

THRESHOLD ANALYSIS

REQUEST FOR RECONSIDERATION RFR14-01

ISSUE

In response to a proposal (WP12-76) submitted and supported by the Eastern Interior Alaska Subsistence Regional Advisory Council (Eastern Interior Council), and also supported by the North Slope Alaska Subsistence Regional Advisory Council, the Federal Subsistence Board (Board) closed sheep hunting in the Red Sheep Creek and Cane Creek drainages in the Arctic Village Sheep Management Area (AVSMA) to non-Federally qualified users in 2012. The AVSMA is within Unit 25A and was closed to non-Federally qualified users for sheep hunting for the entire Aug. 10–Apr. 30 season. The State season would have normally run from Aug.10–Sept. 20. The State of Alaska subsequently submitted a proposal (WP14-51) in which the State sought to lift that closure and require hunters to complete a State-developed hunter ethics and orientation course. The Board rejected the State’s proposal at its April 2014 public meeting. There were no specific details about the ethics and orientation course provided to the Board. Subsequently, the Board members considered a proposed alternative solution to open the Federal season 10 days prior to the State season to allow Federally qualified users to hunt without competition from non-Federally qualified users (USFWS 2014). The Board determined this was inadequate to resolve the problem of limited subsistence opportunity since Arctic Village residents generally harvest sheep in the early fall (FSB 2014). In a letter dated June 17, 2014, the State submitted a timely request for reconsideration of the Board’s action on WP14-51 (also referred to hereafter as “RFR” or “petition”).

The Board will accept a request for reconsideration only if the request meets one or more of the following criteria from 36 CFR 242.20(d) and 50 CFR. 100.20(d) (Appendix A.):

- Provides information not previously considered by the Board
- Demonstrates that existing information used by the Board is incorrect
- Demonstrates that the Board’s interpretation of information, applicable law, or regulation is in error or contrary to existing law

BACKGROUND

In submitting WP12-76, the Eastern Interior Council stated that the Red Sheep Creek and Cane Creek drainages were important subsistence and cultural areas for residents of Arctic Village, and that the influx of non-Federally qualified users into these drainages interfered with traditional uses and practices of Arctic Village residents.

The establishment of the AVSMA and the opening and closing of sheep hunting in the Red Sheep Creek and Cane Creek drainages to non-Federally qualified users have been before the Board eleven times since 1991 (see WP12-76 Appendix A for a listing of proposals). Proposals WP12-76 and WP14-51 were the tenth and eleventh time the Board considered issues related to sheep hunting in these drainages, respectively. Over this time, a substantial record has been established (e.g., FSB 1991, 1995, 2006, 2007, 2012, 2014). Residents of Arctic Village have testified repeatedly concerning their use of the Red Sheep Creek and Cane Creek drainages (e.g., EIRAC 2006: 125-135) and have sought to protect their use of the sheep by requesting closures to non-Federally qualified subsistence users. In response, other user and interest groups have been trying to keep these drainages open to non-subsistence users. The issue has been contentious.

In 1995, the AVSMA was closed to sheep hunting to all but Federally qualified subsistence users and was expanded to include the Red Sheep Creek and Cane Creek drainages. The initial closure was established to provide for continued subsistence uses of sheep in the area (FSB 1995). In 2006, the Alaska Department of Fish and Game (ADF&G) submitted proposal WP-06-57, which requested opening the AVSMA to all hunters. The Board rejected the proposal in May 2006, but requested that the Arctic National Wildlife Refuge staff conduct a sheep population survey within the affected area. The Board intended to revisit the issue at its May 2007 meeting, pending the results of the population survey and a revised analysis.

In July 2006, the U.S. Fish and Wildlife Service submitted Wildlife Special Action WSA06-03, which requested that the closure to non-Federally qualified users for harvesting sheep in the Red Sheep and Cane Creek drainages be lifted during the Aug. 10–Sept. 20 portion of the 2006 season. This request followed a commitment by the Board to address the closure to all but Federally qualified subsistence users in the AVSMA following completion of a sheep population survey. The survey revealed that the sheep population in these drainages could support harvest by both subsistence and non-subsistence hunters; therefore, the Board approved the Special Action effective for the 2006 season. Subsequent to

this action on Special Action WSA06-03, ADF&G submitted Proposal WP07-56, which requested the Federal closure within the Red Sheep and Cane Creek drainages be lifted permanently. The Board adopted this proposal in May 2007 (FSB 2007:305).

In January 2012, the Board adopted wildlife proposal WP12-76, which closed the Red Sheep and Cane Creek drainages to non-Federally qualified users for sheep hunting. Both the Eastern Interior and the North Slope Regional Advisory Councils supported the closure. Eight Arctic Village residents testified in favor of the closure in person at the Eastern Interior Council meeting and ten residents testified by teleconference; four people testified in favor of the closure at the Board meeting (FSB 2012:191). The Yukon Flats Fish and Game Advisory Committee supported closing the area. One Board member (the Regional Director of the U.S. Fish and Wildlife Service) emphasized at the Board meeting that the Red Sheep and Cane Creek area falls entirely within the Arctic National Wildlife Refuge or Native allotments. He made a motion to support the closure with the following justification: 1) “Pressure from non-local hunting is affecting the use of and access to traditional prime sheep hunting areas and camp area[s]”; 2) the activities in the area by non-Federally qualified users “have resulted in displacement of sheep, pushing them out of range which has then prevented Federal subsistence hunters from being able to harvest sheep”; and 3) the Arctic National Wildlife Refuge staff supports the closure (FSB 2012:224-226). The Board passed the motion unanimously.

The Board subsequently rejected the State’s proposal (WP14-51) to lift the closure and require hunters to complete a State-developed hunter ethics and orientation course, a requirement adopted by the State.¹ The State responded with this request (RFR14-01) to the Board to reconsider its decision.

REGULATORY LANGUAGE REGARDING REQUESTS FOR RECONSIDERATION

The applicable regulatory language associated with requests for reconsideration can be found in **Appendix A.**

PRELIMINARY ASSESSMENT OF REQUESTOR’S CLAIMS

¹ 5 AAC 92.003 Hunter education and orientation requirements. (i) Before a person hunts within the Red Sheep Creek/Cane Creek portion of the Arctic Village Sheep Management Area of Unit 25A, that person must possess proof of completion of a department-approved hunter ethics and orientation course, including land status and trespass information. Note that although in State regulation, such a course has not been developed.

The State bases its request for reconsideration on a number of claims, some of which address the Board's criteria for accepting a request for reconsideration, others of which address other issues. The form of the State's request, however, has made it difficult to relate each of the State's arguments to each specific criterion the Board considers in accepting a request for reconsideration. For instance, the State's petition refers to "unfounded statements," "egregious" evidentiary failures, "unsubstantiated comments," "buried" evidence, a situation where the Board "leapt" to conclusions, "selective and misleading presentation of the evidence," and reliance on "rumors and hearsay," as forming the basis for the Board's decision. While each and every such reference is not necessarily cited herein, the State's general contentions are collectively analyzed when considering whether or not there is information not previously considered by the Board; demonstrates that the existing information used by the Board was incorrect, or the Board's interpretation of information was in error.

Criterion 1. Information previously not considered by the Board

Throughout its petition, the State argues that the Board members either failed to consider or were not given certain relevant information that could have supported a finding that a closure is not necessary to provide a meaningful preference for Federally qualified subsistence users.

Claim 1.1

One of the State's specific claims regarding inadequate information is as follows: "Particularly egregious is OSM's [Office of Subsistence Management's] failure even to report to the Board in 2014 the best and most recently available data, which was presented to the Eastern Interior RAC [Regional Advisory Council] but not to the Board" (Petition at 3.).

The information being referred to by the State came from Hollis Twitchell, Arctic National Wildlife Refuge Assistant Refuge Manager. According to the State, Mr. Twitchell informed the Eastern Interior Regional Advisory Council "that in several weeks he spent in the drainages in August and September of 2012 and again in 2013 monitoring use of the area, he *saw no local hunters in the area in 2012 and only one local hunter in 2013*" (emphasis in original; EIRAC 2013:262).

Preliminary assessment of Claim 1.1

The written analysis of WP14-51, which was presented to the Board at its April 18, 2014 public meeting and incorporated into the administrative record, contains the following passage:

At the Eastern Interior Subsistence Regional Advisory Council in Fairbanks, Alaska in November of 2013, Hollis Twitchell, the Assistant Refuge Manager and Pilot with Arctic National Wildlife Refuge, discussed issues related to the Red Sheep and Cane Creek drainages. Mr. Twitchell spent several weeks in the area in August and September of 2012 to conduct law enforcement activities. There was a concern that non-Federally qualified hunters might access the closed area that summer since the State hunting regulations handbook had neglected to include information about the area being closed to sheep hunting for those users. Mr. Twitchell did end up making contact with a group that was actively hunting in the Red Sheep drainage. They did not harvest any sheep and left the area after being informed of the closure. Another party was contacted in relation to a trespass issue on a native allotment in the area. Similar work was carried out during the summer of 2013. Eight to ten parties were dropped off in the area and they hiked up the drainages to access other portions of the refuge. Therefore, the closed area continues to be used by non-Federally qualified users as an access point to other areas (EIRAC 2013: 260-264).

This passage does not address the number of locals (Federally qualified subsistence users) Mr. Twitchell saw over about five to six weeks in August and September, 2012, and over about two weeks in August and September, 2013. The State claims that the number of local hunters Mr. Twitchell did or did not see in the Red Sheep Creek and Cane Creek drainages constitutes “the best and most recently available data” concerning local use of the area. The Eastern Interior Council was clearly unconvinced that this information was sufficient to alter its decision to oppose WP14-51.

