matter of the AMBCC staff
15 developing in a specific way these general comments we
16 might make over these next couple days or next week,
17 whenever you guys talk about it. This Council simply
18 cannot write down the specific language for the laws
19 that are required. It's going to require staff time.

20
21 I guess I'd like to hear maybe from the
22 State side. When people ask for fall season changes,
23 why don't they happen? Why isn't there action and what
24 needs to change? AVCP, myself, we've submitted
25 proposals to the Board of Game and nothing ever
26 happens. They throw their hands up and say they have
27 no authority to do anything. So that's a barrier
28 statement that needs to be clearer about why we're
29 doing this.

30
31 CHAIRMAN ALCORN: Before we have an
32 answer to that question let me make sure I understand
33 the process. Are we now involved in the first process,
34 which is the AMBCC, or the second process, which is the
35 alternate to that, which is going through the Flyway
36 Councils?

37
38 MS. REZABECK: I would ask the group
39 what they want to do first or if this will work for
40 you. If you have some other thoughts about how to do
41 this.

42
43 CHAIRMAN ALCORN: I can see how this is
44 going to all sort of blend together. Maybe going down
45 separate paths for each is going to be sort of almost
46 an artificial restriction because the questions are
47 certainly overlapping in authorities. I think what
48 Austin is describing is a need that's been expressed to
49 the State Board of Game, which the Board of Game makes
50 recommendations through the process that ultimately

1 ends up with recommendations to the Flyway Council and
2 to the SRC for migratory birds.

3

4 I'll let Dale respond to that, but at
5 this point I think we're talking about the AMBCC's
6 process. The question I think is how do we use the
7 AMBCC process as it stands now to effect the change
8 that we are talking about now. The fundamental
9 question is sort of how, but we really haven't even
10 settled on what it is that we're trying to accomplish
11 because I, as an agency, haven't -- I don't have the
12 authority to say I'm willing to support that concept,
13 but I think we need to ask the question whether or not
14 we have the authority.

15

16 I don't mean to confuse this, but it is
17 a very confusing process. So I'll turn it back over.

18

19 MS. REZABECK: I just thought of a
20 possibility and that is that because these things may
21 overlap a lot, I could just begin by making a page for
22 each of the three processes and as we go back and forth
23 I'll just change the pages and record what we talk
24 about.

25

26 CHAIRMAN ALCORN: That works for me.
27 While you're doing that, I'll let Dale respond to
28 Austin's question and Sandy has a comment. Dale, did
29 you have anything additional?

30

31 MR. RABE: I really don't, Doug. I
32 think Doug has already touched on the most relevant
33 point. The Board of Game, when considering any
34 waterfowl regulations, is already very aware that their
35 decision framework and authority is limited by the
36 framework for regulations that actually come out of the
37 flyway process. As Doug mentioned, we've already moved
38 into that second of the three at that point in time.
39 So it's not like the State has any independent
40 authority outside of one of the three processes that
41 have been discussed to address that issue.

42

43 MR. AHMASUK: (Away from microphone)

44

45 MR. RABE: In a sense, what you're
46 saying though is the barrier is a barrier for the State
47 as well as it is for what we're discussing here, but
48 it's an accepted constraint in the system that even the
49 State works within.

50

1 MR. AHMASUK: Maybe you could jot that
2 down.
3
4 MS. REZABECK: I'm sorry, I was moving
5 papers. If someone could recount.
6
7 MR. AHMASUK: The authority for the
8 Board of Game is just not there, I guess, from what
9 Dale is saying.
10
11 MR. RABE: That's correct.
12
13 CHAIRMAN ALCORN: So we're identifying
14 that as a barrier, going through that particular
15 process to accomplish that end.
16
17 MS. REZABECK: I'm just going to call
18 this -- do you want to call it the Eskimo Whaling
19 Commission one a separate body or something?
20
21 MR. RABE: Independent commission.
22
23 MS. REZABECK: I put little reminders
24 on the wall there in case we want to go there. So.....
25
26 CHAIRMAN ALCORN: Austin had his hand
27 raised. I'll let you run the meeting, but.....
28
29 MS. REZABECK: Go ahead, Austin.
30
31 MR. AHMASUK: Thank you. In the fall
32 time, is there a different -- do we have to go through
33 the process of identifying species? Do we have to
34 reinvent additional or new procedural regulations for
35 the fall? Do we need to establish something to go over
36 that hurdle?
37
38 CHAIRMAN ALCORN: Well, I'm thinking
39 about the answer because you're looking at me as the
40 chair. If anybody else has an answer or a thought,
41 offer it. Molly.
42
43 MS. CHYTHLOOK: My short answer would
44 be to eliminate the fall subsistence form. If it's not
45 relevant, if there's no fall season, why keep it in
46 there.
47
48 CHAIRMAN ALCORN: Dave Sharp I think
49 was going to respond to that question too.
50

1 MR. SHARP: Austin's question had to do
2 with the species and what kind of restrictions there
3 might be in terms of us trying to put together some
4 fall harvest regulations. The answer is, and it's
5 where Russ was going this morning, I think it depends.
6 It depends what species it is because what we're going
7 to be looking at is harvest over the annual cycle on
8 these birds and the ability of these birds to sustain
9 that harvest. So if it was a very small harvest and it
10 was not impacting the birds' ability to sort of keep
11 their status going over time, then it would probably be
12 not very consequential and that's where Russ was going
13 this morning.

14
15 If you picked out a species for your
16 proposal, sort of ran it through, but if you picked out
17 a species that wasn't very controversial in terms of
18 where it was at with its numbers, it stands a much
19 better chance than if you picked out a species or
20 populations of birds where we're already in a little
21 bit of trouble in terms of really watching the harvest
22 and in terms of where we want to go, then that harvest
23 becomes additive at that point in the year in terms of
24 where we're at. It's not a compensatory type harvest.
25 The harvest actually occurs before some of the states
26 in the flyway or other countries are even going to get
27 a chance at that harvest.

28
29 I think, yes, you almost have to think
30 about the fall of almost looking species by species,
31 population by population, depending upon how much that
32 harvest is. I don't know if one size is going to fit
33 all here, Austin. It's real hard to answer your
34 question and say, no, never. We would never be
35 concerned about any harvest, any amount of harvest
36 you'd ever take forever. I'd almost bet that we can't
37 say that because it will depend on the species that's
38 involved.

39
40 MS. REZABECK: Thank you. Sandra.

41
42 MS. TAHBONE: I just want everybody to
43 have an understanding. What we're trying to legalize
44 or put into place is a hunt that already currently
45 exists and has existed. It's not a new hunt. It's not
46 an increase in hunting. This is harvesting that is
47 occurring. We just want to have it recognized and
48 hopefully have our methods and means and our
49 traditional way of harvesting. So it's not a new hunt
50 for -- or new increase in numbers. I think we really

1 need to get that established right at the beginning.

2

3 The approach I see, basically what
4 we're doing is we're taking the same steps that we're
5 taking to legalize our spring and summer hunt. To
6 recognize that it was a hunt that was occurring, it has
7 been occurring, and the same goes for our fall hunt.
8 Our people are hunting out there. They're taking.

9

10 CHAIRMAN ALCORN: Before you respond.
11 What I think Sandy is saying is it's not additive, it's
12 a recognition of an ongoing practice and it's not added
13 mortality, and the substantiation of that is that we do
14 have the fall surveys. We know what that take is. If
15 we were to expand into the fall and winter season with
16 a recommendation for subsistence regulations different
17 than the sport regulations, then it wouldn't
18 necessarily be added mortality.

19

20 MS. TAHBONE: And I would assume too
21 that we would approach it the same way that we do our
22 spring and summer regs. We would have the birds of
23 concern. We would have the birds that are closed to
24 harvest. So all that I would assume would just follow
25 our policy and procedures in formulating the
26 regulations.

27

28 CHAIRMAN ALCORN: Dave.

29

30 MR. SHARP: Dave Sharp. I want to
31 clarify one thing there. When I talked about the
32 harvest in terms of being additive, Sandy, where I was
33 going is when the first document was signed, the
34 convention, it said that the secretary could allow take
35 on these species, but there was a real strong
36 disclaimer in there. It talked about the status of
37 these birds that varies annually.

38

39 Just because we had a harvest in 1916,
40 just because it was a subsistence harvest prior to
41 1997, we weren't trying to increase the harvest
42 necessarily, but what's important is that harvest
43 should be commensurate with population status. Just
44 because there was a harvest always initially, we'll say
45 a good example is Sandhill Cranes, in the 1916
46 convention they said there will be no hunting of
47 Sandhill Cranes for five years even though we had
48 always hunted Sandhill Cranes up until that point. The
49 populations, at that point, Congress believed very
50 strongly that the populations of those birds at that

1 point couldn't handle it, but they were careful. They
2 said maybe if we can build that population back we can
3 have a harvest. Today we have a great harvest on
4 Sandhill Cranes, one of the strongest that we have,
5 because harvest is commensurate with population size.

6
7 So it's not a problem, Sandy, that the
8 harvest was always there. We're not talking about
9 increasing it. What I'm talking about is a harvest
10 that fits in with the rest of the harvest that occurs
11 in making sure that that total mortality balances the
12 births on a population so that we have some population
13 stability. Not that the harvest was bad or we're going
14 to try to increase it. That's not the point. The point
15 is it should be commensurate with population size and
16 that can vary a lot over time.

17
18 Here's my point. As we go down this
19 road of climate change and some things are changing,
20 some of the birds that aren't very abundant today may
21 become more abundant. Some of the birds that are very
22 abundant today may become less abundant. Let's put
23 together processes that allows us to use the biology
24 and the science to help us design harvest programs as
25 opposed to designing a process that's so inflexible, so
26 unbendable, that we can't meet what these birds are
27 telling us they need. That's what we shouldn't do.
28 That's where I have a problem with dates and things
29 like that. They're inflexible and these birds are very
30 flexible. So that was my point.

31
32 CHAIRMAN ALCORN: Thanks, Dave. I
33 think we're in violent agreement here. I think what
34 Sandy has said is there is an ongoing hunt and that
35 hunt is substantiated or monitored in the fall survey.
36 We have a history and we can document what that harvest
37 level has been. What Dave is saying is that management
38 considers that fall harvest mortality that occurs in
39 Alaska as well as the other mortalities that are
40 anticipated in the Lower 48 in the fall and winter
41 months. All of those harvests are considered in the
42 establishment of regulations.

43
44 So I think we're in violent agreement
45 that what Sandy is suggesting is a recognition and what
46 Dave is saying is there is a recognition. It's
47 integrated already in the hunt. The caution that I'm
48 hearing from Dave is that any regulation that we would
49 recommend or establish is predicated on the principal
50 of having the populations of the birds be able to

1 sustain the levels of the hunt. I think we all agree
2 on that.

3

4 MS. REZABECK: I think Austin has a
5 comment. Oh, I'm sorry. Myron.

6

7 MR. NANENG: That system has been in
8 place in the Y-K Delta since 1984. One of the major
9 factors that makes it successful is that we travel out
10 to the villages and I know that Fish and Wildlife
11 Service, with their RIT program, has also assisted in
12 providing that info to the villages whenever there is a
13 conservation concern or issues with the lead shot
14 problems or potentially depredation of nesting areas by
15 all-terrain vehicles or other uses.

16

17 The thing that gets to bother me every
18 once in a while when I see comments by people that work
19 for Fish and Wildlife Service is that there's a human
20 footprint out there on lands that are in nesting areas,
21 which our people have used since time immemorial. The
22 way that they write it up makes it very negative, as if
23 our people should not be going on those lands.

