

POLICY ON CLOSURES TO HUNTING, TRAPPING AND FISHING ON FEDERAL PUBLIC LANDS AND WATER IN ALASKA

FEDERAL SUBSISTENCE BOARD

PURPOSE

This policy clarifies the internal management of the Federal Subsistence Board (Board) and provides transparency to the public regarding the process for establishing Federal closures (closures) to hunting, trapping, and fishing on Federal public lands and waters in Alaska. It also provides a process for periodic review of those closures. This policy recognizes the unique status of the Regional Advisory Councils (Council(s)) and does not diminish their role in any way. This policy is intended only to clarify existing practices under the current statute and regulations; it does not create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its agencies, officers, or employees, or any other person.

BACKGROUND

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) establishes a priority for the taking of fish and wildlife on Federal public lands and waters for non-wasteful subsistence uses over the taking of fish and wildlife on such lands for other purposes (ANILCA §804). Under certain circumstances specified in Title VIII, the Board is authorized to restrict, close and reopen Federal public lands and waters to the taking of fish and wildlife (ANILCA §§804, 815(3), 816(b)). Additional Board authorities relevant to closures are established by the implementing regulations at 36 CFR 242.10(d)(4) and 43 CFR 51.10(d)(4).

POLICY

The decision to close Federal public lands or waters to hunting, trapping, or fishing is an important decision that will be made only when authorized under Title VIII of ANILCA and warranted by careful analysis of all relevant considerations. Before closing any Federal public lands or waters to subsistence or non-subsistence uses of fish or wildlife, the Board will assess the availability and effectiveness of lesser restrictions and other management options that could preclude the need to implement such closure. When a closure is no longer needed, the Board will reopen the affected Federal public lands and waters as soon as practicable.

REVIEW OF PROPOSED CLOSURES

Any individual or organization may propose a closure. The Board will review each proposed closure on a case-by-case basis to determine whether such closure is necessary. During its review, the Board will:

- Consider any information and recommendations provided by affected Regional Advisory Councils, the State of Alaska, and the public.
- Consider the biological history (data set) of the fish stock or wildlife population.

- Consider the extent of affected lands and waters necessary to accomplish the objective of the closure.
- Consider the current status and trend of the fish stock or wildlife population at issue.
- Consider the current and historical subsistence and non-subsistence harvest, such as descriptions of harvest amounts, effort levels, user groups, and success levels.
- Consider pertinent traditional ecological knowledge.
- Follow the statutory standard of “customary and traditional uses.” Need is not the standard.
- Consider relevant State and Federal management plans, as well as any relationship to other Federal or State laws or programs.
- Consider other Federal options that would conserve healthy populations and provide a meaningful preference for subsistence, but would be less restrictive than closures.
- Consider the potential adverse and beneficial impacts of any proposed closure on affected fish and wildlife populations and uses of lands and waters both inside and outside the closed area.
- Consider other issues or information that influence the effectiveness and impact of any closure.

The circumstances under which the Board may approve a proposed closure depend on the type of use affected. With respect to **subsistence uses** of a particular fish or wildlife population, the Board may only approve a proposed closure if necessary for reasons of public safety, administration, or to assure the continued viability of such population (ANILCA §816(b), 36 CFR 242.10(d)(4)(vii) and 43 CFR 51.10(d)(4)(vii)). Meanwhile, the Board may approve a proposed closure of **non-subsistence uses** of a particular fish or wildlife population for any of these same reasons, or if necessary for the conservation of healthy populations of fish and wildlife, or to continue subsistence uses of such population (ANILCA §815(3), 36 CFR 242.10(d)(4)(vi) and 43 CFR 51.10(d)(4)(vi)).

When a fish or wildlife population is insufficient to sustain all subsistence uses, the available resource shall be apportioned among subsistence users according to their customary and direct dependence upon the population as a mainstay of livelihood, local residency, and availability of alternate resources (ANILCA §804, 36 CFR 242.17, 43 CFR 51.17).

The Board will base its actions on substantial evidence contained within the administrative record, and on the best available information; complete certainty is not required. If the Board’s action is inconsistent with a Council recommendation, then the Board will explain its rationale pursuant to 36 CFR 242.10(e)(1) and 43 CFR 51.10(e)(1).

REVIEW OF EXISTING CLOSURES

Like other Board-established rules, closures are subject to change during the regulatory cycle. It is the Board's policy that Federal public lands and waters should be reopened as soon as practicable once the conditions that originally justified the closure have changed to such an extent that the closure is no longer necessary. To help ensure that closures do not remain in place longer than necessary, the Board directs the following process for reviewing existing closures:

- The Office of Subsistence Management (OSM) will maintain a list of all existing closures, and will review half of all closures during each applicable regulatory cycle (even years for wildlife, odd years for fish/shellfish). Closure reviews will include analysis of all relevant considerations as listed in this policy and OSM's recommendation to retain, modify, or rescind the closure.
- To give the public an adequate opportunity for notice and comment, each proposed rule published in the **Federal Register** for the next regulatory cycle will announce closure reviews and the opportunities for public comment on possible Board actions.
- A list of closures to be reviewed will be included in the Proposal Book published for each regulatory cycle.
- The OSM staff will present an overview of relevant closure reviews to the affected Council(s) during the normal regulatory cycle for development of a Council recommendation.
- During the Board's regulatory meetings, OSM staff will present an overview of all closure reviews conducted during that regulatory cycle.
- Any individual or organization may submit, during the normal proposal period, a proposal requesting that the Board modify or rescind any closure.
- The Board will take action on proposals concerning existing closures during the applicable regulatory meeting.

Outside of the regular proposal cycles, the Board will also take action on any Special Action requests concerning proposed or existing closures pursuant to the normal process for consideration of Special Action requests as set forth in 36 CFR 242.19 and 43 CFR 51.19.

Adopted by the Federal Subsistence Board August 29, 2007.

Revised by the Federal Subsistence Board August 4, 2020.