Moreover, the State fails to contextualize Mr. Twitchell’s observations. Portions of Mr. Twitchell’s comments to the Eastern Interior Council provide that context. Speaking of the fall of 2013, Mr. Twitchell noted:

We had no local individuals hunting up in Red Sheep Creek and Cane Creek that year. Water levels were very, very low and access to Red Sheep Creek was nearly impossible by any water crafts, so the only way to get [there] would have been by air and we didn’t have anyone [i.e. local hunters] coming into those particular drainages in the fall hunt. That’s not to say they didn’t go up there in the wintertime, but in the fall hunt we didn’t have anyone present that summer (EIRAC 2013: 262).

Because local hunters typically access Red Sheep Creek and Cane Creek drainages by boat, and not by airplane, their absence in 2012 should not be taken as indicating a general lack of local use of those drainages. To the contrary, the record is replete with testimonial evidence from local residents indicating that they do, in fact, hunt sheep in the drainages. Arctic Village resident Louie John, for example, noted the following at the 2006 Eastern Interior Regional Advisory Council meeting:

I forgot to tell you that I hunted that area back in 2004 and we shot two sheep, subsistence wise. The reason why I never report it is I don't pay for license. And I think of it because I am a traditional Native man and I hunt for a living and I don't see why that I should go over there and pay for license, I don't know why. I'm sure that most all of Native Alaskans are that way too. But I hunted that area and I wrote it down and gave it to Joel Tritt to hand over to your department but I don't know if it ever got there (EIRAC 2006:125-126).

At the same Council meeting, a letter from Louie John was read into the record:

I went solo on sheep hunt up river from Arctic Village to narrow Red Sheep Creek, shot one small ram for my subsistence need. After I pack all the sheep meat back to the camp then I made a wood raft and floated back to Cane Creek to scout the area for any more sheep. I only saw one and it not [sic] went after it. Stayed for about three more days and then went back to the village because I don't want my sheep meat to spoil.

Spent about six days around Red Sheep Creek area and the mouth couple days, at the end of the trees at the creek above Red Sheep Creek, and then spend about three days at the mouth Cane Creek. I also have another plan to hunt sheep past Red Sheep Creek about August 2006, this time with another friend (EIRAC 2006:128-129).

Conclusion: In light of the fact that the information cited by the State was included in the written analysis that was presented to the Board, the provided information is not dispositive because it is contradicted in the record. There does not appear to be merit to this claim.

Claim 1.2

The State asserts that “OSM fails to mention contrary evidence” relating to the history of Arctic Village residents’ use of Red Sheep Creek and Cane Creek drainages (Petition at Fn. 2. See also Page 4). The State also takes issue with the “testimony of Dr. David Jenkins, saying exactly the same thing in 2012 as in 2014,” to wit, that “the public record supports the fact that Arctic Village residents have a long history of using Red Sheep and Cane Creek drainages and that it continues to be a culturally significant area and there’s public testimony and previous analyses which attest to the significance and the continued use of Red Sheep Creek area for sheep hunting” (Petition at Fn. 2. See also Petition at 4).

As contrary evidence concerning the residents’ use or non-use of the drainages, the State points to testimony from a single person, Arctic Village elder Gideon James. In 2012, Mr. James noted to the Board that “Cane Creek and Red Sheep Creek is one of our historical places that our people have traveled to, you know, they don’t actually go there every year but, you know, they know that the sheep is there to - for them when they need it” (FSB 2012:200).

Preliminary assessment of Claim 1.2

Mr. James’ testimony is not new—it was provided to the Board in 2012. Nor does Mr. James testimony contradict the extensive public record supporting the fact that Arctic Village residents have a long history of using Red Sheep Creek and Cane Creek drainages for subsistence. To the contrary, it supports that statement.

Conclusion: Offering neither new nor contradictory information, there does not appear to be merit to this claim.

Criterion 2. The existing information used by the Board is incorrect

In its petition, the State argues that the administrative record does not provide factual support for the Board’s finding that a closure is necessary to provide a meaningful preference for Federally qualified subsistence users (Petition at 2). Specifically, the State makes numerous claims that the Board uses information that is “sparse,” “inconclusive,” and “without support.”

Claim 2.1

The State claims that both OSM and the Board “acknowledged that evidence of subsistence use of sheep in the greater AVSMA including the drainages is “sparse” (Petition at 1, 2.).

Preliminary assessment of Claim 2.1

The State mischaracterizes the Board’s position. The Board was aware, from the OSM staff report presented by Chris McKee, that “data on the reported use of the sheep management area by Federally qualified users is sparse and just how many sheep are harvested by Federally qualified subsistence users in the sheep management area is unknown” (FSB 2014:490). The lack of information on reported use reflects local cultural practices, which have been slow to accommodate State and Federal permitting and reporting requirements; the relative absence of bureaucratically-derived information on reported use does not indicate a lack of use.²

Contrary to what the State has alleged, the substantial public record developed over more than twenty years indicates the importance and use of the area for local peoples (e.g., EIRAC 2006, 2007, 2011, 2013; FSB 1991, 1995, 2006, 2007, 2012, 2014). This public record was referenced in WP14-51 and in WP12-76 and formed part of the rationale for the Board’s closure decision. Far from being “sparse,” the public record is extensive and robust, and is further supported by recent Tribal consultations (FSB 2014,). See below for specific examples.

Conclusion: There does not appear to be merit to this claim.

Claim 2.2

In furtherance of its contention that the information relied upon by the Board is incorrect, the State claims that “[t]he anthropological studies that OSM cites in its staff analysis are equally sparse and inconclusive, are presented without discussion, and as reported do not support closure” (Petition at 2.).

Preliminary assessment of Claim 2.2

² Recent research on harvest tickets (Chapin 2014) indicates widespread underreporting, which may be indicative of a general phenomenon in rural Alaska and not simply one of Arctic Village and other nearby communities. In other words, the reliability of harvest ticket information as useful data must be assessed in conjunction with other sources of information, including household surveys, testimony from local peoples, and Regional Advisory Council meeting transcripts, among other data sources.

The analyses of WP12-76 and WP14-51 cite a small but comprehensive number of anthropological studies, including Caulfield 1983, Dinero 2003, Dinero 2007, and Gustafson 2004. As with the relative lack of subsistence harvest data, the relative paucity of anthropological studies in the area is not indicative of a lack of local use, as the State seems to suggest. Indeed, the relevant studies cited in analyses of WP12-76 and WP14-51 indicate the historical importance of the area to local peoples. The State has provided no evidence, nor any additional anthropological studies, that suggest that the information the Board relied on is factually incorrect.

Richard Caulfield's 1983 report on the history of sheep harvest among Arctic Village residents is worth quoting at length.

The communities of Arctic Village, Venetie, Chalkyitsik, and Birch Creek have all historically harvested sheep, according to local informants, but in recent decades sheep have been taken almost solely by Arctic Village residents in the Brooks Range. A "longstanding" tradition of sheep hunting exists for Arctic Village (Jakimchuk 1974, Tritt n.d., Peter 1981). Annual harvest for that community in recent years has probably averaged less than 10 animals. Traditionally sheep were taken using bow and arrow and, occasionally, snares. Sheep meat is stored by drying or by freezing, and is prepared as dry meat, by boiling or baking.

Sheep are generally taken near Arctic Village in early fall (late August or early September) or in early winter (November). Residents usually hunt sheep on foot from hunting camps or through the use of snowmachines. Occasionally chartered aircraft are used to reach sheep hunting areas. In early winter sheep are said to be easy to hunt, as they often move down off high rocky slopes into valleys. Sheep hunting requires considerable expenditures of time and energy to obtain a relatively small quantity of meat. In November 1981, for example, two hunters on snowmachines traveled over 100 miles from Arctic Village to obtain one sheep. Hunters returning with sheep meat; however, are afforded considerable prestige because the meat is said to be highly-desirable "Native food," particularly for the elders in the community. In Arctic Village, furthermore, an effort is made to have sheep meat available for the Christmas potlatch.

The continued availability of sheep, according to one Arctic Village resident, provides a sense of security much like "having money in the bank." While large numbers of sheep are not taken, local residents take satisfaction in knowing that a relatively stable and accessible resource is

nearby should the need arise. In a culture where “hungry times” are still fresh in the memory of elders, this knowledge is said to be of considerable significance (Caulfield 1983:68-69).

Steven Dinero, in his 2003 study of the mixed economy of Arctic Village, noted that fourteen percent of Arctic Village households pursued the harvest of Dall Sheep (2003:152), and that Dall sheep hunters relied on ATV use, “given the time and distance that one must travel to Red Sheep Mountain (in the lower Brooks Range) in order to hunt sheep.” He also recognized, following Caulfield (1983), that harvesting sheep is highly prestigious, “though difficult to accomplish due to...logistical constraints” (2003:156).

Conclusion: There does not appear to be merit to this claim.

Claim 2.3

As mentioned above, the State contends that the Board 2012 meeting materials and transcripts contain no discussion of or support for the observation that Arctic Village residents have a long history of using Red Sheep Creek and Cane Creek drainages. “Rather, they show OSM staff making the same unsupported and sweeping conclusions in meeting after meeting, repeating themselves and citing their previous unfounded statements until these statements are assumed to be correct” (Petition at 3.).

Preliminary assessment of Claim 2.3

The foundation of staff statements and conclusions includes the extensive public record, personal communications from village residents, personal communications from knowledgeable Federal agency staff members, professional anthropological publications, discussions at relevant Regional Advisory Council meetings, and discussions at Federal Subsistence Board meetings. All of these are referenced in the analyses of WP12-76 and WP14-51.