24

25 I'm from the village of Hooper Bay and
26 I'm also involved with our village corporation. Under
27 the Goose Management Plan we have a statement that says
28 that none of the agreements that is made between the
29 waterfowl conservation committee and any of the other
30 agencies will not bind a village corporation from being
31 able to come up with its own agreement as a landowner
32 with any of the agencies that are involved in the area.
33 Our village has worked on all-terrain vehicle impacts
34 on those lands with an agreement with Fish and Wildlife
35 Service.

36

37 When you have comments coming from Fish
38 and Wildlife Staff that says that human footprints, as
39 if it's a negative word or shouldn't have happened and
40 our people have lived off that land even before the
41 author of that report ever came to Alaska, I know that
42 puts a negative light to the efforts of our local
43 people. And when they see that, the heck with it, why
44 are we trying to save these species when they're trying
45 to make us look bad with the fact that we go on those
46 lands to gather food.

47

48 So, if the Alaska Migratory Bird Co-
49 Management Council is going to be involved in open and
50 closed seasons, we can't do it without consulting with

1 the villages. That's the ultimate bottom line. We can
2 possibly make recommendations, but those
3 recommendations should stay here unless we've had
4 consultation with our villages and our hunters.
5 Otherwise it's not going to work.

6

7 MS. REZABECK: Thank you, Myron. Since
8 we're at this AMBCC part, do you want to go down that
9 road for a while and talk about step by step what might
10 need to happen? Russ.

11

12 MR. OATES: Yeah, I just think one of
13 the questions that needs to be answered is can the
14 regulation proposal come forward from the AMBCC that
15 applies to a time period outside of the current April
16 or March through August 31st. I think that's one of
17 the big questions that needs to be answered. We were
18 talking about identifying questions and authorities.
19 To me, that's one of the big ones because if the answer
20 is the proposal comes forward and the Service
21 Regulations Committee will consider it, then it seems
22 like the mechanism is in place for promulgating
23 regulations outside of the current period.

24

25 MS. REZABECK: So that would be a
26 question for the solicitor or someone else?

27

28 CHAIRMAN ALCORN: Well, we would defer
29 that question to the solicitor, but the question, the
30 way you've got it written there, Cathy, needs to have
31 the next statement. Scratch through the second
32 question mark because it's can the proposal come from
33 the AMBCC for regulations for fall and winter. That's
34 a fundamental question.

35

36 MS. REZABECK: So that would be a
37 question for the solicitor?

38

39 CHAIRMAN ALCORN: That's who we would
40 ask. Any time we as an agency are going to support a
41 recommendation, we would certainly ask the solicitor
42 whether that's within our purview and we've been told
43 at this point that it's not within our purview based on
44 the procedural regulations that we have and based on
45 the law. But we could ask that question.

46

47 MS. REZABECK: Okay. Sandy.

48

49 MS. TAHBONE: I would like to propose
50 that we ask that of ourselves first as the AMBCC. Do

1 we think that we have that authority to propose fall
2 regs. So I would like the AMBCC to address that at our
3 meeting next week.

4

5 MR. HICKS: Joeneal, Copper River. You
6 took the words right out of my mouth. To me it would
7 seem like a simple particular process to me. The only
8 question that really needs to be dealt with is the date
9 or the ending date, October 15th or October 31. And to
10 answer that particular question, in my opinion, but I'm
11 not a lawyer either, I would say, yes, we do have that
12 particular authority.

13

14 MS. REZABECK: Are there any other
15 barriers you'd like to think for a moment about in
16 terms of -- of course, this question probably does need
17 to be asked and reflected upon and a solicitor probably
18 does need to take a look at it and go through all that
19 work of creating new regs. Yes.

20

21 MS. TAHBONE: Well, that's pretty much
22 the way business goes at this Council. There's three
23 votes and whenever there is -- I shouldn't say whenever
24 there is. Maybe whoever is counting the votes with
25 past issues that have come before this body where the
26 Native caucus caucuses and we come up with our vote and
27 the representative from the Federal government has
28 their vote and the representative from the State has
29 their vote and usually when issues of real importance
30 that the Native people feel are real important, it's
31 two against one and I'm sure that's probably how it
32 will go when we ask this question, but I think we need
33 to get it on record as to exactly how we're
34 interpreting the regulations and to just have it on
35 record.

36

37 Once that vote is made, then it needs
38 to go to the next process. So that would be your next
39 question. If the answer is, no, there's no consensus
40 to the question, then what's the next step. Who needs
41 to determine whether or not this body has the authority
42 to formulate fall subsistence regulations for migratory
43 birds?

44

45 MS. REZABECK: Thank you. Patty.

46

47 MS. BROWN-SCHWALENBERG: I think part
48 of our authority comes from our bylaws or maybe not
49 authority, but our direction comes from our bylaws and
50 the bylaws don't prohibit us from looking at fall

1 regulations or fall subsistence harvest. It basically
2 says that we are supposed to ensure the recognition of
3 subsistence hunting and the conservation of migratory
4 birds. That's only one point, but that's kind of a
5 broad statement that that's our responsibility. As
6 tribal representatives, if you will, regional
7 representatives, then you go to the Federal Register
8 and the procedural regulations.

9

10 The only way I can see that would allow
11 us to do that is on number 3 where it says develop
12 recommendations for, among other things, law
13 enforcement policies, population harvest. So it would
14 come under the among other things section. Whether or
15 not the solicitor would view it that way is a big
16 question. As you know, they have never viewed or
17 interpreted the laws on the side of the Native people
18 yet as far as I know as far as migratory birds are
19 concerned.

20

21 So that, I think, is the question that
22 needs to be answered. In my mind, I don't think there's
23 a question of whether or not we have -- it's our
24 responsibility to look out for Native subsistence
25 harvest whether spring and summer or fall according to
26 our bylaws.

27

28 MS. REZABECK: Okay. Russ.

29

30 MR. OATES: I just wanted to clarify
31 something here. I don't know. I almost sense that
32 there was something read into what I just said about my
33 position on that question that I raised. I don't know
34 what the answer is to that. I think this group could
35 and possibly should go ahead and develop a proposal
36 through the AMBCC process, like the trial balloon that
37 I was talking about earlier today.

38

39 My point is that if somebody in
40 Washington, the solicitor, whoever, says, no, we can't
41 accept because of the time frame involved, then I think
42 it's either one or the other. If it doesn't work
43 through the normal AMBCC process, then I would say
44 that, by default, means that it does work through the
45 early season regulations process by which the State of
46 Alaska, through the flyway, would do their regular
47 waterfowl season. My point is I think one or the other
48 avenue would have to be open to receive proposals of
49 this nature.

50

1 One of those two processes covers the
2 full 12 months out of the year. So don't misinterpret
3 what I was trying to say earlier.

4
5 MR. HICKS: Again, I think that we need
6 to take a stand on it. I believe that we do have the
7 particular authority and I urge that we make that
8 particular decision in the next week while we're in
9 Nome and then go from there. If we were to sit here
10 and wait until the solicitor gives an opinion, all it
11 does is put this particular issue on the shelf. If we
12 take a stand now, at least maybe six months from now
13 we'll have an answer, whether it be good or bad. I
14 mean if we're told that we can't do it, then we're told
15 we can't do it. If we're told we can do it, then at
16 least we've got our foot in the door. That's my take
17 on it.

18
19 MS. REZABECK: Yes.

20
21 MR. RABE: You know, I was going back
22 and looking at the question, you know. If we asked the
23 question do we have the authority or if we were to put
24 a proposal forward, the question I asked myself and
25 what we discussed in terms of background earlier is if
26 we all supported a proposal for that, then I think we
27 recognized that's not the end of the process. That
28 doesn't make it happen, but that is one step and then
29 it was described earlier what are all of the following
30 steps of bodies with authority that have to be engaged
31 in that. I think that is one of the approaches that we
32 are exploring collectively here.

33
34 In terms of creating the proposal, in
35 terms of the elements of what it is we want to have go
36 forward, I think that's fine. I think to some extent
37 that was described in the initial outcome. Maybe not
38 with as much specificity as we're talking about now
39 with some specific dates, but I think to me the
40 question is, you know, where -- we're talking about one
41 body putting that proposal forward and that would come
42 from the AMBCC, but Doug described the process that
43 those are recommendations that come out of this body
44 and then the next step for evaluation of those
45 recommendations is directly to the SRC, right, or to
46 the flyway?

47
48 CHAIRMAN ALCORN: In consultation with
49 the Flyway Council.
50

1 MR. RABE: The other avenue that we're
2 talking about, which is the Flyway Council, would be to
3 have the proposal for the same kind of change come from
4 somebody within the Flyway Council, which could be the
5 State of Alaska, of course. We are part of that. And
6 it would then again be vetted there. Both of those
7 processes come together at the point of the SRC. So
8 whichever starting point we use it appears to me they
9 converge fairly quickly at that point, whether or not
10 it's considered a barrier or whatever. That's a
11 necessary step the proposal would have to go through in
12 either of these processes, which I think is different
13 from the third one, although I don't know much about an
14 independent commission, how that might be structured,
15 but I don't know where the higher level decision or
16 review authority would be for that kind of a structure.
17 But the other two I think it doesn't particularly
18 matter.

19
20 I think the point that Doug was making
21 was that there may be some questions brought and other
22 people want answers to say, well, which of those two
23 processes, as Russ was saying, between the Flyway
24 Council and AMBCC there is the full 12 months of
25 waterfowl hunting opportunity that's covered. So one
26 or the other should have the authority to bring it
27 forward to make some sort of a change. It's just
28 within which of the two structures are we talking
29 about.

30
31 The other idea that I think has been
32 floated is do we want to change the structure of one of
33 these to broaden it to a degree. In other words,
34 underneath the amendment to the treaty that created the
35 spring hunt, do we want to broaden that. That, of
36 course, has a legislative component to be able to make
37 something like that happen.

38
39 MS. REZABECK: Austin, did you have
40 something?

41
42 MS. BROWN-SCHWALENBERG: Cathy, excuse
43 me. Can I just introduce our chairman.

44
45 MS. REZABECK: Of course.

46
47 MS. BROWN-SCHWALENBERG: I just wanted
48 to interrupt. Pat Norman, the village chief of Port
49 Graham and the chairman of the board of Chugach
50 Regional Resources Commission, just walked in and I

1 just wanted to welcome him to the meeting and invite
2 him up to the table if he's so inclined.

3

4 Thanks.

5

6 MR. AHMASUK: Thank you. For the
7 record, Austin Ahmasuk. Being that we develop
8 proposals for the subsistence areas, we're talking
9 about fall season under either scenario for the
10 subsistence areas, not for the entire state of Alaska,
11 right? Just the subsistence areas?

12

13 MS. REZABECK: I guess we need to
14 clarify that. Yes.

15

16 MR. AHMASUK: Currently designated
17 subsistence areas. I'm just asking.

18

19 CHAIRMAN ALCORN: I don't know if the
20 answer is yes or no. Here's the way it would play out
21 at least in my opinion. If the AMBCC were to -- if we
22 were to follow the process through the AMBCC, right now
23 we make recommendations for indigenous inhabitants and
24 those are defined. So, by default, that includes
25 Alaska Native subsistence hunters as well as any other
26 hunters that live permanently in those included areas.
27 That's the AMBCC's scope.

