

FEDERAL SUBSISTENCE BOARD PROCEDURES ADDRESSING PETITIONS FOR SECRETARIAL EXTENSION OF JURISDICTION FOR THE IMPLEMENTATION OF A FEDERAL SUBSISTENCE PRIORITY

The US Code Title 5 Section 553(e); 7 CFR 1.28; and 43 CFR 14 allow citizens to petition the Secretaries of the Interior and Agriculture (Secretaries). The Secretaries will accept for consideration petitions to exert authority over hunting, fishing, or trapping activities occurring on non-Federal lands when such petitions indicate that those activities may be interfering with subsistence hunting, fishing, or trapping on the Federal public lands and waters to such an extent as to result in a failure to provide the subsistence priority as specified in Title VIII of the Alaska National Interest Lands Conservation Act.

The Secretaries carefully review each case and use a very high threshold when making their decision whether to extend Federal jurisdiction. Petitioners should submit sufficient facts and/or analytic standards to document both the failure to maintain a subsistence priority and how the failure relates to activities occurring off of Federal lands.

The Federal Subsistence Management Regulations for Public Lands in Alaska (36 CFR Part 242 and 43 CFR §51.10) clarify that the Secretaries have not delegated the authority to restrict or eliminate activities occurring on non-Federal lands to the Federal Subsistence Board (Board). However, §51.10(d)(4)(xvii) of those regulations gives the Board the authority to evaluate whether activities on non-Federal lands may interfere with subsistence activities on Federal public lands or waters, to consult with the State of Alaska, the Regional Councils, and other Federal agencies, and to make recommendations to the Secretaries.

The Board will utilize the following procedures and any additional directions provided by the Secretaries when developing recommendations on a request for extension of Federal jurisdiction.

PROCEDURES

1. Petitions should be addressed to the Secretaries of the Interior and Agriculture as follows:

Secretary of the Interior and Secretary of Agriculture
c/o Chair, Federal Subsistence Board
U.S. Department of the Interior, Office of Subsistence Management
1101 East Tudor Road, MS 121
Anchorage, AK 99503-6199

2. Each petition must clearly identify the affected subsistence activity, the Federal public lands or waters where that activity occurs, and how the subsistence priority has been harmed so as to result in a failure. Each petition should present substantial evidence demonstrating that the failure of the subsistence priority is specifically due to a hunting, fishing, or trapping activity that is occurring off of Federal public lands or waters. The information should describe what the interfering activity is, where and when it is taking place, and how it is causing the failure of the subsistence priority on the Federal public lands and waters.
3. Each petition should describe the desired result from Secretarial extension of jurisdiction and propose Federal regulations which would accommodate the subsistence priority.
4. The Board, upon receipt of such a petition, will forward the petition to the Secretaries, notify the State of Alaska and affected Regional Council(s), and may issue a notice to the general public of the request for extension of Federal jurisdiction.
5. If the Secretaries believe that public comment on the issue or extensive analysis will aid in consideration of the petition, they may request the Federal Subsistence Board to hold public meetings to solicit comments and to develop a more detailed analysis of the issue.
6. If directed to do so by the Secretaries, the Board and staff may conduct additional research and assemble information that assists in a thorough analysis. In developing their recommendation to the Secretaries, the Board may meet in public session and accept testimony on the petition.
7. Following review of all information, staff analyses, and public comments, the Board will forward their confidential recommendation to the Secretaries.

Following receipt of a recommendation from the Board, the Secretaries will promptly notify the petitioners of their final decision relative to the petition. A Secretarial decision constitutes the final administrative remedy for any petition.

Approved by the Federal Subsistence Board on July 18, 2005.