The 2012 Board meeting materials contain a lengthy discussion of the importance and use of Red Sheep Creek and Cane Creek by Arctic Village residents and their difficulties in meeting their subsistence needs. In addition, there was a summary of information derived from public testimony at the 2011 Eastern Interior Council meeting contained in the analyses. Information documenting the use of sheep by residents of Arctic Village from the analyses of WP12-76 and WP14-51 along with excepted testimony about the long history of harvesting sheep in these areas, the significance of the use, and the difficulties in

conducting their customary and traditional use in these areas from both of these meetings are noted below.

WP14-51

Subsistence Considerations

Of the five communities with recognized customary and traditional uses of Dall sheep in Unit 25A, the residents of Arctic Village have the strongest tie to the Red Sheep and Cane Creek drainages (USFWS 1993; see also Reed et al. 2008, Gustafson 2004, Dinero 2003). Sheep hunting is a “longstanding” tradition for Arctic Village residents, most of whom are Gwich’in Athabascan (Caulfield 1983:68, Dinero 2003, Gustafson 2004, EIRAC 2006, 2007, 2011), and the Red Sheep and Cane Creek areas have been a longstanding focus of this activity. Sheep are a prestigious subsistence resource and providing sheep meat to the community is highly respected (cf. Caulfield 1983 and Dinero 2003 for discussion). Sheep are also known as an important “hunger food,” that is, a food source that is critical when caribou are unavailable (Caulfield 1983, Dinero 2011 pers. comm., Gilbert 2011 pers. comm.).

Local people report increasing uncertainty of caribou migrations in recent years, declining quality of caribou meat, and increasing difficulty and travel distance to obtain moose in recent years: in light of this, local residents claim that sheep are an increasingly important resource (Gilbert 2011 pers. comm., Swaney 2011 pers. comm.) As noted by one prominent elder, “. . .when we have no caribou, that’s the time we have to go up [to get sheep]” (Gilbert 2011 pers. comm.).

The public record supports the fact that Arctic Village residents have a long history of using the Red Sheep and Cane Creek drainages for sheep hunting, and that it continues to be a culturally significant area to them. Extensive discussion included in previous proposal analyses (cf. Proposal 58 in 1993 and Proposal 54 in 1994) pointed to regular use of these drainages by residents of Arctic Village (USFWS 1993 and 1995). In the final report for a Fisheries Resource Monitoring Program project, Gustafson discusses the importance and continued use of the Red Sheep Creek Area for sheep hunting (Gustafson 2004). Testimony by Arctic Village residents in 2006, 2007, and as recently as 2011 at the Eastern Interior Regional Advisory Council meeting about hunting in the Red Sheep and Cane Creek drainages demonstrates continued (though sporadic) hunting. Discussions with Refuge Information Technicians from Arctic Village, other Arctic National Wildlife Refuge staff, researchers working in the area, and subsistence hunters

from Arctic village also confirm continued sheep hunting in the Red Sheep and Cane Creek drainages (Bryant 2011 pers. comm., Dinero 2011 pers. comm., John 2011, pers. comm.).

There is a story about how Red Sheep Creek was named which illustrates the link between subsistence and religious practices and beliefs among the Gwich'in of Arctic Village. It also underscores the importance of this area to local people. The story relates Red Sheep Creek to the Episcopalian Church, a primary influential factor in establishing Arctic Village, and also sheds some light on why Arctic Village residents consider Red Sheep Creek a revered place (Dinero 2007, 2011 pers. comm.). The story begins that people were hungry and one day at the church someone spotted something moving in the brush. People thought they saw caribou, but upon closer inspection the people realized they were sheep. They were not just any sheep, but these sheep had red stripes, or what many say were crosses on their coats. The next day, the people followed the red sheep far into the mountains where they were finally able to harvest them. The hides of the sheep were kept and passed down because of their distinctive markings (Dinero 2011 pers. comm.). It is significant that the story of the red sheep links a prestigious subsistence resource (sheep) to traditional and modern beliefs and practices (i.e., the Church and hunting sheep along Red Sheep Creek). This demonstrates the complementary nature of subsistence to place, tradition, culture, and modern beliefs.

Because of the importance of this area to residents of Arctic Village, they have repeatedly argued that it should remain closed to non-Federally qualified users. They feel strongly that these lands are theirs, and that access should be limited. As one Arctic Village resident stated at a public meeting in 2006, "Those are our traditional lands, our traditional homelands, our traditional hunting grounds that our fathers and forefathers have hunted for generations and generations" (EIRAC 2006:130). Arctic Village residents have also long argued that the presence of non-Federally qualified users has affected their access and reduced their harvest opportunities (EIRAC 2006, 2011a; FSB 1991, 1995, 1995, 2006, and 2007; USFWS 1993, 1995, 1996, 2006, 2007; Swaney 2011 pers. comm., Gilbert 2011 pers. comm., John 2011 pers. comm.). Arctic Village residents have repeatedly told the Board that they believe that plane traffic and use by non-Federally qualified users has interfered with their ability to successfully hunt sheep in the Red Sheep and Cane Creek drainages. Residents reported that plane flyovers "spooked" sheep and that, "older rams can climb to higher elevations, making them more difficult to hunt" (USFWS 1993: 4, Proposal 58; see also USFWS 1994, Proposal 54 for additional discussion). These disturbances have also been related by local residents (Swaney 2011 pers. comm., John 2011

pers. comm., Gilbert 2011 pers. comm.). One study corroborates this type of disruption: Frid (2003) found that fixed wing aircraft disrupted resting or caused fleeing behavior in Dall sheep in the Yukon Territory during overflights. This disruption was of a longer duration during direct flight approaches.

In summary, there are no present conservation concerns to close Red Sheep and Cane Creek to non-Federally qualified users for sheep hunting. However, from the perspective of local users, there are cultural reasons to keep the area closed to non-Federally qualified users. Arctic Village residents believe that allowing non-Federally qualified users to harvest sheep in Red Sheep Creek and Cane Creek during the State's August 10 to September 20 season adversely affects their experience in their traditional hunting area, and impairs their ability to successfully harvest sheep (FSB 2012: 45-348).

The Eastern Interior Council met on October 11 and 12, 2011 in Fairbanks. A total of 14 people testified in support of Proposal WP12-76; six called in and eight testified in person (EIRAC 2011: 18-29, 164-167, 314-368). The testifiers were from Arctic Village or had ties to Arctic Village. One other testifier, a sheep-hunting guide, was neutral on the proposal (EIRAC 2011: 18-29). The testimony supported the information provided in this analysis in the cultural considerations section; however, there was some new information provided in the testimony.

Some Arctic Village residents testified about the desire to have a community harvest system put in place and that residents had asked repeatedly for this over the years (EIRAC 2011: 342 and 348). Others stated that having an earlier season prior to the State hunt would not solve the problem because it is too warm to hunt sheep during that time period and that the preferred time to harvest sheep is after a particular berry turns half red (EIRAC 2011: 349), with sheep meat being taken only in the fall (EIRAC 2011: 338).

Others testified about the deep respect for sheep and that Red Sheep is sacred to the Gwich'in, who have a special respect for any animal that takes a long time to become an adult. Because of this respect, the only time the backdoor is used is when sheep meat is brought into the house (EIRAC 2011: 342). Others testified that sheep meat was a delicacy reserved for elders, with one man testifying that he hunted sheep many times, but only ate the meat once he was old enough to do so (EIRAC 2011: 338).

A woman with an allotment in the Red Sheep areas testified about trespassing issues and people leaving trash on her allotment (EIRAC 2011: 337-338). Another Arctic Village resident noted that there are three

160 acre allotments on maps provided by the Refuge, but that there are more than that in the Red Sheep area (EIRAC 2011: 333).

Conclusion: The Board relied on relevant and factual information. There does not appear to be merit to this claim.

Claim 2.4

One of the State's contentions, reiterated in several places, is that "[T]here is no evidence in the record at all that subsistence users have been prevented from or impaired in meeting their subsistence needs by non-subsistence hunting in the area" (Petition at 3. See also Petition at 1, 4, 8-9).

Preliminary assessment of Claim 2.4

Residents of Arctic Village have provided public testimony over many years that non-Federally qualified users hunting sheep in the Red Sheep Creek and Cane Creek drainages impair their subsistence opportunities by displacing sheep to higher elevations.³ In addition, Arctic Village residents have described being crowded out of the area, as well as a cultural preference and practice of excluding themselves from areas in which non-Federally qualified users have established camps or are hunting. At the November 2013 Eastern Interior Council meeting, Mr. Firman spoke concerning the conflict with other hunters:

You pull up to your favorite hunting spot and there's 15 people in multiple airplanes there, are you really going to stick around and hunt anyway. I mean that was part of the reason for it being closed (EIRAC 2013: 289).

The State cites testimony about the self-exclusion, but misinterprets that testimony as a "desire to exclude outsiders" (Petition at 6-7.). To the contrary, the public testimony quoted by the State shows that the presence of others has caused local peoples to be crowded out from the Red Sheep Creek and Cane Creek drainages (Petition at Fn. 4, quoting testimony by Bob Childers at the 2012 FSB meeting). Public testimony is referenced in the various proposal analyses, is readily available in transcribed form, and provides evidence of impaired subsistence opportunity. In making its determination to keep the drainages closed to non-Federally qualified users, the Board found this public testimony to be credible (FSB 2012; FSB 2014).

³ See Frid 2003 on the effects of helicopters and fixed wing aircraft on sheep.

OSM wildlife biologist Chris McKee noted the following at the November 20, 2013 Eastern Interior Alaska Regional Advisory Council meeting:

Arctic Village residents have testified repeatedly that allowing non-Federally qualified users to harvest sheep in Red Sheep Creek and Cane Creek during the State's season dates adversely affects their ability to hunt in their traditional hunting area and impairs their ability to successfully harvest sheep (EIRAC 2013:253).