28

29 For the Flyway Council process, they
30 make recommendations to the SRC that establishes
31 sideboards and those are Federal sideboards and every
32 state then has the prerogative to establish regulations
33 within those sideboards, within those frameworks
34 they're called, and they can be more restrictive or
35 they can be as broad as those sideboards allow.

36

37 So the State then is responsible for
38 establishing or promulgating regulations within its
39 boundaries and the way the State promulgates
40 regulations is for all licensed hunters within the
41 state. As far as I know, in the Flyway Council
42 process, there is no special dispensation given for
43 subsistence hunters or Alaska Natives or rural
44 residents for migratory birds. There may be a rural
45 residency allowance for other game, I'm not sure, but
46 Dale can speak to that.

47

48 MR. RABE: I'm reluctant to try and
49 speak into any of the history of the legal situation,
50 which most of you have lived through and I have not in

1 terms of developing a Federal and State regulatory
2 process. I guess it's appropriate to say that we --
3 well, I think Doug has covered it. I don't know if I
4 want to go back through and redescribe all of the other
5 stuff. I think he's accurately portrayed that.

6
7 MS. REZABECK: So I guess the question
8 then begs does this group -- are you interested in a
9 broader framework or in the framework covered by the
10 AMBCC, subsistence hunters and indigenous people? Yes,
11 go ahead, Dave.

12
13 MR. SHARP: Just quickly so it's clear
14 at least in my mind an everyone here needs to help me
15 out, I think. When I look at the two processes and I'm
16 trying to look at this just to help you get this done
17 basically, but when I look at coming through the Flyway
18 Councils and I think about the time of year and the
19 constraints that are on us, I believe there are a bunch
20 of additional constraints that we haven't talked about
21 at this table.

22
23 If you try to bring it through the
24 Flyway Councils under that process that's in place out
25 there, I believe that the species that the Flyway
26 Councils can actually work with in terms of trying to
27 help you set seasons for are more constrained than what
28 they are under the subsistence regulations that are
29 currently in place that are out there. I believe the
30 methods of take are constrained over the process. I
31 believe the amount of take, even though it may not
32 change, I think it's the monitoring of that take.

33
34 By monitoring of that take, when you
35 come to the fall period -- this is probably going to
36 get Molly's attention when I talk about that, but when
37 we come into the fall period, the monitoring of that
38 harvest, we actually have regulations in place right
39 now for the harvest information survey program that are
40 out there, that becomes the universe that we need. We
41 need to know who those hunters are so that we can
42 actually sample those and determine what the harvest
43 is, so there's some additional monitoring that's
44 necessary, then that ultimately feeds into population
45 and population management. There are flyway management
46 plans out there in place and it looks at the take on
47 these birds through the annual cycle and then it helps
48 distribute that take among all of the users that are
49 taking that resource.

50

1 My whole point in all this under the
2 Flyway Council part of this, I believe there are a
3 bunch of constraints on the current system that you
4 have in place that I know we haven't talked about here,
5 but I think we should talk about them if you're going
6 to try to invoke that part of the process to implement
7 your hunt. I don't know the answers to any of those.
8 I'm just pointing out that there are some additional
9 constraints if you're going to go through this process,
10 the Flyway Councils.

11
12 That's all I have.

13
14 MS. REZABECK: Thank you very much.

15
16 CHAIRMAN ALCORN: I hadn't even thought
17 about that and then the light bulb just went on. Under
18 the Flyway Council process they manage by species and
19 by population. The example, and I'll let Russ and Dave
20 correct me, the Flyway Councils will make a
21 recommendation for, let's say, Scaup and Scaup is a
22 diving duck that is of special concern and because of
23 the declining population trend the sideboards for
24 harvesting have been somewhat constrained in the Flyway
25 Councils and every flyway has certain constraints
26 prescribed by the SRC and that's what I regarded as the
27 sideboards or the frameworks and it's the states within
28 that flyway that have to establish regulations that
29 accommodate those conservation needs for that
30 particular species. Scaup is one example.

31
32 Pintails is another example. There's
33 just a few other species, waterfowl particularly, that
34 are particularly specifically managed by prescriptive
35 regulations or regulatory frameworks. Then it's up to
36 the states individually to establish regulations that
37 cannot be more liberal but have to be at least as
38 conservative for those particular species.

39
40 It's actually much more complicated
41 than our AMBCC process. So if we were to adopt strategy
42 two, which is to use the existing Flyway Council
43 vehicle, all of a sudden, as Dave said, there are some
44 additional constraining sideboards that we would have
45 to be cognizant of.

46
47 MS. REZABECK: Russ and then Austin.

48
49 MR. OATES: Russ Oates, Fish and
50 Wildlife Service. That's a good point and I mean it's

1 possible that even within AMBCC process that we may
2 ultimately have to do some things along those lines to
3 provide a continuing opportunity, although somewhat
4 constrained at some point in time. One of the aspects
5 of it, I think it would be very, very highly desirable
6 to have regulations go through the AMBCC process as
7 opposed to the Flyway Council process for a number of
8 reasons. One of the ones that I'm thinking about with
9 the AMBCC process we have the opportunity to restrict
10 harvest to those people that live in included areas.

11
12 Typically with regulations that go
13 through the flyway process they have differential bag
14 limits or whatever for different geographic areas, but
15 any licensed hunter, regardless of where they reside,
16 can come into that area and hunt under the area
17 regulations. In other words, if you go through the
18 flyway process and in so doing, say on the Yukon-
19 Kuskokwim Delta from September to October 31st, there's
20 no bag limit on Pacific White-Fronted Geese. Then if
21 it went through the flyway process and there weren't
22 further constraints applied by the State or in some
23 other manner, a typical regulation would then, going
24 through this process, would allow residents from
25 Anchorage, like myself or Doug or Dan Rosenberg, to get
26 in a plane and fly out to Bethel and have no bag limits
27 on Pacific White-Fronted Geese out there. That's a
28 typical regulation. There's some constraints under
29 State regulation for state residents versus state non-
30 residents, but not area residency so much, you know,
31 within the state. That's a more typical regulation
32 coming out of a flyway process.

33
34 Now the AMBCC, if the regulations could
35 be promulgated through that, you could still, I
36 presume, retain the constraints of where you reside.
37 So I think there's a lot of reasons why this AMBCC
38 process would be the preferred source of regulations
39 going into the fall.

40
41 MS. REZABECK: Thank you. Austin and
42 then Patty.

43
44 MR. AHMASUK: Thank you. Austin
45 Ahmasuk. This morning I asked if this discussion might
46 help or hinder, but I think there's one more point that
47 we should list up there under understanding point.
48 We've had various perspectives and whichever
49 perspective is adopted, this issue just becomes so
50 enormously complex now that what we need to -- by

1 saying that, we're able to convey to the Secretary of
2 Interior that this issue needs lots of work and our
3 AMBCC process needs a few plugs here and there to try
4 to make this work a little better because at this point
5 we can envision so many complexities it kind of boggles
6 the mind really.

7
8 MS. REZABECK: Are you talking about
9 educating people?

10
11 MR. AHMASUK: Yeah, sure.

12
13 MS. REZABECK: I'm sorry. Patty.

14
15 MS. BROWN-SCHWALENBERG: This is a
16 question for Russ. I don't really know the Flyway
17 Council process as it relates to fall regulations. My
18 question is so if we as a body presented a proposed
19 regulation to the Flyway Council similar to the one
20 that you just mentioned but instead said for indigenous
21 inhabitants of the Yukon Delta or wherever as specified
22 in the protocol, does the Flyway Council have the
23 authority to entertain such a regulation if we specify
24 a certain group of people or not?

25
26 MR. OATES: I would be speculating,
27 Patty. I would say that would be the way to approach
28 it, but I would say that is counter to the typical
29 regulation. Typically those regulations that come out
30 of that process don't have that kind of qualifying
31 language and I guess I would like to see if our flyway
32 representative with many more years of experience in
33 the details of this might have a thought on that.

34
35 MR. SHARP: I don't. I'm sorry, I just
36 don't have any. I have no experience with exactly what
37 you're talking about where we limit very much. I mean
38 I can give you some examples. We have certain hunts
39 that we put in place, for instance, that are for youth
40 and we specifically say adults cannot go out. They're
41 youth hunts and they're specifically set up for those
42 younger hunters and we have those, but we don't
43 normally set regulations for specific groups of people.
44 We do for birds. We're very good at that. We can
45 handle birds, whether it be Mottled Ducks on the Texas
46 gulf coast or it be Sandhill Cranes in the state of
47 Kansas. We can handle that part. Not people. That's
48 what Russ was talking about earlier where you tend to
49 go and they're very mobile. We have very little
50 experience setting any kind of regulations for people.

1 This morning all the way along I've
2 been thinking, in fact I whispered a couple times over
3 there, I see some strong similarities to how we handle
4 in the Lower 48 tribal regulations during the fall. We
5 have a completely different process, different than the
6 Flyway Councils. They're not part of the Flyway
7 Council process, but the lands are different. Those
8 are seeded lands in the Lower 48. They're
9 fundamentally different and we need legal help. I
10 can't get you there. I don't even understand it very
11 well in terms of how that's done, but there is a
12 process out there that's similar to that but different.
13 I can't answer your question.

14
15 MS. REZABECK: We have a little line-
16 up. I think Dale and then Sandy and then Doug if you
17 remember what you were going to ask.

18
19 MR. RABE: In terms of my own ability
20 to sort of think through the problem, I have at least
21 started to try and take a very specific example in
22 terms of a proposal that would meet at least a portion
23 of the desire that I think is being expressed here in
24 terms of change that we want to allow into that fall
25 period, then work that example through all the various
26 steps to identify the specific hurdles that arise from
27 that. I don't know if that would be helpful for the
28 group because a lot of the conversation that even I am
29 struggling with is because we're in the conceptual
30 description. Some of the things really pop out when
31 you get down to a specific example.

32
33 Like the Flyway Council process. If
34 one of the proposal elements were to say you wanted to
35 have a fall subsistence expansion for a shorebird
36 species, then all of a sudden things that have been now
37 brought to the table more conceptually would pop out
38 immediately. I'm not suggesting we need to do it for
39 all the species, but even taking a single proposal
40 forward of some more concrete nature might help to move
41 us down that road to come up with the questions. I was
42 just sitting here thinking about that issue.

43
44 If you use the Flyway Council process,
45 which, if I understand it correctly and I'm not sure I
46 always do, a proposal would have to be sponsored from
47 one of the State partners into that, is that correct?
48 I mean the AMBCC, can they sponsor a proposal into that
49 process without the State being involved?
50

1 MR. SHARP: The voting members at the
2 flyway level, State of Alaska is one of those. And the
3 AMBCC is not, is that correct, they're not a voting
4 member of the Flyway Council? Okay. See, I don't know
5 all this stuff very well. But the State of Alaska is.

6
7 So the State of Alaska could forward a
8 recommendation that would typically start out at the
9 study committee level. They would put a recommendation
10 on the table and then it's Robert's Rules of Order.
11 It's going to require a second from someone out there,
12 one of the voting members, of which the Fish and
13 Wildlife Service is also not a voting member. We
14 cannot vote on any kind of Flyway Council
15 recommendation. So it's going to take a second just to
16 get talked about. Then you're going to have to end up
17 with the vote. I have seen tons of very, very good
18 proposals at the flyway level that die for either lack
19 of a second or, two, they're not going to get a
20 majority vote out there.

