

DECISION

III. PROGRAM ELEMENTS CONSIDERED AMONG ALTERNATIVES AND FEDERAL SUBSISTENCE BOARD RECOMMENDATIONS

A. Introduction

This section includes a brief description of the four alternatives in the EIS and the six program elements contained in each of the alternatives. The six program elements are: 1) the composition of the Federal Subsistence Board, 2) the structure of the Regional Advisory Council system, 3) the structure of local advisory committees, 4) the rural determination process, 5) the process for determining customary and traditional uses, and 6) the regulation adoption process. Following the description of each program element is a recommendation from the Federal Subsistence Board. These recommendations are based on the analysis contained in the EIS and comments received on the document. These recommendations were finalized at the March 9, 1992, meeting of the Federal Subsistence Board.

1. ALTERNATIVES

The EIS analyzed four alternatives for Federal Subsistence Management Program (FSMP). They are as follows:

a. **Alternative I:** The focus of this alternative—minimal change from the State subsistence program while fulfilling the requirements of ANILCA Title VIII—constitutes the "status quo" or No Action alternative required under Council on Environmental Quality (CEQ) regulations. This alternative would utilize the Temporary Subsistence Management Regulations (36 CFR 242 and 50 CFR 100) originally issued on June 29, 1990, and amended on June 26, 1991. The existing State system of Regional Councils and Local Advisory Committees would serve as the mechanism to provide public participation for the Federal subsistence regulation process.

b. **Alternative II:** Independent agency management of subsistence on Federal lands is the focus of this alternative. Temporary regulations would expire and the Federal program as it exists today would dissolve. Each agency would independently develop regulations necessary to meet the requirements of ANILCA. The basic structure would be agreed upon and established to guide the agencies in their management.

c. **Alternative III:** Local involvement, the focus of this alternative, would provide a subsistence management structure that emphasizes the role of Local Advisory Committees and incorporation of subsistence users on the Board. The committees would provide the public forum in which local subsistence users could play a meaningful role in Federal subsistence management. Up to 283 committees would be formed (one per rural community) within 12 Regional Councils.

DECISION

d. **Alternative IV:** The goal of Federal management under this alternative would be to provide a flexible program to meet subsistence user needs and provide regulations responsive to regional requirements. The Regional Councils would interact directly with the Board with the aid of Federal coordinators. Coordinators would work as the primary liaison between the Federal agencies and the Regional Councils. The existing State Local Advisory Committees could be used and/or new Federal Advisory Committees could be established if needed.

2. RECOMMENDATION

The Federal Subsistence Board (by unanimous vote) recommends that the program structure described under Alternative IV (A-4) be selected. The specific elements which follow below contain some modifications from the specific elements of Alternative IV as described in the EIS. These modifications are all within the range of the elements analyzed in the EIS.

B. Board Structure

1. ALTERNATIVES

a. **Alternatives I:** The Federal Subsistence Board would consist of the following members:

- the Alaska Regional Director, FWS;
- the Alaska Regional Director, NPS;
- the Alaska Regional Forester, USFS;
- the Alaska State Director, BLM;
- the Alaska Area Director, BIA; and,
- a chairman appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture.

b. **Alternative II:** No Board would be established. Regional and State directors within the Department of the Interior and the Regional Forester within the Department of Agriculture would be delegated the authority to implement the subsistence program within their own agencies. Interagency coordination would continue between Federal and State agencies for subsistence uses.

c. **Alternative III:** The Board would consist of the following 16 members:

- a chairman appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture;
- a State representative;
- 12 subsistence users (1 from each Regional Council as described in B.1.c below); and

DECISION

- 2 "at large" members.

d. **Alternative IV:** The Federal Subsistence Board would consist of the following members:

- the Alaska Regional Director, FWS;
- the Alaska Regional Director, NPS;
- the Alaska Regional Forester, USFS;
- the Alaska State Director, BLM;
- the Alaska Area Director, BIA; and,
- a chairman appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture.
- 8 regional liaisons and a liaison from the State of Alaska would serve as consultants to the Board.

2. RECOMMENDATION

The Federal Subsistence Board recommends that the Board structure described under Alternative IV (B-5) be selected with the modification for 10 regional liaisons consistent with the recommendation on Regional Advisory Councils below.

C. Regional Advisory Councils

1. ALTERNATIVES

a. **Alternative I:** The existing six State Regional Advisory Councils would be used to provide local and regional participation in the Federal subsistence program as required by Section 805 of ANILCA. Regional boundaries would remain the same as presently used in the State system.

b. **Alternative II:** Up to 36 Regional Advisory Councils with boundaries based on Federal conservation system unit boundaries would be established to provide local interaction between the users and the Federal managers. This would assist the councils in the development of a strategy for the management of fish and wildlife that recognizes the subsistence use patterns of the people and that corresponds with Federal land management ownership and objectives.

c. **Alternative III:** Twelve Regional Advisory Councils with boundaries based on subsistence use areas would be established. Regional Council boundaries would be similar to or coincident with those of the twelve (12) Native Regional Corporations established by the Alaska Native Claims Settlement Act (ANCSA). The Regional Councils would coordinate the recommendations of the Local Advisory Committees and assure consistency within the Region.