At the same meeting, Arctic Village resident Edward Sam testified as follows:

There used to be plenty of sheep that the older people talk to us about, Dall sheep, when there is no animal around or the hunting is scarce, we'll be dependent on [sheep]. When the caribou is not migrating to our community, we have to depend on sheep. Matter of fact there's no caribou this winter in the valley of Arctic Village area. The meat is so scarce and I don't like to hunt from the Native store either when there's sheep that I could hunt. Matter of fact I'm going hunting in two weeks depending on the condition of the ice in the river.

I have hunted sheep for the past 85 [sic] years or seasons. We have to hunt further into the mountain because there have been too many traffics or people hiking through there. You can understand the sheep have 10 times more visual power than human beings. They could hear you two miles downdraft or updraft. They can smell you for three miles. So it's kind of hard when you have to go charter a plane and you have to hike into the mountain and sometimes you get nothing. It's kind of sad when you have to travel that far (EIRAC 2013:269).

Edward Sam goes on to emphasize the difficulty of subsistence hunting when others have greater access to the area:

My understanding is why are there so many landing area[s] in that area north of Red Sheep Creek which we depend on? You know, it's kind of hard when you have to compete with hunters, both hunters. They got more access. We don't (EIRAC 2013:269).

Two years earlier, Arctic Village resident Charlie Swaney also testified to the Eastern Interior Council. He spoke on behalf of the entire village.

I come here today as I speak for my people. Ever since Red Sheep was opened to hunting, we got nothing. We got no moose and we got no sheep. Nothing. Ever since all the plane activity started, we got nothing.

My uncle is in the back right here. His name is Gideon James. Last year he spent \$1500 on gas, just gas alone, so we could go hunt. No, we came back with nothing. Nothing.

Arctic Village is where we live. It's not like we can go down to the store and buy food. No. No. No way. We make very little. You know, last year and this year I made \$12,000 annual income. \$12,000. This year, too. Can you live off of that? Every one of you. Every one of you. \$12,000 annual income. Can you live off of that? That's what I made.

So when we go out there in the woods and we hunt, we hunt for our food. That's our lifestyle. That's our lifestyle. That's our tradition. We make dried meat, everything. When we get moose or we get caribou or we get sheep. That's our lifestyle. That's how we live. We're from there. We're from there. Arctic Village. Arctic Village. We live off the land. I tell you straight up right now, eye-to-eye, all of you. Eye-to-eye, all of you, we live off the land. That's our lifestyle. That's how we live. When I was kid, even my grandkids now, my kids, my grandkids, that's how they live. I tell you, eye-to-eye right now, all of you, that's how we live. That's our lifestyle.

Ever since that Red Sheep Creek is open up, nobody's gotten moose upriver. Nobody's gotten sheep up river. We travel 70 miles by boat as far as we could go, and from there we got to hike 8, 9 miles, try to go up there and get sheep. No, not this year. Nobody. No. Even this fall. Even this fall. How many people went upriver, tried to get moose. No. Nobody succeeded. That's because of all of that plane activity is flying over and chase them out. We live up there. We live up there. That's our life. Our life is up there. That's the way we live. Our life is up there. Come around and jeopardize our living. That's why we're here, because we're not getting nothing. We're not getting nothing. All that plane jeopardize our living. Our living. Our lifestyle. All that plane activity.

I speak for my people, the whole village. That's why they sent me down here, to speak in front of you. They -- I'm out there all the time. I'm out there all the time. That's why they sent me down here. They want me to speak for them. I speaking for my people. I love my people. That's my

family. That's my family. All the people of Arctic Village, that's my family. We live off the land, and we want to continue living off the land.

All this plane activity that's going on up there in Red Sheep Creek, no, we can't get no moose. We can't get no sheep. There's nothing. They chase them away. They run away. They run away. We hike 6, 7 miles up there. Nothing. Can you imagine that, any of you? Can you imagine that? Hiking all the way up there, and stay up there 6, 7 days. No, nothing. Nothing. Nothing. That's what's happening right now. That's what's happening right now.

I come to you today. I ask you; close Red Sheep Creek, because Arctic Village, we live in Arctic Village land that's our lifestyle now. We want to go out and continue hunting, and to go out there and get sheep and go out there and get moose, but that's not possible right now. That's not possible right now. After all that plane activity up there, it's not possible.

My uncle, Gideon James, way up here in the back, like I told you, last year he spent \$1500 on gas money alone, just gas money. No, came back with nothing. Can all of you imagine that? We're paying \$10 a gallon of gas in Arctic Village. \$10 a gallon of gas. It's hard.

Red Sheep Creek is open right now and it make it even harder on us. I'm not just speaking for myself. I'm speaking for my people. I'm speaking for my kids, my grandkids, all my grandchildren up there. Everybody. They call me Babba (ph). They call me grandpa. All those kids up there, they call me grandpa Babba. Babba. I'm speaking for them. I'm speaking for them.

We've got a life up there. Why does our life have to be jeopardized? Why? Just so somebody can charter a plane, spend \$1500, \$1600 to go up there and get sheep? Well, here, us, we're spending \$10 a gallon of gas and all that, and we go up there and we get nothing.

This is where we're from. This is our village. We go way up there and we get nothing, because all that plane activity chased all that sheep, all that moose away. I can't say any more to it with my kids, my grandkids. That's their future. That's their future. They -- what we're trying to teach them, we're trying to live off our land. (EIRAC 2011:164-167)

Bob Childers, executive director of the Gwich'in Steering Committee, succinctly noted the sense of displacement felt by Arctic Village residents: "We did a number of interviews with all the families that

hunted in Red Sheep Creek and Cane Creek in the early 90s when we were first putting this together. And I was incredibly struck by the similarity of what almost everyone said to me. And it was really this kind of sense of discomfort, that they were sort of displaced from a place that was always there, and they didn't feel comfortable going back” (EIRAC 2011:349).

OSM policy coordinator David Jenkins reflected public testimony with an observation at the April 18, 2014 Board meeting, summarizing the breadth of available information:

The State argues that the issue is mainly a user conflict and a trespass issue, but a review of the testimony over the last 20 years from the Arctic Village residents and a review of the ethnographic literature and the historical literature indicates that it's not a trespass issue but it's an issue of access that these people have been describing... (FSB 2014:492).

Conclusion: There does not appear to be merit to this claim.

Criterion 3. The Board's interpretation of information, applicable law, or regulation is in error or contrary to existing law

The State correctly cites ANILCA Title VIII Section 815 and the Board's Closure Policy as providing the legal basis for the Board's decision. The Board's authority to act is as follows. Title VIII, § 815(3) of ANILCA addresses the restriction on the take of fish and wildlife for nonsubsistence uses. The Secretaries have empowered the Board to implement Title VIII of ANILCA. Title § 815(3) of ANILCA states,

Nothing in this title shall be construed as—

(3) authorizing a restriction on the taking of fish and wildlife for nonsubsistence uses on the public lands (other than national parks and park monuments) unless necessary for the conservation of healthy populations of fish and wildlife, for the reasons set forth in §816, to continue subsistence uses of such populations, or pursuant to other applicable law;

(16 U.S.C. § 3125(3)).

The Board's 2007 closure policy notes the following:

Proposed closures of Federal public lands and waters will be analyzed to determine whether such

restrictions are necessary to assure conservation of healthy populations of fish and wildlife resources or to provide a meaningful preference for qualified subsistence users. The analysis will identify the availability and effectiveness of other management options that could avoid or minimize the degree of restriction to subsistence and non-subsistence users (FSB 2007).

Claim 3.1

“The application of the incorrect legal standards [by the Board] in 2012 flowed through to and tainted the 2014 action, since Board members voted against the State’s 2014 proposal because they believed nothing had changed since 2012. The vote was zero in support and eight in opposition (EIRAC 2013:511). Board members’ application of incorrect closure standards warrants the Board’s reconsideration of its decision” (Petition at 6, citing FSB 2014 at pp. 505-06, 510.). As part of this discussion, the State takes issue with one Board member’s verbal discussion of the Board’s obligation to give deference to Council recommendations (Id. at 5.).

Preliminary assessment of Claim 3.1

The State’s request to the Board is to reconsider WP14-51. The State did not file a timely request to the Board to reconsider WP12-76. It cannot use this request for reconsideration to alter the Board’s decision on another proposal.

The key consideration in regard to this claim is whether or not the Board properly relied on the closure authority set forth in ANILCA Section 815(3). A careful review of the record demonstrates that the Board did not rely on incorrect closure standards. To the contrary, the record shows that the Board found that credible public testimony, in conjunction with a number of other sources of information, demonstrated that restrictions on non-Federally qualified users were necessary to continue subsistence uses of those sheep (FSB 2012:347, FSB 2014:504). Moreover, it does not appear from the record that the Council’s recommendation was contrary to any of the three criteria set forth in section 805(c) of ANILCA that would have then allowed the Board to decline to follow that recommendation.

Conclusion: For these reasons, there does not appear to be merit to the State’s claim that the Board applied incorrect legal standards in its action.

Claim 3.2

A major heading in the State’s petition, and a recurring theme throughout, is that “[t]he Board considered irrelevant and unlawful evidence in making its decision” (Petition at 6.).

Preliminary assessment of Claim 3.2

The State argues that the closure was driven by the desire of local residents to exclude others and that “Congress did not intend the Board to consider, and the Board should have been instructed that it cannot consider the desires of local residents and hunters simply to exclude others from the area.” The State also contends that the Board should have been instructed to consider, and should have considered, only the actual impacts on subsistence from hunting by non-Federally qualified users” (Id. at 6-8.).