21
22 It's very frustrating when you're one
23 state, one area of a state that's interested in getting
24 something through that makes sense, but if you can't
25 get it through the Flyway Council, you're ultimately
26 not going to get it forwarded. That is a very
27 frustrating part of the flyway system in that even
28 though -- it just happened. We just dealt with the
29 state of Texas and they were dealing with Mottled
30 Ducks. A couple of you in this room were probably out
31 there. Sandy, you were there. You heard some of that
32 discussion. I felt sorry for the state of Texas going
33 through that process because they didn't have a flyway
34 behind them and they didn't have the Fish and Wildlife
35 Service behind them and they ended up not going very
36 far with what their proposal was, but that's just the
37 elements of doing business there. If the State of
38 Alaska agreed with the proposal, Alaska could bring it
39 forward on your behalf to the Flyway Council for a vote
40 or if you're ultimately going to go through the Flyway
41 Council process, I don't know why you wouldn't become a
42 member. I think there's a possibility of you becoming
43 a member. I don't know how the bylaws work for that
44 flyway. It might be limited to the state's bylaw. I
45 can't speak to that one. But if you're not a member,
46 you're going to have a hard time bringing it forward
47 unless the State of Alaska does.

48
49 MR. RABE: Or one of the other states
50 would sponsor. But presumably the logical sponsor

1 would be the State of Alaska if it's a regulation
2 that's going to benefit Alaskans. As I started to play
3 one of those scenarios through in my own thinking as a
4 member of this body, but then looking at the legal
5 history, if we were to put forward a proposal here that
6 differentiated between citizens of the state in terms
7 of who would participate and be benefitted by that
8 regulation, that's quickly going to fall under the same
9 controversy that is against the current State
10 constitution that created the Federal regulatory
11 process as a dual regulatory system that we live with
12 now.

13

14 Frankly, the State -- whether I agree
15 or not is immaterial. The State would not take a
16 proposal like that forward because it would be in
17 violation of the current constitution. Then you'd have
18 to go to California and ask them to take the proposal
19 forward. Of course, the State of Alaska wouldn't
20 support it. Couldn't support it.

21

22 MS. REZABECK: So are we ready to
23 eliminate that particular mechanism?

24

25 MR. RABE: The point is, I think
26 depending on what the proposal was, if it were for a
27 species that there is a desire to have greater harvest
28 up here and the opportunity is to allow everybody to do
29 it so you don't have that State constraint, the State
30 of Alaska would not have to object based on its
31 constitution, and then you could take it to the flyway
32 and basically put it on the table and say, well,
33 there's extra opportunity and we have Alaskan important
34 subsistence opportunity in the fall and we think it's
35 available and we can sidestep a lot of those other
36 issues.

37

38 But that may be a fairly small portion
39 of what we're talking about here in terms of very broad
40 authority into that fall period. That might be one
41 species for a period of time that would have to be, you
42 know, acceptable through all the other parameters of
43 the flyway process to get that through. That would
44 have to be, as I understand it, done for each species
45 within the scope of what the flyway has authority for
46 and it wouldn't be a single change in authority or how
47 things would be done, but it would be a whole series of
48 very specific kinds of requests going forward.

49

50 Am I correct on that? Does that seem

1 reasonable to the Federal folks?

2

3 MS. REZABECK: Sandy's been waiting a
4 really long time.

5

6 MS. TAHBONE: Actually Dale covered
7 what I was saying. The State of Alaska is not the
8 preferred way because they would have to present the
9 proposal and they would never be able to do it.

10 MS. REZABECK: Okay.

11

12 MS. TAHBONE: Under their current
13 position, interpretation.

14

15 MS. REZABECK: Doug.

16

17 CHAIRMAN ALCORN: I think the State
18 could do it if the request was not to limit it to, as
19 Russ said, to an individual group of hunters. Fred has
20 expressed this lots of times. Fred has a lot of common
21 sense and this is one of the things I'm going to give
22 him credit for. We always, in my agency, second guess
23 and triple guess all these policy kinds of issues and
24 Fred said, but in reality how much of that would really
25 play out.

26

27 The example here is, if we were to say
28 we promulgate regulations that would allow for a
29 fall/winter suite of regulations that accommodate the
30 subsistence needs and it basically relaxes some of the
31 given constraints that we have in the fall and winter
32 hunts. We always say that would open the flood gates
33 for every hunter that lives in Anchorage and every
34 hunter that lives in Fairbanks. Fred always asked the
35 question how many people would really take advantage of
36 that opportunity and would it really translate into a
37 resource conservation issue. That's kind of ultimately
38 the bottom line here.

39

40 Would regulations impact the population
41 so that they don't meet whatever population objectives
42 and thresholds we have established. He asked that
43 question and I think it's a pretty fair question to
44 ask. We talk about policy, but in fact sometimes
45 policy is what-if'd to the point we can never institute
46 it. So it doesn't mean we can't use the Flyway Council
47 process. It just means that we can't be select on who
48 we allow the opportunity to hunt for.

49

50 Russ has his hand raised and maybe I've

1 said something that's inaccurate. I think the process
2 can still work, but it may not work specifically as
3 envisioned.

4
5 MS. REZABECK: Russ, and then maybe
6 we'll consider a break.

7
8 MR. OATES: Russ Oates. No, I wasn't
9 going to jump you, Doug. Just a thought. There are
10 certainly some species and I think we can remember what
11 happened with Brant at Cold Bay not too many years ago.
12 I mean we would probably want to retain bag limits or
13 something like for that particular situation for
14 example. But there are a number of species that I
15 think we could have no bag limit for. I see Dan
16 Rosenberg is giving me a very critical look right now.
17 And not have that residency constraint. It probably
18 wouldn't be a big issue. I'm probably going to regret
19 I ever went on record saying that. But it's entirely
20 possible. We could at least have a suite of species
21 that we wouldn't have too much concern about.

22
23 Certainly there are some species, Brant
24 is one of them and there are some others, that we would
25 probably need to retain just to keep -- I mean there
26 are some species that would draw a flood of hunters out
27 of Anchorage to hunt, that's a fact, if there was no
28 bag limit. So we have to be cognizant of that and we'd
29 have to ensure that didn't happen. I mean it's
30 possible that we could come up with at least some suite
31 of species that we wouldn't have to worry about that
32 constraint.

33
34 Just to reiterate, I think the more
35 preferable approach would be using the current AMBCC
36 process and just applying it to the extended time
37 period if we can figure out a way to make that fly. I
38 think that would be far preferable.

39
40 MS. REZABECK: Anyone with a last word
41 before break? How about 3:15. See you back here.

42
43 (OFF RECORD)

44
45 (ON RECORD)

46
47 MS. REZABECK: We should probably get
48 started again. We'll continue with more pieces as we
49 get down on a different sheet. It appears that we're
50 focusing on these two methods and I think our

1 conversation has been good and we should just keep
2 talking.

3

4 Sandy, did you have something?

5

6 MS. TAHBONE: Yes. Regarding the State
7 and Flyway Council, one thing it doesn't afford, which
8 the AMBCC does, is that under the AMBCC process each
9 region has a council made up of the users which the
10 State kind of does, but not to the same degree as the
11 AMBCC, which I think is a really big plus.

12

13 MS. REZABECK: Thank you. Where would
14 you like to go next? Do you want to just keep talking
15 about the various differences? Yes, Molly.

16

17 MS. CHYTHLOOK: Also under AMBCC I
18 don't know if this would apply, but we do have these
19 survey projects that we do in the majority of our
20 communities even though we rotate. We collect harvest
21 information and the reports are on a timely manner.
22 The harvest information, the reports aren't held for
23 two years before they come to whoever needs to use the
24 numbers.

25

26 MS. REZABECK: Okay. Good. What else?

27

28 MS. TAHBONE: The independent
29 commission.

30

31 MS. REZABECK: Ah, you want to go
32 there.

33

34 MS. TAHBONE: Oh, yeah. I think the
35 way it was presented regarding the process, I think
36 that would be the ultimate in my opinion because that
37 would afford the Native community, the indigenous, a
38 seat at the table where regulatory decisions are made
39 versus where we currently are. I think more of our
40 issues would be able to be addressed, whereas we've had
41 a number of issues that have been put on the back
42 burner so to speak. We've had to try to address them
43 outside of this body. So unless we can get more meat
44 to our current authority, if you will, which a lot of
45 us still think that we should have that authority or do
46 have that authority. But I think that independent
47 commission would afford us that opportunity.

48

49 MS. REZABECK: I apologize, I'm not a
50 good speller. Molly.

1 MS. CHYTHLOOK: The Independent
2 Committees have a management planning place that works,
3 I think, very well with the committee that spells out
4 their processes, process to drive the committees.

5
6 MS. REZABECK: Are you talking about
7 the management plan that the Eskimo Whaling Commission
8 has?

9
10 MS. CHYTHLOOK: Yes.

11
12 MS. REZABECK: All right. Yes.

13
14 MS. BROWN-SCHWALENBERG: I just have a
15 question for whoever can answer it. If we established
16 an independent commission and I'm assuming that's just
17 tribal organizations and not State or Federal partners.
18 That's the first question. The second question is once
19 these regulations are put into a form we can get them
20 passed, who do you propose we go to? Is it the SRC or
21 is it some other body? I don't really understand what
22 the ultimate goal or whatever is.

23
24 MS. REZABECK: If I might suggest, I
25 don't know if we have looked carefully at what's behind
26 one of your tabs. There's some Eskimo Whaling
27 Commission information there in your packet.

28
29 MS. BROWN-SCHWALENBERG: But that's a
30 different governing agency.

31
32 MS. REZABECK: Okay. So you don't
33 think it's a good model.

34
35 MS. BROWN-SCHWALENBERG: No, I'm not
36 saying it's not a good model. I'm just trying to
37 figure out how that's going to translate to migratory
38 birds and that's my question. What ultimate authority
39 are we looking at going to get our regulations passed.

40
41 MS. REZABECK: Yes, Dave.

42
43 MR. SHARP: I obviously can't answer
44 your question, but I think the answer to your question
45 lies under whose rules would the commission play by.
46 Would they play by the rules that the Flyway Council is
47 dealing with in terms of that time frame with the
48 species, the methods and means, those types of things,
49 or would they play by rules the AMBCC plays by, the 97
50 species, the no bag limits, that kind of thing. Would

1 they play by those rules or would they play by their
2 own rules? That's the part I can't quite -- if you
3 could tell me which rules they're going to play by, it
4 would be kind of clear, I think, who they would have to
5 answer to, but there's got to be some rules established
6 by someone, somewhere.

7
8 MS. REZABECK: Doug, did you want
9 to.....

10
11 CHAIRMAN ALCORN: I think I can address
12 that. The authorities that the Secretary of the
13 Interior has for managing migratory birds is provided
14 under the 1916 Migratory Bird Treaty Act. If an
15 independent commission were to be established, I think
16 the authorities to establish commissions might lie with
17 the Secretary, but it might also lie with Congress. I
18 suspect it lies with Congress.

19
20 So I think what we're talking about is
21 trying to understand who has the authority to actually
22 establish the commission and in so doing relieving the
23 Secretary of the Interior of current responsibilities
24 and authorities. Right now the Secretary of the
25 Interior is vested with those authorities to make
26 regulations, to manage migratory bird resources across
27 this country. Any time you have a commission with that
28 authority established, it has to simultaneously relieve
29 the current authority and the entity with those
30 authorities.