DECISION

d. **Alternative IV:** Eight Regional Advisory Councils would be established using the existing six State regional boundaries, except that the Arctic and the Southwest Regions would each be divided into two regions to reflect the subsistence use patterns of each region. Federal Regional Advisory Councils will then be established in each region.

Federal Regional Coordinators would be assigned to serve as Federal Advisory Committee Act (FACA) representative and provide liaison between the Regional Councils and the Federal program managers, facilitating communication between the two groups. Federal coordinators also would coordinate the preparation and review of regulatory proposals and annual subsistence reports.

In addition to the Board members, a State liaison to the Board would be nominated by the Governor and appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture. The chairperson of each Federal Regional Advisory Council also would serve as liaison to the Board. The State and Council representatives would attend Board meetings and be actively involved as consultants to the Board.

e. **Common to all Alternatives:** Each council will be authorized to hold public meetings on subsistence matters and to prepare an annual report on subsistence uses and needs, recommendations on fish and wildlife management, and implementation strategies to the Secretary in accordance with ANILCA Section 805. The councils will develop, review, evaluate, and make recommendations on any existing or proposed regulation, policy, or management plan, or any other matter relating to the subsistence take of fish and wildlife within or affecting the regions they represent. Council membership will be structured to provide subsistence users the maximum possible opportunity to participate in the Federal program. The number of members on each council will be based in part on needs and desires for representation expressed by residents of each region. While the Federal Advisory Committee Act requires that members to these councils be appointed, it is expected that appointments will be preceded by nomination from the local residents.

2. RECOMMENDATION

The dominant concern expressed by subsistence users during the public comment period was their desire to be involved in decisions affecting their subsistence lifestyle. They wish to participate in the decision making process at the highest level possible. The Regional Advisory Council system required by ANILCA Section 805 was created to provide subsistence users the opportunity to participate effectively in the management and regulation of subsistence resources on Federal public lands. The Board in its recommendations to the Secretary, places great emphasis on developing an advisory system that enables people with personal knowledge of local conditions and requirements to have a meaningful role in managing subsistence. The Board recommends that the Secretary adopt the Regional Advisory Council System structure under Alternative IV, but modify the number of councils from eight to ten as shown in the attached map of Alternative IV (modified) (C-5). This recommendation, while different from the alternatives in the EIS, is within the range of the alternatives considered and analyzed.

DECISION

The Federal Subsistence Board recommends increasing the number of Regional Advisory Councils to provide for more participation by rural residents in subsistence management. The increase allows the regional boundaries to reflect more closely the differences in social and cultural patterns of the affected subsistence users. Substantial input from the Native subsistence user groups urged creation of 12 Regions using the same boundaries as those adopted in the ANCSA for the 12 Native Regional Corporations. The Board recognizes that those regions were formed in part based on social, cultural, and resource use patterns. However, the ANCSA regional boundaries do not precisely meet all the requirements of Federal Regional Advisory Councils. The Regional Council boundaries also must balance other considerations such as: the amount and distribution of Federal public lands, the distribution of wildlife populations regulated by the Federal Subsistence Management Program, the number of eligible subsistence users residing in the region, the size of the regions, travel distances within the regions, and the cost of operating the Councils. The fact that subsistence use in Alaska is not restricted to Native members of the population alone must also be considered.

Alternative III contains some regions with relatively small amounts of Federal public lands, disproportionately few eligible substance users, and restricted numbers and distribution of wildlife species regulated by the Federal program. By increasing the number of regions to ten, the Board feels it can effectively respond to sociocultural concerns, allow for increased participation by rural residents, and at the same time administer a more cost effective program. The Board recommends the regional boundaries follow the boundaries of the existing Game Management Units established by the Alaska Department of Fish and Game. Use of these boundaries will facilitate wildlife management efforts and reduce the potential for conflicts between State and Federal regulations.