As noted in previous assessments of various State claims, the Board found credible the extensive public testimony of knowledgeable local residents on the negative impacts to subsistence from non-Federally qualified users in the area. Far from being irrelevant, local ecological and cultural knowledge provide the factual basis for many of the Board’s decisions. Indeed, Congress created the Regional Advisory Council system for the purpose of enabling local residents with knowledge of local subsistence practices to provide meaningful input into the decision making process (ANILCA Title VIII Section 805).

As there was substantial evidence on the record to support a finding by the Board that the presence and practices of non-Federally qualified users were hampering the continuation of subsistence uses by local Federally qualified subsistence users.

Conclusion: There does not appear to be merit to this claim.

Claim 3.3

One of the State’s contentions is that “[e]ven if there had been a supportable reason for placing restrictions on non-Federally qualified users, the Board did not consider less restrictive options, including the potential effectiveness of the new State-approved hunter education class in minimizing the real and perceived conflicts with subsistence” (Petition at 8.). Another less restrictive option mentioned by the State would have been to restrict the time of the closures to only the first few days of the season (Id.). This other less restrictive option to restrict the time of closure was considered in 2012 and is not considered in this analysis.

Preliminary assessment of Claim 3.3

At its 2014 public meeting, the Board was presented with limited available information about the State-approved hunter education course. The staff analysis of the State's proposal, as read into the record, noted the following:

While the efforts of the proponents [of WP14-51] to require hunter education and ethics orientation are recognized as good faith efforts, such efforts do not go far enough to assure [sic] that Arctic Village residents have continued opportunity to harvest sheep in the Red Sheep and Cane Creek drainages and receive the benefits of a subsistence priority.

In addition, adopting this proposal would require Federal[ly] qualified users to take a State approved hunter ethics and orientation course which to-date has not been developed. However, the State intends to work with the affected users to develop this course (FSB 2014:492).

Jennifer Yuhas, representing the Alaska Department of Fish and Game, provided the State's perspective on the hunter ethics and orientation course (FSB 2014:499-501). Ms. Yuhas noted that "We want to make a difference here on Red Sheep Creek..." She goes on to say:

We're hearing about trespass, we're hearing about vandalism, we're hearing about things that aren't okay but what can we do as a Department. Well, the only thing we can manage are the hunters going up there so we came back and said, well, what about an ethics and orientation class... The State adopted this [class]. You've heard some Staff discussion, well, we can vote to oppose this and just keep it close[d] because the State doesn't have a class in place; that's a fairly contrived answer. There's no incentive for the local people to work with us when this is what they want, they want people out, so why would you work with us to reopen an area if the—if the condition is, once the class is in place then it can be reopened, then where's the incentive for that. No agency is going to expend the Staff time or the finances to put a class in place the locals don't want (FSB 2014:500).⁴

⁴ At the Eastern Interior Regional Advisory Council meeting, Ms. Yuhas similarly provide the State's perspective: "The details of the full course have not been developed because we're not going to put efforts into the course for an area that's not open" (EIRAC 2013: 256).

Having heard information about a proposed State-approved hunter education course, but no specific details of that course, the Board then had the opportunity to discuss this issue. It chose not to, suggesting that the Board members considered the proposed alternative solution (an earlier Federal season) and considered it inadequate to resolve the problem of limited subsistence opportunity.

A continued attempt to work with local communities on hunter education and orientation programs should be encouraged to foster positive relationships between all users to protect resources. However, the conceptual idea of a hunter's education and orientation course by itself was not sufficient to resolve the issue.

Conclusion: There does not appear to be merit to this claim.

SUMMARY

As discussed at some length, the State's various claims appear to be without merit. No new relevant information was presented for the Board's consideration. No information the Board relied on was shown to be factually incorrect. There was no demonstration that the Board's interpretation of information, applicable law, or regulation was in error or contrary to existing law.

OSM CONCLUSION

Oppose the request to reconsider WP14-51.

Justification

The State's claims individually and collectively fail to reach the level to trigger a request for reconsideration, as required by the Board's policy.

LITERATURE CITED

- Caulfield, R. 1983. Subsistence land use in upper Yukon Porcupine communities, Alaska. Dinjii Nats'aa Nan Kak Adagwaandaii. ADF&G, Div. of Subsistence Tech. Paper No. 16. Fairbanks, AK. 252 pages.
- Chaplin 2014 (from Page 8 of analysis)
- Bryant, J. 2011. RIT Technician, ANWR, former resident Arctic Village. Personal communication: phone. July 2011.
- Dinero, S. 2003. Analysis of a “Mixed Economy” in an Alaskan Native Settlement: The Case of Arctic Village. *The Canadian Journal of Native Studies* XXII, 1:135–164.
- Dinero, S. 2007. Globalization and development in a post-nomadic hunter/gatherer Alaskan village: a follow-up assessment. *Polar Record* 43(226): 225–269.
- Dinero, S. 2011. PhD. Anthropologist conducting research in Arctic Village. Personal communication: phone. July/August 2011. Philadelphia University, PA.
- EIRAC. 2006. Transcripts of the Eastern Interior Regional Advisory Council Meeting. March 21, 2006. Fairbanks, AK. Pages 110–137.
- EIRAC. 2007. Transcripts of the Eastern Interior Regional Advisory Council Meeting. March 20, 2007. Arctic Village, AK. Pages 95 ff.
- EIRAC. 2011. Transcripts of the Eastern Interior Regional Advisory Council Meeting. October 11-12, 2011. Fairbanks, AK.
- EIRAC. 2013. Transcripts of the Eastern Interior Regional Advisory Council Meeting. November 19-20, 2013. Fairbanks, AK.
- Frid, A. 2003. Dall's sheep responses to overflights by helicopter and fixed-wing aircraft. *Biological Conservation* 110: 387–399.
- FSB. 1991. Transcripts of the Federal Subsistence Board. June 5, 1991. Anchorage, AK.
- FSB. 1995. Transcripts of the Federal Subsistence Board. Volume V. April 14, 1995. Anchorage, AK.
- FSB. 2006. Transcripts of the Federal Subsistence Board. September 5, 2006. Anchorage, AK.
- FSB. 2007 (see Pages 2, 8, and 12 of analysis)

- FSB. 2012. Transcripts of the Federal Subsistence Board. January 18-20, 2012, Anchorage, AK.
- FSB. 2014. Transcripts of Federal Subsistence Board. April 18, 2014. Anchorage, AK.
- Gilbert, T. 2011. Elder, resident Arctic Village. Personal communication: phone. August 2011.
- Gustafson, J. 2004. Traditional Ecological Knowledge of Subsistence Harvests and Fishes, Old John Lake, Alaska. Final Report No. FIS01-003. USFWS. Anchorage, AK.
- Jakimchuk, R.D. 1974. Distribution of Moose, Sheep, Muskox, and Furbearing Mammals in Northeastern Alaska. *In* Arctic Gas Biological Report Series 6. Canadian Arctic Gas Study, Limited, and Alaskan Arctic Gas Company.
- John, J. 2011. Arctic Village Council, First Chief, Elder, resident. Personal communication: phone. August 2011.
- Peter, K. 1981. Neets' aii Gwiindaff: Living in the Chandalar Country. Fairbanks Alaska Native Language Center, University of Alaska.
- Reed, J., C. Villa, and T. Underwood. 2008. Red Sheep Creek airstrip public use monitoring, Arctic National Wildlife Refuge, Alaska, 2006-2007. Report for USFWS Arctic National Wildlife Refuge. Fairbanks, AK.
- Schmidt, J.I., Chapin F.S., 2014. Relationship of Community Characteristics to Harvest Reporting: Comparative Study of Household Surveys and Harvest Tickets in Alaska. *Human Dimensions of Wildlife: An International Journal* 19:334-346.
- Swaney, C. 2011. Subsistence user, resident Arctic Village. Personal communication: phone. July 2011.
- Tritt, A. n.d. The Albert Tritt Collection. Fairbanks: University of Alaska Archives.
- USFWS. 1993. Staff Analysis P93-58. Pages 1-9 *in* Federal Subsistence Board Meeting Materials. April 5-8, 1993. Office of Subsistence Management, FWS. Anchorage, AK.
- USWS. 1994 (see Page 12 of analysis).
- USFWS. 1996. Staff Analysis. P96-55. Pages 'Eastern Interior 2-12' *in* Federal Subsistence Board Meeting Materials. April 14, 1995. Office of Subsistence Management, FWS. Anchorage, AK.
- USFWS. 2006. Staff Analysis. Special Action WSA06-03. Pages 1-5 *in* Federal Subsistence Board Meeting Materials. July 18, 2006.
- USFWS. 2007. Staff Analysis WP07-56. Pages 529-538 *in* Federal Subsistence Board Meeting Materials April 30-May 2, 2007. Office of Subsistence Management, USFWS. Anchorage, AK. 622 pages.

USFWS. 2010. Federal Closure Review WCR-10-21. Office of Subsistence Management, USFWS. Anchorage, AK.

USFWS. 2011. Harvest database. Microcomputer database. Office of Subsistence Management, USFWS. Anchorage, AK.

USFWS. 2014. Staff Analysis WP14-51. Pages 336-351 *in* Federal Subsistence Board Meeting Materials. April 15-17, 2014

Wald, E. 2015. Wildlife Biologist, Arctic National Wildlife Refuge. Personal communication: phone. January 2015.

Appendix A

§100.20 Request for reconsideration.

(a) Regulations in subparts C and D of this part published in the FEDERAL REGISTER are subject to requests for reconsideration.