31
32 If it's the Congress, which I suspect
33 was what it is, it would require an act by Congress and
34 within that act it would say the Secretary of the
35 Interior is relieved of these authorities and these
36 authorities are now vested with this new commission
37 that's established. That's what I think.

38
39 Again, I'm not an attorney, I'm not a
40 constitutional law attorney. It seems to me if we were
41 to begin to explore this, we would have to either ask
42 some legal counsel or some political scientist what the
43 appropriate methods and means would be to establish a
44 commission.

45
46 MS. REZABECK: Other comments? Yes,
47 Peter.

48
49 MR. DEVINE: Yes, I just had a thought
50 here. Couldn't the AMBCC send a letter of

1 recommendation to the State Subsistence Board asking
2 for a fall hunt and let them deal with it?

3

4 MS. REZABECK: Boy, I don't know where
5 to put that one. It's a different process all
6 together, isn't it?

7

8 CHAIRMAN ALCORN: The Federal
9 Subsistence Board is established under Title VIII of
10 ANILCA and I believe that it excludes migratory bird
11 management within ANILCA. That's why AMBCC is
12 established. We would not ask the Federal Subsistence
13 Board to take on migratory bird management unless we
14 were ready to seed our authorities and let the
15 Subsistence Board take it over.

16

17 MR. HICKS: (Away from microphone).

18

19 MR. RABE: I guess I'm not following
20 exactly what you're saying.

21

22 MR. HICKS: In regards to the
23 management of migratory birds, the State.

24

25 MR. RABE: The State of Alaska does not
26 have a primary responsibility because of the Migratory
27 Bird Treaty Act.

28

29 MS. REZABECK: So is that what you want
30 to do?

31

32 MR. DEVINE: No.

33

34 MS. REZABECK: I'm sure that just like
35 any other process there may be a process to go there.
36 Dale.

37

38 MR. RABE: Well, I'm not an expert, but
39 I think based on what Doug was saying if you wanted to
40 go to that source for that kind of authority, it seems
41 to me it would require a change to ANILCA, which would
42 be again a process that would be back with Congress.

43

44 MS. REZABECK: Okay. Other ideas? Do
45 you want to talk a little bit more about the
46 independent commission because we really haven't talked
47 much about it. Yes.

48

49 MR. PEDERSON: I think the reason
50 number one why it was brought up in our region was just

1 because a lot of the people didn't understand what the
2 AMBCC process was and a lot of the tribal members up
3 there who we worked with they view the commission
4 probably more realistically as a co-management venue
5 than how the AMBCC process was described in our
6 villages. The commission itself, the whaling captains,
7 it was them that formed the commission after a quota
8 was imposed by not only the international community but
9 from the Federal government as well.

10

11 MS. REZABECK: Thank you. Yes.

12

13 MS. BROWN-SCHWALENBERG: Mike, I know
14 you gave a description of the whaling commission
15 earlier. So, when the regulations are proposed or when
16 they were back in the day or whatever, those went to
17 NMFS for approval and then NMFS carried them forward to
18 the International Whaling Commission or how does that
19 play into the process?

20

21 MR. PEDERSON: From my understanding,
22 because the U.S. Federal government signed the
23 International Whaling Commission Treaty in 1946
24 regarding big whales, whatever the International
25 Whaling Commission decided, it went back down to each
26 of the countries. In our case, it was subsistence
27 whaling. When we were working with NMFS, they proposed
28 certain things and the whaling captains proposed
29 certain things, so when it went back to either '77 or
30 '78 the meeting, we were talking about reinstating the
31 quota, the international community was in favor of the
32 way we wanted to do things to get back into hunting,
33 but then they started off I think with seven whales was
34 our quota for 10 villages at the time. So we had to
35 work back and forth to get things pretty good the way
36 they are now, but at first it started with NMFS. NOAA
37 came into the picture with all the science money, so
38 there's that aspect of it, but the real reporting goes
39 to NMFS.

40

41 MS. REZABECK: Doug.

42

43 CHAIRMAN ALCORN: I have a question for
44 Mike. So NMFS, who had the responsibility under
45 Federal law to negotiate -- did the State department
46 have the authority or did NMFS have the authority to
47 negotiate terms of agreement for managing whales on the
48 international level?

49

50 MR. PEDERSON: It was both NMFS and the

1 State department. Under the State department it was
2 the Under Secretary for Oceans and International
3 Affairs. I guess with the International Whaling
4 Commission the State department did all their stuff,
5 but everybody on that delegation, a lot of those people
6 are made up of NOAA and NMFS representatives anyway.
7 The only person involved from the State department was
8 the head of delegation, which was the commissioner to
9 the IWC.

10

11 CHAIRMAN ALCORN: So the way I
12 understand it then, you had two Federal departments
13 working at the international level. You had the
14 Department of State and you had the Department of
15 Commerce, which is where NOAA and NMFS lies. The
16 Department of Commerce had the responsibility of
17 managing whaling regulations and take of whales
18 domestically, correct? So that's the connection
19 between the two.

20

21 Apparently NOAA supported the
22 establishment of the Alaska Eskimo Whaling Commission.

23

24 MR. PEDERSON: Correct.

25

26 CHAIRMAN ALCORN: And petitioned it to
27 the International Whaling Council?

28

29 MR. PEDERSON: I think it was more of
30 the State Department stuff, but in the beginning a lot
31 of the funding did come from NOAA AND NMFS, but right
32 now NOAA, through a cooperative agreement, they provide
33 a lot of the science related and the research for the
34 Borough to do all the research. Every year we have to
35 report on the previous year's harvest. Once every four
36 years we go up and ask for a block quota for the next
37 four or five years and that quota since the mid '90s
38 hasn't changed at all. But the science has changed and
39 we always are reporting new numbers based on the
40 statisticians and everybody's research that they do out
41 there on the ice.

42

43 So, yeah, with both of those
44 departments we've been able to work with the
45 International Whaling Commission and I guess the bad
46 thing about it is that the like-minded countries, say
47 like Iceland was before Norway, Japan, I guess the
48 commercial whaling countries, but we always work
49 together really well with the like-minded countries and
50 they've always supported us and up to a limit we

1 supported them. The Whaling Commission always went to
2 these meetings as a non-governmental observer, NGO
3 status, but it wasn't until the last three or four
4 meetings that the U.S. delegation did have somebody
5 from the whaling captains as a member of its
6 delegation. Before that happened we always went as
7 NGO's, but we always worked with the State and Commerce
8 Departments as well as back then Senator Steven's
9 staff.

10

11 So it was a real cooperative effort
12 when it came time to the IWC because we always had to
13 keep everybody's faces -- you know, are you from the
14 State, are you from NOAA, you know, who do you
15 represent out of the delegation. We had a hard time
16 keeping all that straight just so we could get what we
17 needed done accomplished. So there was a lot of
18 politicking, but in the end, working together, it all
19 worked out.

20

21 CHAIRMAN ALCORN: So the reason I asked
22 that question -- thanks for that explanation. The
23 reason I asked that question is it seems to me that to
24 mirror that process you have to have -- you said a lot
25 of politicking and that's certainly what would be
26 required, but it seems to me what you would have to
27 have is the director of the Fish and Wildlife Service
28 and the Secretary of the Interior in agreement that the
29 Secretary would be willing to delegate that authority
30 to a commission if the authority to establish a
31 commission lies with the Secretary of the Interior.

32

33 So, to me, it sounds like that's one
34 question we've already asked, who has the authority to
35 establish. But really what you're also talking about
36 is the political arena of exploring the will of the
37 Secretary of the Interior to give up that authority,
38 the will of the Secretary and the will of the Director
39 to give up that authority, which is currently vested in
40 those two positions for managing migratory bird
41 resources.

42

43 MR. PEDERSON: Let me remind you, too,
44 that it's not we, as the North Slope Borough, that was
45 pushing this issue. It was the hunters of migratory
46 birds in our region that asked us to explore this
47 issue.

48

49 MS. REZABECK: Okay. Yes, Patty.

50

1 MS. BROWN-SCHWALENBERG: First of all,
2 the authority to establish a commission, I think if
3 we're modeling after the Eskimo Whaling Commission,
4 they didn't get their authority from the Federal
5 government. They established it themselves. Likewise,
6 the tribal governments could establish a commission any
7 time they want. Then they'd have to be working with
8 the Federal government to establish the regulations or
9 get the regulations passed somehow and that gets back
10 to my question. If the tribes established a commission
11 for migratory birds, who would they go to besides the
12 SRC to get the regulations passed?

13

14 MR. PEDERSON: I think that's a good
15 question and I know that those of us in the borough
16 where I'm at we haven't explored that, but we're also
17 doing internally where we have our regional management
18 body. There's been some issues that were brought up
19 because of the MOU that we signed identified by the
20 tribes on the North Slope where they want to be
21 considered the regional management body for the North
22 Slope, for the Arctic Slope, and that would take us out
23 of it.

24

25 So, in response to that I've been
26 working with the regional tribal government and the
27 villages up there on how the North Slope Borough Fish
28 and Game Management Committee -- we also serve as the
29 Arctic Advisory Council to the Board of Game and
30 Fisheries where we've had the capacity to act on
31 research, science related, wildlife management quota
32 type stuff for all species on the North Slope. The
33 only reason that we are able to do that is because at
34 the time all these organizations were formed we've had
35 that capacity and the tribes haven't.

36

37 So, right now the tribes are starting
38 to get their capacity. They're starting to want to get
39 involved in the stuff that we're doing. We don't have
40 a problem with that. We're working with them on it.
41 The only issue that's been identified to us are the
42 other organizations, say the Fish and Wildlife Service.
43 Are they going to be willing to -- instead of working
44 with the wildlife department, are they going to be
45 willing to work with the tribes on some of these
46 things.

47

48 I think if this commission was indeed
49 established and where to go and all that, I think they
50 would have to work with the entity that's in charge of

1 it, so I think they'd have to work with the Fish and
2 Wildlife people to get everything rolling. That's my
3 opinion anyway.

4

5 MS. REZABECK: Yes.

6

7 CHAIRMAN ALCORN: Patty asked the
8 question if a commission were established who would you
9 send the recommendation or the regulations to. I guess
10 if the authority to make regulations is still the
11 responsibility of the Secretary of the Interior, a
12 commission would make the recommendation or elevate the
13 regulations either directly to the Secretary through
14 the Assistant Secretary for Fish and Wildlife and Parks
15 or through the SRC, which includes the Director of the
16 Fish and Wildlife Service.

17

18 Right now that's the existing authority
19 and I guess what I'm learning from this discussion is
20 if the International Whaling Commission, who has seeded
21 authority to the Alaska Eskimo Whaling Commission, it
22 sounds to me like that's what happened, the Alaska
23 Eskimo Whaling Commission sets its regulations and then
24 floats those regulations back up through the
25 International Whaling Commission? Is that how it
26 works, Mike?

27

28 MR. PEDERSON: No.

29

30 CHAIRMAN ALCORN: No. Okay.

31

32 MR. PEDERSON: I think you're
33 misunderstanding that part of it. When we develop our
34 rules for our whale hunt, the rules are made by the
35 whaling captains themselves. It's incorporated into
36 the management plan, which has been revised probably
37 every year since it was first introduced.

38

39 The only thing that NMFS worries about
40 is whether we're actually following what's in the plan.
41 Several years ago a whaling crew caught a whale they
42 weren't supposed to catch. It was a calf. One of the
43 things that we know is that when we're out there
44 whaling a lot of those calves swim close by their
45 mothers. A lot of other crews had testified in this
46 one case where they did see the mother and the crew
47 that caught the calf didn't see the mother. In the
48 end, based on what was written in the management plan
49 the whaling captains in that community decided to ban
50 that whaling captain for a period of five years.