D. Local Advisory Committees

1. ALTERNATIVES

a. **Alternative I:** Existing State operated Fish and Game Advisory Committees would provide a public forum for individuals to express their views on subsistence uses of fish and wildlife within the regions. The committees could make recommendations on regulations to the Regional Councils.

b. **Alternative II:** Existing State Local Fish and Game Advisory Committees and State Regional Advisory Councils would submit proposals through the Federal Regional Council to the agencies for any items that concern subsistence management on Federal public lands. Federal Local Advisory Committees and their membership would be formed based on the recommendation of the Regional Advisory Councils to the agencies. Federal committees would be formed if an agency determined that existing State committees were not fulfilling the requirements of Section 805 of ANILCA. Federal Regional Advisory Councils would define specific duties and needs for Local Advisory Committees at the time they were formed.

c. **Alternative III:** Local Advisory Committees would be

DECISION

created in response to a direct request from users or by recommendation from the Regional Advisory Councils. Committees could be established for each rural community (up to 283).

d. **Alternative IV:** Consistent with a Memorandum of Understanding to be negotiated with the State, existing State Fish and Game Advisory Committees and Regional Councils could submit proposals through the Federal Regional Council to the Board for any items that concern subsistence management on Federal public lands. Federal committees would be formed if, after notice and hearing, the Board determined that existing State committees were not fulfilling the requirements of ANILCA Section 805. Federal Local Advisory Committees and their membership would be formed based on the recommendations of the Regional Advisory Councils to the Board.

2. RECOMMENDATION

The Federal Subsistence Board recommends that the Secretary adopt the Local Advisory Committee structure under Alternative IV (D-4).

E. Rural Determination Process

1. ALTERNATIVES

a. **Alternative I:** Acting under authority of the temporary regulations, the Board published final rural and non-rural determinations in the Federal Register on January 3, 1991. The rural determination process used aggregated communities that are socially and economically integrated. The Board then applied population and community characteristic tests. The Board presumed an aggregated community or area of less than 2,500 people to be rural unless it exhibited non-rural characteristics. There was no presumption about the status of a community or area with a population of 2,500 to 7,000, while communities or areas 7,000 or greater in population were presumed to be non-rural unless the characteristics of the community or area were rural in nature. The Board evaluated community characteristics including use of fish and game, development and diversity of the economy, community infrastructure, transportation, and educational institutions, as the basis for these decisions.

The Federal subsistence staff made recommendations to the Board with respect to those communities or areas that have a population greater than 2,500, comparing these community characteristics to those of non-rural communities, i.e., Anchorage, Fairbanks, Juneau, and Ketchikan and the rural communities of Dillingham, Bethel, Nome, Kotzebue, and Barrow. This rural determination process would be adopted under Alternative I.

b. **Alternative II:** Rural eligibility would be determined strictly by population within a community or area. A rural community would be defined as one with a population of 7,000 or less. Rural determinations would be re-evaluated as necessary by the appropriate agency.

DECISION

When, through increase in population, a community or area exceeds 7,000, the agencies would make a preliminary determination that the community has become non-rural. However, a waiting or "grace" period of 5 years would occur before a non-rural determination would become final in these instances. This delay in reclassification would mitigate the effect of a sudden loss of subsistence uses on those who previously were dependent on subsistence resources.

c. **Alternative III:** Under this alternative only the communities of Ketchikan, Juneau, Anchorage, and Fairbanks are identified as non-rural. All other communities and areas would be considered rural and thus would have the subsistence priority. This alternative relies on language in the ANILCA legislative history (Senate Report No. 96-413, p. 233) that cited these cities as examples of communities within the State that are non-rural.

d. **Alternative IV:** The rural determination process would aggregate communities and areas which are socially and economically integrated. The Board would then apply population and community characteristic tests. The Board would presume an aggregated community or area of less than 2,500 people to be rural. There would be no presumption about the status of a community or area with a population of 2,500 to 7,000, while communities or areas 7,000 or greater in population would be presumed to be non-rural unless the characteristics of the community or area were rural in nature.

The Board would evaluate community characteristics including use of fish and game, development and diversity of the economy, community infrastructure, transportation, and educational institutions as a basis for determining whether a community or area is rural or non-rural.

Recommendations would be made on the communities or areas that have a population greater than 2,500 by comparing their community characteristics to the non-rural communities of Anchorage, Fairbanks, Juneau, and Ketchikan and the rural communities of Dillingham, Bethel, Nome, Kotzebue, and Barrow. This recommendation and the rationale for the recommendation would be forwarded by Federal program staff to the Board for review, rejection, modification, or approval. The rural determinations resulting from applying the process described above are not expected to differ from those existing under Alternative I, but these determinations have not and will not be made until such time as this alternative is implemented. Over time these determinations would change as the status of some communities or areas as the population and other community characteristics change.