(b) Any aggrieved person may file a request for reconsideration with the Board.

(c) To file a request for reconsideration, you must notify the Board in writing within sixty (60) days of the effective date or date of publication of the notice, whichever is earlier, for which reconsideration is requested.

(d) It is your responsibility to provide the Board with sufficient narrative evidence and argument to show why the action by the Board should be reconsidered. The Board will accept a request for reconsideration only if it is based upon information not previously considered by the Board, demonstrates that the existing information used by the Board is incorrect, or demonstrates that the Board's interpretation of information, applicable law, or regulation is in error or contrary to existing law. You must include the following information in your request for reconsideration:

(1) Your name, and mailing address;

(2) The action which you request be reconsidered and the date of FEDERAL REGISTER publication of that action;

(3) A detailed statement of how you are adversely affected by the action;

(4) A detailed statement of the facts of the dispute, the issues raised by the request, and specific references to any law, regulation, or policy that you believe to be violated and your reason for such allegation;

(5) A statement of how you would like the action changed.

(e) Upon receipt of a request for reconsideration, the Board shall transmit a copy of such request to any appropriate Regional Council and the Alaska Department of Fish and Game (ADFG) for review and recommendation. The Board shall consider any Regional Council and ADFG recommendations in making a final decision.

(f) If the request is justified, the Board shall implement a final decision on a request for reconsideration after compliance with 5 U.S.C. 551-559 (APA).

(g) If the request is denied, the decision of the Board represents the final administrative action.

INTERAGENCY STAFF COMMITTEE RECOMMENDATION

Do not support reconsideration of any of the claims in the request for reconsideration RFR14-01.

Justification

The Interagency Staff Committee (ISC) found the threshold analysis for request for reconsideration RFR14-01 to be a thorough evaluation of the request and that it provides sufficient information for Federal Subsistence Board action on the request.

According to regulations under Subpart B §____.20 The Board will accept a request for reconsideration only if it is based upon information not previously considered by the Board, demonstrates that the existing information used by the Board is incorrect, or demonstrates that the Board's interpretation of information, applicable law, or regulation is in error or contrary to existing law. Conclusions from the threshold analysis are restated below.

Criterion 1. Offering neither new nor contradictory information, there does not appear to be merit to this claim.

Criterion 2. Contrary to what the State has alleged, the substantial public record, developed over more than twenty years, indicates the importance and use of the area for local peoples. This public record was referenced in WP14-51. The Board relied on relevant and factual information, there does not appear to be merit to this claim.

Criterion 3. The key consideration in regard to this claim is whether or not the Board properly relied on the closure authority set forth in ANILCA Section 815(3). A careful review of the record demonstrates that the Board did not rely on incorrect closure standards. The record shows that the Board found that credible public testimony, in conjunction with a number of other sources of information, demonstrated that restrictions on non-Federally qualified users were necessary to continue subsistence uses of those sheep. Moreover, it does not appear from the record, that the Council's recommendation was contrary to any of the three criteria set forth in section 805(c) of ANILCA that would have then allowed the Board to decline to follow that recommendation. For these reasons, there does not appear to be merit to the claim that the Board applied incorrect legal standards in this action. Additionally, the Board heard about various alternatives and declined to adopt them, thereby inferring that the Board members considered those alternative to be inadequate and consequently acted within their purview.

None of the claims in the RFR meet the threshold for reconsideration.

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

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17 June, 2014

Mr. Tim Towarak, Chairman
Federal Subsistence Board
Office of Subsistence Management
U. S. Department of the Interior
3601 C Street, Suite 1030
Anchorage, AK 99503

RE: FRFR WP14-51

Dear Mr. Towarak:

As provided for in Subpart B, 36 CFR §242.20 and 50 CFR §100.20, of Subsistence Management Regulations for federal public lands in Alaska, the Alaska Department of Fish and Game hereby requests that the Federal Subsistence Board reconsider and rescind its decisions of April 18, 2014 on Wildlife Proposal 14-51. The Board improperly denied the reinstatement of a valid harvest opportunity to other users. These decisions will purportedly be effective upon publication in the Federal Register.

The enclosed Request for Reconsideration details the reasons for our request. I request an opportunity to further explain these procedural and factual errors during Board deliberations on this request. I also request that the Board act expeditiously.

Sincerely,



Doug Vincent-Lang
Director, Division of Wildlife Conservation

Enclosure

STATE OF ALASKA'S REQUEST FOR RECONSIDERATION OF FEDERAL SUBSISTENCE BOARD ACTION ON RED SHEEP CREEK/WP14-51

I. Summary of State's Request

The State of Alaska, through its Department of Fish and Game ("State"), seeks reconsideration of the action by the Federal Subsistence Board ("Board") taken on April 18, 2014 rejecting the State's proposal, WP 14-51, that would reopen the Red Sheep Creek and Cane Creek drainages in the Arctic Village Sheep Management Area of Unit 25A (AVSMA) to non-Federally-qualified subsistence hunters August 10 through September 20, while requiring hunters to complete a State-approved hunter ethics and orientation course. The State requests reconsideration under 50 CFR 100.20(d) for the following reasons.

The Board acknowledged that the sheep population is healthy and there is no conservation reason for keeping the area closed. It purported to act under authority of provisions of ANILCA § 815 and the Board's Closure Policy that authorize closure when substantial evidence shows closure is necessary to provide a meaningful preference for qualified subsistence users. However, there was no substantial evidence that non-subsistence hunting interferes with the preference accorded to Federally-qualified subsistence hunters or their access to sheep for subsistence. The Board acknowledged that evidence of subsistence use of sheep in the greater AVSMA including the drainages is "sparse." These drainages comprise a small portion of the AVSMA, and the actual subsistence use of these drainages by Federally-qualified hunters and the number of sheep taken is not known. Federally-qualified hunters have 271 days each year to hunt sheep in this area and can take any rams. The Board acted unreasonably and unlawfully in closing the drainages to the few non-Federally-qualified hunters who hunt in the drainages for full curl rams during the 41-day state hunt based on comments about aircraft noise and the idea that local hunters do not want other sheep hunters to be in the area. The Board considered improper legal standards and irrelevant information in reaching its decision, and also did not reasonably consider other less restrictive options, as required by the Board's Closure Policy, including the effects of a mandatory hunter ethics and orientation class offered by the State, as discussed below.

II. There is No Conservation Need to Keep the Area Closed to Sheep Hunting By Non-Federally-Qualified Subsistence Hunters

The history of sheep hunting regulation in this area since 1991 is summarized in the Draft Staff Analysis prepared by the Office of Subsistence Management ("OSM") for the Board in conjunction with its April 18, 2014 meeting. In 2007, the Board approved the State's proposal to lift the closure of the drainages because surveys of sheep populations found the "sheep populations in these drainages were determined to be healthy," but in 2012 it reinstated the closure, contrary to OSM's recommendation [2014 OSM Staff Analysis at p. 340]

From the period 2006 to 2011, before the 2012 closure was put into place, the sheep density in the drainages remained stable, and slightly increased. This occurred while non-Federally-qualified sheep hunters harvested two to seven sheep annually.

As stated in the OSM Staff Analysis [page346]: “If adopted, this proposal would not affect the Dall sheep population in the proposal area. The most recent population surveys indicate good productivity of the sheep population. Allowing sheep hunting by non-Federally qualified users in these drainages is not a conservation concern”

III. The Record Does Not Support a Finding That a Closure is Necessary to Provide a Meaningful Preference for Qualified Subsistence Users

In its Staff Analysis and at the meeting, OSM reported that information on use of the larger AVSMA by Federally-qualified subsistence users is “sparse” and there is little evidence and no documentation of subsistence hunting and harvests of sheep by the local communities in the Red Sheep Creek and Cane Creek drainages within the AVSMA. [FSB 4/18/14 Meeting Tr. at 490; 2014 OSM Staff Analysis at p. 342]. OSM said “just how many sheep are harvested by Federally qualified subsistence users in the AVSMA is not known,” primarily because of Federally qualified users’ non-compliance with permitting and reporting requirements. [*Id.*] The permit data that are available show *average annual harvest by federally qualified users in the entire AVSMA was less than one sheep per year in 2005-10.* [*Id.*] The Red Sheep Creek and Cane Creek drainages comprise a small part of the overall AVSMA, and there is no data on how many sheep were harvested by Federally qualified users in these particular drainages. The older ADF&G household survey data from the mid-1990s as reported by OSM indicate that Arctic Village residents harvested 3–5 sheep per year in the mid-1990s, but again do not show the location of the harvest. [*Id.* at p. 342-43].

The anthropological studies that OSM cites in its staff analysis are equally sparse and inconclusive, are presented without discussion, and as reported do not support closure. For example, OSM cites anthropological studies for the proposition that sheep are important to the residents of Arctic Village, but does not cite to any support for the proposition that Arctic Village residents regularly subsistence hunt for sheep in these drainages.¹ OSM also summarily asserts: “The public record supports the fact that Arctic Village residents have a long history of using the Red Sheep and Cane Creek drainages, and that it continues to be a culturally significant area to them,” without support for this assertion. It goes on to state: “Extensive discussion included in previous proposal analysis (cf. Proposal 58 in 1993, Proposal 54 in 1994, and Proposal WP14-51 in 2012) pointed to regular use of these drainages by residents of Arctic

¹ OSM states: “Sheep hunting is a ‘longstanding’ tradition for Arctic Village residents, most of whom are Gwich’in Athabascan (Caulfield 1983:68; Denero 2003; Gustafson 2004: EIRAC 2006, 2007, 2011), and the Red Sheep and Cane Creek areas have been a longstanding focus of this activity.” OSM cites no studies or other authority for the latter proposition. [2014 OSM Staff Analysis at p. 342].