1 In another instance, the same thing
2 happened, but of all the crews out there nobody could
3 see the mother. The captains just decided to fine that
4 crew, but they could go out whaling the next spring.

5
6 The management plan, the only thing
7 NMFS looks at is just to make sure that we're following
8 what the management plan says. They don't go up there
9 and send any type of law enforcement and stuff like
10 that. They kind of leave it up to the whaling captains
11 and the crewmembers themselves to do that. What
12 happens at the International Whaling Commission is they
13 don't give us rules to abide by. All they want to know
14 is what is science saying about the population that we
15 hunt.

16
17 MS. REZABECK: Yes.

18
19 CHAIRMAN ALCORN: A question just for
20 clarification. Who actually publishes the rules or the
21 regulations that the whaling crews abide by every year
22 or every five years?

23
24 MR. PEDERSON: It's the whaling
25 captains association in each village. They have their
26 own set of rules. But their guide, they might just
27 follow the overall AWC management plan, which has when
28 the hunt is going to happen, how it's going to happen,
29 what you have to do. In the rules it says you have to
30 put a float with a harpoon on the whale before you
31 actually shoot it with a shoulder gun. Like a big
32 shotgun just to kill the whale, you have to do it in a
33 humane way. Those are the types of things that are in
34 the management plan, but each community has their own
35 different rules on how they conduct their hunts because
36 they're all different.

37
38 I mean the way we do it in Barrow is
39 way different than the way they do it on St. Lawrence
40 Island. But it comes from the local captains
41 themselves. A lot of them append the management plan
42 that AWC has along with their own rules. Even the
43 rules of sharing the whale are different in all the
44 communities. So they may have their own rules, but
45 they also refer to the management plan that AWC has.

46
47 MS. REZABECK: Thank you, Mike. Dale.

48
49 MR. RABE: Again, exploring some of the
50 elements, Mike. Who is it that determines simply how

1 many whales can be harvested in Alaska? What's the
2 authority you report to?

3

4 MR. PEDERSON: Every few years we go to
5 the International Whaling Commission for a block quota.
6 They're the ultimate authority in giving us whatever
7 number we want. It can be 67 landed whales per year or
8 77 struck whales per year, whichever number is reached
9 first. Once they agree with all the science that the
10 Borough presents at the IWC level and then the 40,
11 however many, whaling commissioners, they are from
12 throughout the world, they all decide and debate
13 amongst themselves, they give us a number.

14

15 We take that number and what we do is
16 we have a big convention once every four years,
17 bringing all the whaling captains, the co-captains and
18 their wives into Barrow and they argue amongst
19 themselves on the smallest village will only get one
20 whale, whereas the largest village will get 22 strikes.
21 There are some villages that get 7, 6, 5. It all
22 depends on what we call cultural nutritional need of
23 that village based on the population. That's a study
24 that's been updated every few years by Stephen Braund,
25 because he did the first one.

26

27 Recently Point Lay just got their first
28 whale in over 70 years last spring, but they had to go
29 through that needs study too. So it goes from the
30 whaling captains themselves that decide on the quota.

31

32 MR. RABE: A follow up. Who are the
33 members for the U.S. that are delegates to the
34 International Whaling Commission then?

35

36 MR. PEDERSON: It's the staff from the
37 Under Secretary for Oceans and International Affairs.
38 It's either the State or Commerce Department. But
39 we've all worked with State, Commerce, NMFS and NOAA
40 people. I think the delegation is made up of a variety
41 of those government agencies. But the whaling captains
42 report directly to NMFS or the whaling commission
43 reports to NMFS.

44

45 MS. REZABECK: Thank you, Mike. Other
46 comments or questions. Yes, Sandy.

47

48 MS. TAHBONE: What I like about that
49 scenario is the involvement of the people regarding the
50 management plan and as far as enforcement. Those are

1 always issues that we're having and the science behind
2 it.

3

4 MR. PEDERSON: Thank you, Sandy.

5

6 MS. REZABECK: Yes, Doug.

7

8 MR. RABE: My question is going to be
9 to Doug. If I understand it as you've described those
10 Federal authorities, is it reasonable that in this case
11 the lowest level of authority, the only authority that
12 would establish a commission to deal with the waterfall
13 regulations that we're discussing would be Congress?

14

15 CHAIRMAN ALCORN: I think the Congress
16 could certainly establish a commission. They have the
17 authority to write any Federal law they want and they
18 could do that. That's, I think, generally considered
19 micro-managing the affairs of the cabinet level
20 officials. The affairs of the cabinet level official
21 for migratory bird management is the Secretary of the
22 Interior. That position, that cabinet member, has the
23 responsibility under congressional law for affairs of
24 the Interior and migratory birds are considered that.

25

26 What it would then take -- I guess you
27 could approach it two ways. You could have the
28 Congress pass a law that tells the Secretary of the
29 Interior you will delegate authority for these
30 management decisions to the equivalent of the Alaska
31 Eskimo Whaling Commission for subsistence harvest
32 regulations for migratory birds. That could occur.

33

34 The other avenue for establishing this
35 would be to petition the Secretary directly and ask the
36 Secretary to establish a commission if he or she has
37 that authority. It would require some significant
38 discussion at the treaty level with the Canadian
39 government and Mexico because we have treaties that
40 govern the management decisions for those resources.

41

42 MS. REZABECK: Mike.

43

44 MR. PEDERSON: Just because I was born
45 and raised and from Barrow and on a whaling crew, I
46 could praise the glories of the Whaling Commission
47 forever, but they're not the only co-management body in
48 this state. We have the Eskimo Walrus Commission, the
49 Beluga Whale Committee. It might be wise to look at
50 how those were formed. I do know that by Congress

1 they're called Alaska Native organizations. So those
2 are other avenues or other models that the AMBCC could
3 look at. I don't want to put down the AMBCC, but I
4 think the concern is that when we try to describe the
5 AMBCC as a co-management body people get confused
6 because there's 11 Native representatives and the State
7 and Federal representative and we have three votes and
8 we work by consensus. I think that confuses a lot of
9 people out there. When we're having our public
10 meetings, I think just the way the AMBCC was described
11 was a little bit confusing and people didn't think it
12 was a co-management body, at least in our region. I'm
13 not sure how it is in other regions.

14
15 You and Fred were up there this past
16 winter with me when we went to the meetings and you
17 guys heard that concern. People were pointing at me
18 and saying why is the Borough here. It shouldn't be
19 the Borough, it should be the tribes. So that's why we
20 said we would talk about a different type of
21 commission.

22
23 Yeah, there's all those other
24 commissions too and they were formed and they get
25 Federal funds to do their work, but they don't get
26 enough Federal funds to do their work. At the SRC
27 meetings when we had meetings on the Hill, I mean I was
28 surprised to hear that one of the Senator's staff was
29 impressed with the work the AMBCC is doing and they
30 thought that we had our ducks in a row compared to the
31 other co-management bodies in Alaska.

32
33 So I just wanted to say that.

34
35 MS. REZABECK: Thank you, Mike. Fred,
36 did you have something?

37
38 MR. ARMSTRONG: Yeah. I think Doug
39 expressed it good, but Congress can create the
40 commissions as they've done with the marine mammal
41 councils, the Nanook Commission, the Polar Bear
42 Commission, Walrus Commission, and they've identified a
43 mechanism to fund them, Section 119 funding
44 authorization. The Secretary certainly could appoint a
45 commission. I think it's a matter of Congress and the
46 Cabinet level who is going to seed authority to manage
47 the birds. A similar way with the International
48 Whaling Commission.

49
50 MS. REZABECK: Did you have something,

1 Patrick?

2

3 MR. NORMAN: How is this Council
4 different from the commissions that are out there in
5 terms of authority or operations?

6

7 CHAIRMAN ALCORN: Want me to answer
8 that?

9

10 MS. REZABECK: Yes, go ahead.

11

12 CHAIRMAN ALCORN: I'll take a crack at
13 it and other people can offer their anecdotes, I guess.
14 We're authorized under -- the State Department
15 negotiated the Migratory Bird Treaty Protocol Amendment
16 in 1996 after folks like Myron Naneng and other
17 representatives from Alaska regions worked with the
18 Congress and State Department to recognize there was a
19 need for subsistence hunting, to legalize subsistence
20 hunting that occurred in what was formerly referred to
21 as the closed season and that was the spring and summer
22 months.

23

24 So the State Department negotiated a
25 deal with Canada and amended the treaty with Canada and
26 Mexico and then gave that treaty to the Congress and
27 asked the Senate specifically to consider it and ratify
28 it to make it law.

29

30 The Senate did that and in 1997 it was
31 ratified, sent back to the White House and ultimately
32 to the Secretary of the Interior saying we've ratified
33 this treaty amendment, the authority that is vested in
34 the Secretary of the Interior to manage migratory bird
35 resources. The Secretary will establish a co-
36 management council in effect, statewide management
37 bodies is what it was referred to, and we'll consider
38 that body advisory and we'll take the advice of that
39 management body in the annual regulation-making
40 process.

41

42 The annual regulation-making process is
43 the Fish and Wildlife Service's Regulation Committee.
44 Here's the recommendations from Flyway Councils, also
45 including the AMBCC, and then they, through the
46 Director of the Fish and Wildlife Service, recommend a
47 suite of frameworks to the Secretary and the Secretary
48 has the authority to promulgate those regulations. The
49 states then have the authority to establish statewide
50 regulations under those frameworks.

1 So that's kind of a real quick
2 explanation of how we do what it is that we do and what
3 empowers this body.

4
5 MS. REZABECK: Patty.

6
7 MS. BROWN-SCHWALENBERG: In short, the
8 big difference I see between those other commissions
9 and this body is that those other commissions are made
10 up of either representatives from various regions in
11 the state or tribes or villages and this body is made
12 up of that plus a State representative and a Federal
13 representative and those other commissions don't have
14 those two entities as members on their bodies. That's
15 one of the things that kind of restricts this body
16 because the State has the Constitution to follow. They
17 have restrictions what they can vote for and what they
18 can't vote for. Feds have mandates and policy that
19 they have to follow. That just puts in a little bit
20 more things to consider when we're trying to get things
21 passed because we do deal by consensus.

22
23 Thank you.

24
25 MS. REZABECK: Thank you, Patty.
26 Molly.

27
28 MS. CHYTHLOOK: I think Doug and Patty
29 did the explanations. The comment that I was going to
30 make is that this body is unique and complex because of
31 the explanation of how this body operates with Doug and
32 then Patty. I don't see how we could work through this
33 independent committee because of the complexity of this
34 committee right now.

35
36 MS. REZABECK: Thank you, Molly. Mike.

37
38 MR. PEDERSON: One other thing that I
39 think is important to tell you is regarding polar
40 bears. The North Slope Borough shares the southern
41 Beaufort Sea population of polar bears with the
42 Canadian Inuit. What we did from a management
43 perspective based on discussions with our Federal
44 government and Canadian Federal government and local
45 regional governments in Canada is we formed the
46 Inuvialuit Inupiat Polar Bear Agreement. I don't think
47 it's really co-management, but we do work together and
48 it feels like co-management. We share a quota with the
49 Canadians, so it's 40 for them, 40 for us. One of the
50 things they do is they have a commercial harvest and we

1 don't. We're completely subsistence. But we sit at
2 the table with them as joint commissioners and the
3 Federal government on our side and on their side we
4 consider them as our technical advisors.