2. RECOMMENDATION

The Federal Subsistence Board recommends that the Secretary adopt the rural determination process set forth in Alternative IV, with the addition of the 5-year waiting or "grace" period included in Alternative II (E-5). Those who commented on the EIS were very concerned with the prospect of overnight loss of access to subsistence resources because of changes in population of their community or area. The legislative history of ANILCA recognizes that the rural nature of some Alaskan communities may not be a static condition. It recognizes that through economic maturation and community development, the rural nature of some communities may change over time. The loss of rural status by a community or area would

DECISION

not prohibit the taking of fish and wildlife on Federal public lands by residents of the community or area. Uses could continue according to existing State regulations, but residents would not be afforded any preference on Federal public lands, and could be restricted when necessary to ensure that the subsistence needs of rural residents were met. If the Board determines that a community or area is no longer rural, a five-year waiting or "grace" period would occur before the community or area would lose the subsistence priority provided by Title VIII. This would allow residents reasonable opportunity to make adjustments to minimize and potential adverse impacts of such a change.

F. Customary and Traditional Uses

1. ALTERNATIVES

a. **Alternative I:** On July 1, 1990 the Board adopted the State of Alaska's customary and traditional use determinations as they appeared in the State's 1989 subsistence regulations. The State had made customary and traditional use determinations for most wildlife resources for most of the State. These determinations would be maintained under Alternative I, unless changed by the Board on recommendation of the Local Advisory Committee or based on information obtained through State or Federal agency research. Additional determinations also would be made, as needed, following this same procedure.

b. **Alternative II:** The State customary and traditional use determinations that were adopted by the Board on July 1, 1990 would be utilized in Alternative II. These determinations would be maintained unless changed through the regulatory process established by each agency.

Federal agencies would collect information on subsistence uses to determine a community or area's customary and traditional use of a particular fish or wildlife resource. This information would be made available to the Regional Councils in order for the councils to make recommendations on customary and traditional uses to the agencies.

c. **Alternative III:** The State customary and traditional use determinations that were adopted by the Board on July 1, 1990 would be utilized in Alternative III. These determinations would be maintained unless changed by the Federal Subsistence Board on recommendation of the Local Advisory Committees.

Federal agencies would collect and synthesize subsistence use information for determining a community's customary and traditional use of a particular fish or wildlife resource. The Local Advisory Committees would consider this information in making recommendations through the Regional Councils to the Board regarding a community's customary and traditional use of such resources.

d. **Alternative IV:** The State customary and traditional use determinations that were adopted by the Board on July 1, 1990 would be utilized. These determinations would be maintained unless changed by the Federal Subsistence Board.

DECISION

Determinations of customary and traditional use of subsistence resources would be made by the Board on recommendation of the Regional Councils. Appropriate professional staff would be assigned to advise the Regional Councils in making customary and traditional use recommendations and assist in the interpretation of Federal and State subsistence use reports and information.

2. RECOMMENDATION

The Federal Subsistence Board recommends that the Secretary adopt the customary and traditional determination process under Alternative IV (F-4).

G. Regulation Process

1. ALTERNATIVES

a. **Alternative I:** Proposals from all sources--State Local Advisory Committees and Regional Councils, and individuals--would be submitted to the Board, which would compile and distribute them to the public, Regional Councils, and Local Advisory Committees for comment. Recommendations by the Regional Councils would be used to facilitate deliberations during the Board's review of proposals.

When necessary to restrict the taking of subsistence resources, Regional Councils would assess who would qualify under Section 804 to participate in a limited subsistence harvest; and these recommendations would be sent to the Board.

b. **Alternative II:** The Regional Councils would develop proposals and review and evaluate proposals from other sources. Recommendations from the Regional Councils would be forwarded to the appropriate agency for action.

When it is necessary to restrict the taking of subsistence resources, Regional Councils would assess who would qualify under Section 804 to participate in a limited subsistence harvest; and these recommendations would be sent to the appropriate agency for action.

c. **Alternative III:** Local Advisory Committees would develop proposals and review and evaluate regulatory proposals from other sources. Proposals and other recommendations originating from other than Local Advisory Committees would be referred to the appropriate Local Advisory Committees for review and comment prior to Regional Council review and Board action. Proposals recommended by the committees would be presented to the Regional Councils for review, evaluation, and recommendation to the Board.

When it is necessary to restrict the taking of subsistence resources, Local Advisory Committees would assess who would qualify under Section 804 to participate in a limited subsistence harvest; and these recommendations would be sent to the Board through the Regional Councils.

DECISION

d. **Alternative IV:** The Regional Councils would develop proposals and review and evaluate proposals from other sources. Recommendations from the Regional Council would be forwarded to the Board for action. Proposals from individuals, Federal or State agencies, or other groups would be sent to the appropriate Regional Councils for their review and evaluation before being forwarded to the Board for consideration.

When it is necessary to restrict the taking of subsistence resources, Regional Councils would assess who would qualify under Section 804 to participate in a limited subsistence hunt; and these recommendations would be sent to the Board for action.

2. RECOMMENDATION

The Federal Subsistence Board recommends that the Secretary adopt the regulation process under Alternative IV (G-4).