Village (USFWS 1993, 1995).” [Id. at 344] However, the 2012 meeting transcript and materials contain no such extensive discussion or support for these conclusions. Rather, they show OSM staff making the same unsupported and sweeping conclusions in meeting after meeting, repeating themselves and citing their previous unfounded statements until these statements are assumed to be correct.²

Particularly egregious is OSM’s failure even to report to the Board in 2014 the best and most recent available data, which was presented to the Eastern Interior RAC but not to the Board. ANWR Assistant Refuge Manager Hollis Twitchell told the EIRAC that in the several weeks he spent in the drainages in August and September of 2012 and again in 2013 monitoring use of the area, he *saw no local hunters in the area in 2012 and only one local hunter in 2013*. [EIRAC 11/20/13 Meeting Tr. 262]

Focusing on the issue and analysis required under ANILCA § 815 and the Board’s Closure Policy – whether closure is necessary to provide a meaningful preference for qualified subsistence users – there is no evidence in the record at all that subsistence users have been prevented from or impaired in meeting their subsistence needs by non-subsistence hunting in the area. Rather, the Board was swayed by unsubstantiated comments from OSM and a few individuals about the possibility of aircraft noise disturbance, but it failed to take a hard look at the data, which is generalized, dated, and not indicative of actual disturbance of subsistence in these drainages. OSM said that residents reported that plane fly-overs “spook” sheep and that “older rams can climb to higher elevations, making them more difficult to hunt,” citing its 1993 proposal analysis. It cites more recent personal communications for the proposition that flights through the Red Sheep and Cane Creek areas “disturb the sheep.” [2014 OSM Staff Analysis at p. 345]. But there is no data suggesting or showing that any such disturbance actually occurs and if so whether it actually interferes with their ability to subsistence hunt for and harvest sheep in the drainages, which the evidence shows rarely occurs.

Moreover, the best available data, which is buried elsewhere in its report, indicates that most of the air and ground traffic in the area is from hikers, not hunters. OSM reports, under the heading “current events involving species,” that in his several weeks in the area in August and September of 2012, Assistant Refuge Manager Twitchell saw only one group of non-Federally-qualified hunters (even though the State hunting regulations pamphlet did not inform the public that the area was closed), but encountered eight to ten other user groups that were dropped off in the area and hiked up the drainages to access other portions of the refuge. [2014 OSM Staff Analysis at p.

² See Transcript of 2012 FSB meeting at p. 191 (testimony of Dr. David Jenkins, saying exactly the same thing in 2012 as in 2014: “And the public record supports the fact that Arctic Village residents have a long history of using Red Sheep and Cane Creek drainages and that it continues to be a culturally significant area and there’s public testimony and previous analyses which attest to the significance and the continued use of Red Sheep Creek area for sheep hunting.” OSM fails to mention contrary evidence, such as the testimony of Arctic Village elder Gideon James, who testified to the FSB in 2012: “Cane Creek and Red Sheep Creek is one of our historical places that our people have traveled to, you know, they don’t actually go there every year but, you know, they know that the sheep is there to -- for them when they need it.” [Id. at p. 201].

341]. And OSM did not include in its report what Mr. Twitchell told the EIRAC, that alleged impacts such as trash and trespass that are blamed on sheep hunters “could very well be” from other users, not sheep hunters. [EIRAC 11/20/13 Meeting Tr. at p. 263-64].

An agency action is arbitrary and capricious if the agency “entirely failed to consider an important aspect of the problem [or] offered an explanation for its decision that runs counter to the evidence before the agency.” *Alaska v. Federal Subsistence Bd.*, 544 F.3d 1089, 1094 (9th Cir. 2008). The Board heard testimony that aircraft noise can disturb sheep and leapt to the conclusion that aircraft noise from non-Federally qualified users in the drainages does significantly interfere with Federally-qualified users’ subsistence harvests. This conclusion was arbitrary and capricious and not supported by substantial evidence.

With such a significant lack of information on use by Federally-qualified subsistence users and on impacts on these users’ subsistence harvests, and such a selective and misleading presentation of the evidence, the Board’s rejection of WP14-51 lacks substantial evidence in the record to support a finding the closure should be continued and should be reconsidered. Indeed, in 2012, considering essentially the same evidence (other than Mr. Twitchell’s observations, which began later that year and which do not support the continued closure), OSM recommended that the drainages be kept open to non-subsistence hunting. OSM staff stated in their written analysis in 2012:

While it is recognized that Red Sheep Creek and Cane Creek are culturally important to the people of Arctic Village and that this is a longstanding issue for the people of Arctic Village, reinstating the Federal closure is not supported by the available biological data or formal harvest data. ... The most recent population surveys indicate good productivity of the sheep population. ... Based on the harvest information and populations surveys, allowing sheep hunting by non-Federally qualified hunters does not have a measurable effect. ...

In addition, reinstating this closure is not necessary to meet the continued use clause of Section 815(3). Despite past closures to non-Federally qualified hunters and a more liberal subsistence harvest limit, there has been relatively little hunting reported in the Red Sheep and Cane Creek drainages by Arctic Village and other Federally qualified communities. Since subsistence users can take two rams of any age, the number of sheep available to them is much greater than the number of full-curl rams to which non-Federally qualified hunters are limited.

[2012 Draft Staff Analysis, from Interagency Staff Committee Meeting Materials at p. 634] Likewise, an OSM staff member told the Board at the 2012 meeting:

The OSM conclusion is to oppose this proposal [to close the Red Sheep and Cane Creek drainages]. Reinstating the Federal closure in Red Sheep and Cane Creek is not supported by the available biological data, although sheep populations in

the area are lower than in other areas of Alaska the most recent data we have available does indicate good production. In addition information on sheep harvest by Federally-qualified users is lacking for the two drainages and there's been very little reported hunting by local users since 1991. Finally Federally-qualified users have a much larger segment of the population available for harvest than do non-Federally-qualified users and the opportunity to harvest under Federal regulations extends until April 30th, providing these users with more than seven months of harvest opportunity beyond the State's fall hunting season. [Transcript of 2012 FSB meeting at p. 191-92]

The same analysis and same conclusions apply here as in 2012 and support lifting the closure. Further, as discussed above, the new evidence is even less supportive of closure than the evidence considered by OSM and the Board in 2012.

The Board has the authority to close public lands to non-subsistence users only when substantial evidence shows it is necessary to conserve healthy populations of fish and wildlife or to continue subsistence uses of such populations. 16 USC 3125(3), 50 CFR 100.10(4)(vi). There is no conservation need, and there is no substantial evidence showing need to keep the area closed to provide a meaningful preference for subsistence uses.

IV. The Board Did Not Apply the Correct Legal Standards for Closure When It Closed the Drainages in 2012 and When It Continued the Closures in 2014

In 2012, immediately after moving to adopt the proposal to close the drainages and receiving a second, the USFWS Board member stated on the record what he said were two rules that should guide deliberations: “[U]nless there's a biological, conservation issue we're pretty much supposed to not go against what's proposed by the RAC. ... Another rule we have is that we're not going to go against what the RAC proposes unless it's detrimental to the satisfaction of subsistence need.” [Transcript of 2012 FSB meeting at p. 225].

These were incorrect statements of the legal standards. The Board may not defer to RACs where their position is not supported by substantial evidence that the closure is necessary for the continuation of subsistence. *See* ANILCA § 805(c); *Alaska v. Federal Subsistence Bd.*, 544 F.3d at 1095 fn.9. That these were incorrect statements of the legal standards also is clear from the Board's 2007 “Policy on Closures to Hunting, Trapping and Fishing on Federal Public Lands and Waters in Alaska” (“Closure Policy”), which states:

The Board will not restrict the taking of fish and wildlife by users on Federal public lands (other than national parks and park monuments) *unless necessary* for the conservation of healthy populations of fish and wildlife resources, or *to continue subsistence uses of those populations*, or for public safety or administrative reasons, or “pursuant to other applicable law.” ... *Proposed closures will be analyzed to determine whether such restrictions are necessary to*

assure conservation of healthy populations of fish and wildlife resources or *to provide a meaningful preference for qualified subsistence users*. The analysis will identify the availability and effectiveness of other management options that could avoid or minimize the degree of restriction to subsistence and non-subsistence users.

The closure policy also reiterates the substantial evidence standard, under the heading “Decision Making”: “The Board will ... [b]ase its actions on substantial evidence contained within the administrative record, and on the best available information; complete certainty is not required.”

ANILCA and the Closure Policy presume that Federal public lands (other than national parks and park monuments) will remain open to the taking of fish and wildlife by non-Federally qualified users as well as by Federally-qualified users. This taking may not be restricted unless, and only for so long as, substantial evidence in the record shows that closure is necessary to assure a meaningful subsistence preference.

Shortly after the USFWS member incorrectly stated the standard, the transcript indicates further confusion about the correct legal standards. The BIA Board member asked Board’s counsel a question: “I noticed in the Resolution 12-1, which was read earlier, ANILCA clearly anticipates closure of sports hunting where they would serve to continue subsistence uses, is that in the Federal closure policy?” Counsel responded: “I’ve just been handed a copy and I’ll read the sentence into the record. ‘When necessary for the conservation of healthy populations of fish and wildlife, to continue subsistence uses of such populations, the Federal Board is authorized to restrict or close the taking of fish and wildlife by non-subsistence users.’” Counsel did not elaborate, and did not clarify that the standard is not “serve to” continue subsistence uses, it is “*necessary to*” continue (interpreted in the Closure Policy as “necessary to provide a meaningful preference” for subsistence uses). [Transcript of 2012 FSB meeting at p. 229]

The application of the incorrect legal standards in 2012 flowed through to and tainted the 2014 action, since several Board members voted against the State’s 2014 proposal because they believed nothing had changed since 2012. [FSB 4/18/14 Meeting Tr. at pp. 505-06, 510]. Board members’ application of incorrect closure standards warrants the Board’s reconsideration of its decision.