5
6 What we do when we get together to talk
7 about polar bear issues, at least in that one
8 population is we go over all the research, the science,
9 the harvest, whatnot, but we meet with the technical
10 advisors first and then after our meeting is done with
11 the joint commissioners we get together, just like we
12 do here in the Native caucus, and we go over what we
13 think both sides of the government should deal with and
14 we give them our recommendations.

15
16 It's not really co-management, but a
17 lot of people feel it is because it's worked so well.
18 That's just another option that's out there that seems
19 to have worked at least in our region.

20
21 MS. REZABECK: Thank you, Mike. May I
22 ask a question? This would be a new entity and would
23 it be in addition to the AMBCC or in place of the
24 AMBCC?

25
26 MR. SHARP: Subcommittee.

27
28 MS. REZABECK: Doug.

29
30 CHAIRMAN ALCORN: I think if you're
31 talking about establishing truly an independent
32 commission with authority as Mike described to set
33 regulations, I think it's in lieu of the AMBCC because
34 AMBCC's actions would be moot. We don't have authority
35 as AMBCC to make regulations. We have authority to
36 recommend through the existing processes the existing
37 authorities of the Secretary of the Interior to make
38 recommendations up the chain and that's the way we do
39 things in consultation with the Flyway Councils.

40
41 If we establish an independent
42 commission with authority to make regulations for
43 Alaska Natives or for all subsistence hunters in the
44 state, either/or, it seems to me that AMBCC's
45 responsibilities are moot.

46
47 MS. REZABECK: Dale and then Mike.

48
49 MR. RABE: It appears to me that making
50 a decision to go this route implies to me that we would

1 want to change the hierarchy of authority that you
2 report to. I mean everybody reports to a higher
3 authority. So what we're really talking about here is
4 that the chain of authority that exists for AMBCC or
5 the Flyway Council aren't meeting the needs. To go to
6 an independent commission, it's in essence seeking a
7 different line of authority that would create the
8 opportunity for the kinds of changes that are being
9 sought here. So I assume that it would be outside of
10 everything that's been discussed in terms of flyway,
11 the SRC and potentially even the Secretary of the
12 Interior. But that's not clear to me what would be
13 that next higher authority that that commission would
14 report to.

15

16 MS. REZABECK: Thank you. Mike.

17

18 MR. PEDERSON: I don't have an answer
19 to that question, but getting back to Doug's thing.
20 Again, one of the reasons why it was brought up in our
21 region to create a commission was because that when we
22 were dealing with the Stellar's Eider issue and when it
23 came time for the regulations to be published, we had
24 our first meeting in September '08 and then they came
25 up to our Regional Council meeting in December and from
26 then we held public hearings. I think the gist of
27 talking about this commission had come from the Fish
28 and Wildlife Service proposing regulations that we had
29 no say so. Meaning like the shooting hours, the
30 proposed road closure, all those things that were
31 brought out in the initial discussions.

32

33 In the public hearings, the comments
34 that we heard were that is this co-management and a lot
35 of people just didn't think it was co-management. At
36 the Barrow meeting, Taqulik had asked you if these
37 proposed regulations went through the AMBCC, your
38 response was no, but the regulations that went through
39 the AMBCC were the general overall things. It wasn't
40 the new proposed rules for the North Slope in order to
41 conserve the Steller's Eiders. So I just want to point
42 that out. That's why some of our hunters were
43 interested in creating a new commission with what they
44 view as co-management. The way that we ended up doing
45 all this stuff, to people in our region, it wasn't
46 considered co-management, especially coming from the
47 migratory bird hunters who we have to work with to get
48 the MOU done.

49 GETTING BACK TO DOUG

50

1 MS. REZABECK: I think Dave had a
2 comment and then Doug. Did you have a comment?

3
4 MR. SHARP: Yeah, I do, but Doug can go
5 next.

6
7 CHAIRMAN ALCORN: I think Mike raised a
8 really important point. I think it will add to the
9 understanding of co-management and the AMBCC's role.
10 The Secretary of the Interior has the ultimate
11 authority to establish those regulations. The Fish and
12 Wildlife Service is a bureau within that agency. The
13 agency is the Department of the Interior. As a bureau,
14 we are given the more precise responsibility of
15 recommending to the Secretary a regulation that not
16 only complies with MBTA but complies with the
17 Endangered Species Act and all other Federal laws that
18 govern how the Secretary establishes regulations. The
19 MBTA is only one law of a suite of conservation law.

20
21 So what Mike referred to is a process
22 that after the AMBCC makes recommendations to the SRC,
23 the SRC hears the recommendation in July and makes a
24 decision, yes or no, we'll accept the recommendation
25 or, no, we'll hear you and make our own recommendation
26 to the Director.

27
28 In fact, last year they heard the
29 Council's recommendation and approved our
30 recommendation verbatim for the North Slope. Why Mike
31 and his hunters and the people that he represented took
32 issue with that was because through the next step of
33 the process, which is an internal process working for
34 the Secretary, it considers the Endangered Species Act,
35 the National Environmental Policy Act, the
36 Administrative Procedures Act, all the Federal laws
37 that the Federal government has to comply with to
38 establish public policy.

39
40 In considering the Endangered Species
41 Act, we must make a determination for the Secretary
42 that whatever action we are taking will not jeopardize
43 the future survival of a listed species under the
44 Endangered Species Act. It's either a candidate
45 species, a threatened species or an endangered species.
46 One of those three categories of species. If our
47 actions potentially jeopardize the future survival of
48 those species, we cannot take that action.

49
50 This is a long-winded answer. Once the

1 AMBCC had made the recommendation to the SRC, the next
2 step in the analysis is to ensure that we're complying
3 with all the Federal laws. In fact, we were not
4 complying with the Endangered Species Act because the
5 analysis showed that if we continued on with the
6 regulations as we had in 2008 in the 2009 season, we
7 could jeopardize the future survival of Steller's
8 Eiders.

9
10 So because of that analysis, we, the
11 regulation-making agency or bureau for the Secretary,
12 we said we will change the regulations to provide
13 adequate protection for the Steller's Eider through
14 what's called the Section 7 consultation process of the
15 Endangered Species Act. We did that and then we
16 proposed the rule, the regulation. That's when we went
17 up to Barrow the 15th of December. The proposed rule
18 came out on the 18th of December last year. We said we
19 heard what the Council said, the SRC approved it, but
20 through the analytical process and the compliance
21 tests, in order to comply with the Endangered Species
22 Act the rule is going to have to read this way. That's
23 what we are proposing and we will now hear public
24 comment and we did.

25
26 In fact, we had proposed some
27 protective measures. One of those protective measures
28 was a road closure of hunting on some of the very
29 specific specified road areas in and around Barrow.
30 Through the public comment process they said this is
31 not appropriate. We would rather see regulations that
32 don't include road closures as well as shooting hours
33 and things. So our agency took the public comment and
34 then actually relaxed that part of the proposed rule
35 and said, okay, we heard what the public had to say.
36 We think that this is manageable without having a road
37 closure.

38
39 Ultimately we ended up with a final
40 rule that was published in May, after the April 2nd
41 time frame that we've given the AMBCC. It was not what
42 the Council recommended and not what the Service
43 recommended in the proposed rule, but a little bit of a
44 compromise between the two. It in fact was required.
45 As a staff agency to the Secretary of the Interior, we
46 had to do that because the Endangered Species Act
47 required that process and it required those protective
48 measures.

49
50 So once we went through that process,

1 we have to show our solicitor that we've complied with
2 those acts before the Solicitor's Office will approve
3 the regulation that goes to the Secretary before the
4 Secretary actually publishes it in the Federal
5 Register. It's a very complex process and very time
6 consuming and that's why it is so difficult for us to
7 make that April 2 deadline if there's any tiny
8 disturbance in that process.

9

10 This was considered a fairly large
11 disturbance. It threw us off by six weeks. But that
12 was why that occurred. It was not a situation where
13 the Director willingly ignored the recommendation of
14 the AMBCC. The Director had to accommodate that
15 recommendation as well as all the other Federal laws
16 that he had to do at that time.

17

18 MS. REZABECK: Thank you, Doug. Just
19 so that it's clear, does that mean both these processes
20 would be vetted through all those other Federal laws as
21 well?

22

23 MR. PEDERSON: If the proposals were
24 dealing with ESA species, that's the way I understand
25 it after spending a year and a half working with them.

26

27 CHAIRMAN ALCORN: Mike is becoming an
28 expert. The short answer is yes.

29

30 MS. REZABECK: Are you done, Dave? We
31 still have Sandy.

32

33 MR. SHARP: I can tell she was ready to
34 talk and now I kind of forgot what I was going to say.
35 No, I'm just teasing, Doug. I remember. When I think
36 about migratory birds and I think about an independent
37 committee and just listening to this discussion, one of
38 the things I go back to and it kind of haunts me just
39 thinking about it, and I'm not against it and I'm not
40 for it, I'm just kind of a guy over in the corner.

41

42 One of the things with migratory birds
43 is in 1916 the reason we signed the treaty in the first
44 place is that we had lots of independent committees,
45 commissions, whatever you want to call them, that were
46 managing migratory birds. Lots of them. The problem
47 we had is that they were doing it independently and not
48 working on a shared resource that crossed borders
49 internationally, crossed state borders and it didn't
50 work. It doesn't work for migratory birds.

1 For entities to work, you have to have
2 all those people that utilize the resource sitting at
3 the table at the same time to work on the future
4 management of those birds. If you just take a part of
5 them -- his example with the whales and so on. If you
6 just took a little piece of that and didn't work
7 through this bigger hierarchy that he talks about, it
8 won't work. It can't work if all the users aren't
9 there.

10
11 Here's my point. If you were to set up
12 an independent commission just to deal with this time
13 of the year for these birds in this area in absence of
14 everything else without having those other entities at
15 the table, it can't work in the long term because the
16 birds are not going to live there throughout the annual
17 cycle. They're going to go somewhere else and they're
18 going to winter and they're going to come back. The
19 actions of other people through the annual cycle
20 influence exactly the same kind of birds you're trying
21 to protect.

22
23 I guess my point is migratory birds are
24 different and we tried with independent commissions, in
25 fact to the point the state of Missouri sued the
26 Federal government in 1920 on the signing of the
27 treaty, putting the Act into place. It's a famous
28 lawsuit. It really gets into states' rights. What the
29 state of Missouri was saying, Federal government, you
30 have no right to help us manage the ducks that live in
31 the state of Missouri. The day they enter the state
32 until the day they leave, they're ours, they're not
33 yours. We have the ultimate right to manage those.

34
35 That didn't make it through the Supreme
36 Court. Oliver Wendall Holmes was the Chief Justice.
37 It's a monumental case and it really gets into states'
38 rights today. My point is I don't think an independent
39 commission can actually work with migratory birds with
40 shared resources unless you get all the entities, all
41 the users together regardless of what country they live
42 in, you had a great example on your bears. We're
43 working with Black Ducks the same way right now. We
44 actually have a summit they call it between Canada and
45 the United States and it really gets into take, into
46 the proportion of take, the quotas that were taken on
47 Black Ducks. We're not making tremendous progress yet,
48 but they keep telling us we're close.

49
50 But that's what you have to do. You

1 have to get all the users together. That's the one
2 flaw I see with an independent committee. A little
3 different than the legal aspects. My point is, unless
4 you had all the users there, I don't know if you could
5 actually do it because it's just one entity.

6
7 MS. REZABECK: Thank you. What would
8 you like to do? Yes, Doug.

9
10 CHAIRMAN ALCORN: I don't know what we
11 want to do for the rest of the day. It's 35 or 40
12 minutes until 5:00. It seems to me what we've done is
13 we've laid out -- we've all become very knowledgeable
14 about the complexities of each of these three processes
15 that we've discussed here at length today. More
16 complicated than I ever thought they were when I was
17 sort of envisioning this meeting and what potentially
18 the outcomes of this meeting could be. It seems to me
19 that unless there are additional things to add to these
20 three processes, additional complexities that we've not
21 thought of, maybe we can sort of mull these over
22 tonight, over the course of the night. What would we
23 need as a Council to make a recommendation on which of
24 these avenues to proceed to get to the outcome that we
25 described early this morning, which was fall and winter
26 hunt that accommodates the needs of the subsistence
27 hunters and which of these avenues might be best.

28
29 I'm not sure I can answer which is
30 best, but I can certainly identify which of these I
31 think have a lot of barriers or hurdles that we would
32 have to get over and a lot of legal questions that my
33 agency would require be answered before we would
34 support one or any of these strategies to get us there.

35
36 So I think tomorrow maybe we could come
37 back in the morning and talk about what the legal
38 questions are because I'm going to have to ask those
39 questions and I would rather them come formulated by
40 this body than me to ask them separately and
41 independently.

42
43 MS. REZABECK: Any suggestions? Yes,
44 Mike.

45
46 MR. PEDERSON: I agree with you, Doug,
47 only because the spring meeting and our Native to
48 Native caucus. That was kind of what we agreed when
49 Sky was there. This is how the question should be
50 framed and that it shouldn't come from necessarily the

1 Feds. If it did, we already know what the answer would
2 be.

3

4 MS. REZABECK: Thank you. Are you
5 ready to take a break and come fresh in the morning?
6 Yes, Sandy.

7

8 MS. TAHBONE: I've got, before we
9 close, several things in reviewing these. There's a
10 lot of pluses to some of them and, of course, there's
11 minuses and I think it would be worth our while to look
12 and see what is working well and how we can possibly
13 apply it to the way we do things with AMBCC.

14

15 I know Doug was very strong in his
16 words in describing what his department needed to do
17 regarding the Steller's Eider, but there's different
18 approaches as well within our bylaws. That's part of
19 why we're here, is to provide guidelines within which
20 the regional bodies regarding regulations. There was,
21 in my opinion, time enough to where the regional bodies
22 could have addressed those proposed regulations.
23 There's other Federal policies that departments,
24 agencies have to follow through with when they're
25 dealing with tribal government.

26

27 I think we can pull a lot of that
28 together and make ourselves stronger, so I think we
29 should also look at, for instance, a management plan.

30

31 That's something that we can maybe be
32 stronger.

33

34 MS. REZABECK: Thank you very much.
35 Yes.

36

37 MR. SHARP: I have just one parting
38 thought. I may not be able to spend very much time
39 with you tomorrow. Something Sandy said this morning
40 and I keep going back to it in my mind. I'm an
41 outsider, but one of the things that would help me
42 understand the problem you have and what maybe would
43 help fix it is to better understand where you're at
44 today.

45

46 What's going on in Canada. You asked
47 that question this morning, Sandy, and we never did
48 really write it down as someone said, so it will
49 probably get lost. I'm kind of curious where we're at
50 today from a status standpoint. How does it work? How

1 are people going out there in the Y-K Delta, wherever
2 it may be, during the fall? Are they taking birds now?
3 If they are, are they taking them illegally? Either
4 they don't have the right duck stamps or whatever or
5 they're not following the bag limits or they're not
6 doing the seasons. Maybe it's Molly's concern about
7 monitoring the harvest during the fall.

8
9 I think it would help people outside
10 this room in Washington and other places if we had a
11 little better understanding of what is happening right
12 now. Not just in Alaska, but in Canada. If you did
13 that, it would help articulate what the problem is that
14 you've got. I'm not fully understanding and
15 comprehending the problem. I'm being honest with you.
16 I'm only here for a day, so I don't really truly
17 understand all the intricacies.

18
19 Maybe that's what Sandy was getting at
20 this morning when she said what's going on in Canada,
21 how are they handling it and so on. I think it would
22 help us all if we better understood that just a little
23 bit. This is more of a background thing than anything
24 else because I just don't understand all that very
25 well. Just a comment.

26
27 MS. REZABECK: Molly.

28
29 MS. CHYTHLOOK: The reason why I
30 mentioned why we still had the fall survey form in the
31 survey packet. We know that fall season is not in
32 place. It's kind of a two-edged sword. When the
33 surveyors ask the households questions about how many
34 birds do you harvest in the fall, the ones that know
35 good and well that the fall season is not in place,
36 they'll ask us why in the world are you asking this
37 when you know good and well that the fall season is
38 closed.

39
40 MR. SHARP: Are they actually taking
41 birds and don't want to write it on the form because of
42 that reason or because there isn't a season they're
43 saying, boy, I wouldn't go out there and shoot one?

44
45 MS. CHYTHLOOK: I think it's both.
46 They're not going to record something that's not in
47 season except for the very few that may not know that
48 the season's not open.

49
50 MR. SHARP: Right. One of the things I

1 remember going back to the period leading up to 1997
2 was that we were just trying to put in place the
3 legalization of something that had been going on for a
4 long time. Subsistence harvest. We weren't asking for
5 anything knew. We were just trying to maintain a
6 tradition, a way of life that was experienced by people
7 here. I think that's all anybody was trying to do at
8 that point.

9
10 Where I'm going with that, if this fall
11 harvest has been something that's been going on for a
12 long time, shame on us for putting something in place
13 that's taking that away because I don't think that was
14 ever the original intent of what we were trying to do
15 in 1997, is maintain a tradition and a way of gaining
16 nutrition that's always been there for the people that
17 are up here. If what we have done is not done that,
18 then I know which direction we should go. We should go
19 back and take a look at what subsistence is, what we're
20 trying to legalize.

21
22 I remember a video one time and I don't
23 remember people's names very well, but it was one of
24 the early videos and it got me in my heart when the
25 person said all we want to do is have legal what we've
26 always done. I still remember that as part of that
27 video and I was for that. I'm still for it today.

28
29 Anyway, I just think it would be a very
30 good idea and it goes back to what Sandy was saying, if
31 we could pull together the information you have on
32 what's going on today to help better elicit what the
33 problem is, I think that would help you all, whatever
34 road you go down. It's going to help you if you could
35 explain to people outside this room. You know what
36 your problem is. I can tell you do because I'm sitting
37 here getting the vibes across the table. But I'm from
38 the outside. I don't clearly understand your problem
39 very well. It would be good to understand that.

40
41 And I'm with Sandy on this one. I'd
42 like to know what Canada is doing because they must
43 have the same problem I would guess. I don't know
44 that.

45
46 MS. REZABECK: I wrote it down.

47
48 MS. CHYTHLOOK: Well, the regulations -
49 - when the regulations come down to our people and they
50 understand it, they abide by it. If they don't, then

1 it gives negative implications of those regulations.
2 When a survey form like this comes to them and they
3 know good and well that it's illegal, that sarcastic
4 attitude comes out. Not only to the surveyors
5 themselves, but to the agencies.

6

7 MS. REZABECK: Thank you, Molly. Russ.

8

9 MR. OATES: Yeah, Russ Oates here. I
10 just wanted to be very clear about one point. The
11 season is not closed after September 1st. It's just a
12 different set of rules. But the seasons are open. I
13 mean it's entirely possible that there is illegal
14 hunting by definition of exceeding bag limits and
15 things like that, but the season is open. If the
16 message is going out to the villages that the season is
17 closed, then that's not the right message, so that
18 needs to be clarified.

19

20 MS. REZABECK: Yes, Mike.

21

22 MR. PEDERSON: In our region, I guess
23 we always had a fall hunt whether you call it that or
24 not. I think because we did so much outreach this
25 summer and spring based on the regulations we were
26 faced with in our region come September 1, there was a
27 few people who abided by the sporthunting regs. Maybe
28 three people that I know of.

29

30 What we noticed this fall was we didn't
31 have as many hunters as last September 1. I think we
32 scared so many people by explaining the rules to them
33 over and over again in newspaper articles, on radio
34 shows, stuff like that, that we just scared them out of
35 hunting. So law enforcement comes up to me on
36 September 2 and told me they're packing up because
37 there's no more hunters out there for them to be
38 worried about.

39

40 So I think about the fall season, if
41 you guys have an issue in your region regarding
42 migratory birds, just be careful on your outreach
43 message so you don't scare them from going hunting.

44

45 MS. REZABECK: Thank you. Anything
46 else? Yes, Lisa.

47

48 MS. KANGAS: How do you propose we do
49 that without scaring them? One thing that I'm doing
50 and working on is writing a little article for the

1 Council newsletter and I want to go a little bit of
2 what AMBCC is and I also want to explain the hunting
3 for the spring and the fall. How do you think I should
4 put that out there?

5
6 MR. PEDERSON: Just tell them they're
7 going to go to jail, get cited and all that other
8 stuff.

9
10 (Laughter)

11
12 MS. REZABECK: I see Lisa has her
13 article out there.

14
15 MR. PEDERSON: That's what we did. I
16 mean we had to tell them what would happen if they
17 didn't follow what we were faced with.

18
19 MS. REZABECK: Well, thank you all very
20 much for a long day. What time would you like to begin
21 in the morning?

22
23 CHAIRMAN ALCORN: I think we're
24 scheduled for 9:00. Dave is flying out mid morning.

25
26 MR. SHARP: Yeah. I'll be leaving.

27
28 CHAIRMAN ALCORN: He won't be able to
29 participate and I would like to thank Dave and Jerome
30 for coming. Dave has had a lot to offer I think as a
31 veteran, seasoned flyway consultant. He knows a lot of
32 the history behind management of these migratory birds
33 at the Flyway Council level.

34
35 Jerome is the assistant director, so he
36 is sort of the direct conduit to this principal manager
37 of this program in Washington, D.C. Jerome is not
38 saying a lot. He's admitted that he's here to learn
39 and to listen. But I really appreciate the fact that
40 he's here and he'll be able to articulate these issue
41 much much better than -- we always go to the SRC
42 meeting and we're always on the record and we're always
43 trying to get a few minutes of senior official's time
44 in the hallways to talk about these issues. But Jerome
45 has been here all day. He's going to be here all day
46 tomorrow or most of tomorrow.

47
48 I would really like to make sure that
49 we have enough time to kind of reach an end point
50 tomorrow. So 9:00 is okay if we think we're going to

1 get there, but I'd like to push it forward to maybe
2 8:30 if we could use the extra half hour.

3

4 (Various voices saying 9:00)

5

6 CHAIRMAN ALCORN: Okay, 9:00 it is, but
7 Jerome is out of here probably around 3:00 and I would
8 sure like to be able to kind of start wrapping things
9 up so Jerome has kind of a concise message to take
10 back.

11

12 MS. REZABECK: Okay. We'll see you
13 tomorrow at 9:00. Have a good evening.

14

15 (PROCEEDINGS TO BE CONTINUED)

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C E R T I F I C A T E

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

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Salena A. Hile
Notary Public, State of Alaska
My Commission Expires: 09/16/10