V. The Board Considered Irrelevant and Unlawful Evidence in Making Its Decision.

The transcript of the testimony and deliberations at the 2012 and 2014 Board meetings and RAC meetings indicates the closure is driven by a desire of local residents to keep outsiders from hunting in the area. This desire may be understandable but it is not a lawful consideration, because ANILCA and the Closure Policy protect non-subsistence hunting as long as a

meaningful subsistence priority is provided.³ The desire to exclude outsiders is implicit in the vague and shifting concerns about trespass and outsiders' use of aircraft (even though local residents use aircraft to access the area), and occasionally it is explicit in the testimony.⁴ That the Board improperly relied on this factor is apparent, for example in the comment by a Board member that he would "vote in opposition of it, just based on the cultural significance of the people of the area" and the notion that the "connection to the land and the resource to the people in the area is generally lost due to trying to provide an opportunity for other people to come in and share that resource in that area." [FSB 4/18/14 Tr. at 50]. A bad decision resulted from perpetuation of the Board's reliance on rumors and hearsay.

An agency action will be found to be arbitrary and capricious if "the agency has relied on factors which Congress has not intended it to consider." *Alaska v. Federal Subsistence Bd.*, 544 F.3d 1089, 1094 (9th Cir. 2008). Congress intended that public lands would be open to the public and that non-Federally-qualified hunters as well as Federally-qualified hunters would be able to use public lands in Alaska, including hunting on those lands, as long as a meaningful preference for

³ See *Ninilchik Traditional Council v. United States*, 227 F.3d 1186, 1192 (9th Cir. 2000) ("Congress, however, articulates other statutory aims as well. In ANILCA's statement of purpose, for instance, Congress declares as a goal to 'preserve wilderness resource values and related recreational opportunities including but not limited to hiking, canoeing, fishing, and sport hunting' § 3101(b).")

⁴ At the 2012 Board meeting, Bob Childers, Executive Director of the Gwitch'in Steering Committee, testified that Arctic Village residents:

didn't feel comfortable being there anymore. There was folks in -- there was an airplane camp right there at Red Sheep Creek, there's hunters in there, they just felt really uncomfortable, not that there'd been -- there'd been a couple incidents, but nothing that was very serious, but they just felt like it wasn't that big a place, that they couldn't go there. They talked about -- one of the things that was repeated again and again in those interviews was something like, you know, we don't know who those people are, we don't know who their parents were, we don't know where they came from and we don't know what they're going to do. And people -- you know, there was a couple incidents where people may have felt threatened, those incidents get passed around. When we started doing that -- those interviews people hadn't -- several of the people I talked with hadn't hunted in Red Sheep Creek in several years. And when I asked them why it was always the same reason, they just didn't feel like there was enough room for them there anymore. There's also a number of cultural sites in the valley, ...

[Transcript of 2012 FSB meeting at p. 197]. In response, RAC representative Ralph Lohse commented

on your -- what you were saying about the uncomfortableness. I know from being around I'll say long term residents of Cordova who are used to hunting, if there's somebody else's boat there or somebody else is in the valley, they don't go hunting there, you know, you don't -- the average subsistence user is not into combat hunting or combat fishing, if there's somebody else there you go someplace else and if there's no place else to go you go home. And I could understand that very fully for -- from a village standpoint out there, this is a place that you've been used to going and there's somebody else going, you don't go hunt on top of them, you..... you know, you wait until there's nobody else there.

[*Id.*]

subsistence uses is provided. Congress did not intend the Board to consider, and the Board should have been instructed that it cannot consider, the desires of local residents and hunters simply to exclude others from the area. The Board should have been instructed to consider, and should have considered, only the actual impacts on subsistence from hunting by non-Federally-qualified users.

VI. The Board Did Not Adequately Consider and Adopt Less Restrictive Alternatives to Closure As Required By Its Closure Policy.

The Board's Closure Policy states that proposed closures will be analyzed to "identify the availability and effectiveness of other management options that could avoid or minimize the degree of restriction to subsistence and non-subsistence users." For this analysis to be meaningful, not only must there be such an analysis, the Board must consider less restrictive alternative options and adopt them if they will provide the necessary protection of the subsistence preference in a less restrictive manner. Even if there had been a supportable reason for placing restrictions on non-Federally-qualified users, the Board did not consider less restrictive options, including the potential effectiveness of the new State-approved hunter education class in minimizing the real and perceived conflicts with subsistence. A variety of educational possibilities could have been explored, such as with aircraft noise (for example, suggesting agreed-upon altitudes and minimizing "fly-bys"). Other possibilities beyond the State's proposed class also were not considered. For example, in 2012 Jack Reakoff suggested keeping these drainages closed to non-Federally qualified hunters on the opening day of the sheep season and then opening them a few days later to alleviate opening-day pressures, but it does not appear that the Board considered such an option in 2012 or 2014.⁵

Further, the Board did not consider alternatives that could alleviate non-subsistence concerns, such as trespass (for example, if the class were to include maps showing the location of allotments and other private lands) and cultural sensitivity (such as with education of hunters on the nature and importance of subsistence, cultural and local norms, and culturally and locally important areas and sites).

VII. Closing the Drainages to a Small Group of Occasional Users While Leaving It Open Without Restriction to a Large Group of Other Annual Users is Arbitrary and Capricious.

As discussed above, there is no evidence that aircraft noise or the presence of non-Federally-qualified hunters or others (users who are expressly authorized by ANILCA to use public lands)

⁵ [Transcript of 2012 FSB meeting at p. 213]. Mr. Reakoff suggested that "there's this opening day syndrome, everybody's got to get there on the opening day. And so if you don't allow hunters, non-subsistence hunters to hunt on the opening day, that's the main stress period. They'll be hunting somewhere else. If you displace them for a 10 day period or a 20 day period until the end of August you would have -- basically alleviate a lot of the local people's stresses." [*Id.* at 212-13].

in any way affects the subsistence preference accorded to Federally-qualified users. The continued closure to a small handful of hunters is arbitrary, capricious, and unsupported by substantial evidence. Further, even aircraft noise or the presence of others were appropriate concerns, it is arbitrary and capricious to keep the drainages closed only to non-Federally-qualified hunters, whose use has been shown to be occasional, sporadic, and in small numbers, while keeping them open to all other recreationalists and other users, who use the area annually in much greater numbers and whose relative impacts are much greater, without addressing potential impacts from those users.

VIII. Conclusion

The State's proposal, WP14-51, would open the area to a few sheep hunters for about 41 days, August 10 through September 20. The Federally-qualified subsistence hunters would continue to be able to hunt sheep in these drainages for about 271 days, August 10 through April 30, and thus would continue to enjoy a meaningful subsistence preference, as OSM recognized in 2012 when it recommended against closing the area to non-Federally-qualified users.

The State urges the Board reconsider its action on Proposal WP14-51, and to take a hard look at all of the evidence in the record it relied upon when closing the area in 2012 and refusing to reopen the area in 2014. There is no evidence regarding actual impacts on subsistence sheep hunting in the area from non-subsistence hunting. In fact, there is no evidence of actual Federally-qualified subsistence sheep hunting in these drainages. The stated reasons for the closure indicate local people simply don't want sheep hunters coming in from outside the area, in spite of a serious lack of evidence of impacts on subsistence hunting. The testimony about alleged trespassing and sheep displaced by airplane noise was vague, was not tied to any particular people or location, and was not tied to impacts on subsistence. There is some discussion by the Board members recognizing use of the area by other users, but it is unclear from the record, assuming trespassing occurred and planes caused sheep to move, the extent of the alleged trespassing and sheep displacement, whether the culprits were sheep hunters (either local or visitors) or other visitors to the area, and whether trespassing or sheep displacement continues to occur. Most importantly, the record lacks evidence of any actual impacts on subsistence sheep hunting. Finally, the Board must consider other lesser restrictive alternatives, including the impact of the new State-approved hunter education class. The Board's decision to disregard the potential of educating sheep hunters on ethics and orientation was arbitrary and capricious.

The Board's actions are inherently inconsistent: The Board closed the area in 2012 without evidence about the subsistence uses in the area, concluding that hunting by a few non-Federally-qualified hunters may potentially adversely impact subsistence users. The Board's decision was not based on substantial evidence in the record, but merely on self-serving statements that having other hunters in the area affects ability to hunt. The Board did not request details or actual facts. Yet the Board also concluded that it needs more details and cannot determine whether the State's

hunter ethics and orientation course would have an effect on subsistence users, and therefore will keep the closure in place, thereby denying the State an opportunity to demonstrate the effectiveness of such a course. Reconsideration by the Board of its action on WP14-51 would allow the Board the opportunity to apply the correct standards for closure and to review and correct its conclusions regarding subsistence impacts in the Red Sheep Creek and Cane Creek drainages. Keeping the area closed simply to keep outsiders from hunting sheep in the area is not permissible under ANILCA. The State understands and supports the residents' desire to have the right to subsistence hunt for sheep in these drainages. WP14-51 would have no impact on the healthy population of sheep, and would not adversely affect the minimal use of sheep by Federally-qualified subsistence users.

STATE OF ALASKA
DEPARTMENT OF FISH AND GAME



17 June 2014

DATED: _____

DOUG VINCENT-LANG, DIRECTOR –
DIVISION OF WILDLIFE CONSERVATION
FOR CORA CAMPBELL, COMMISSIONER