

WP14-51 Executive Summary	
General Description	Proposal WP14-51 requests that the Red Sheep and Cane Creek drainages be opened to non-Federally qualified users Aug. 10 – Sept. 20 in the Arctic Village Sheep Management Area (AVSMA) of Unit 25A, and that a person hunting within the Red Sheep Creek/ Cane Creek portion of the AVSMA of Unit 25A possess proof of completion of a department-approved hunter ethics and orientation course (to include land status and trespass information) upon hunting in this area. <i>Submitted by the State of Alaska.</i>
Proposed Regulation	Unit 25A — Sheep <i>Unit 25A — Arctic Village Sheep Management Area – 2 rams by Federal registration permit only. Federal public lands are closed to the taking of sheep except by rural Alaska residents of Arctic Village, Venetie, Fort Yukon, Kaktovik, and Chalkyitsik hunting under these regulations.</i>
OSM Preliminary Conclusion	Oppose
Eastern Interior Regional Council Recommendation	
North Slope Regional Council Recommendation	
Interagency Staff Committee Comments	
ADF&G Comments	
Written Public Comments	None

**DRAFT STAFF ANALYSIS
WP14-51**

ISSUES

Proposal WP14-51, submitted by the State of Alaska, requests that the Red Sheep and Cane Creek drainages be opened to non-Federally qualified users Aug. 10 – Sept. 20 in the Arctic Village Sheep Management Area (AVSMA) of Unit 25A, and that a person hunting within the Red Sheep Creek/Cane Creek portion of the AVSMA of Unit 25A possess proof of completion of a department-approved hunter ethics and orientation course (to include land status and trespass information) upon hunting in this area.

DISCUSSION

In January 2012, the Federal Subsistence Board closed the Red Sheep Creek and Cane Creek drainages to sheep hunting except by Federally qualified residents of Arctic Village, Venetie, Fort Yukon, Kaktovik and Chalkyitsik. The proponent states that the Red Sheep and Cane Creek drainages were closed unnecessarily. The proponent further states that the area was closed because of user conflicts focused mainly on issues of trespass. The proponent proposes lifting the closure to non-Federally qualified users and requiring hunters to complete an ethics and orientation course prior to hunting sheep in the Red Sheep and Cane Creek drainages. The Alaska Board of Game adopted an ethics and orientation course requirement to safeguard against user conflicts in this area in March 2012. The proponent states that an ethics and orientation course would alleviate the need for closing the Red Sheep Creek and Cane Creek drainages to non-Federally qualified sheep hunting.

Title VIII, § 815(3) of the Alaska National Interest Lands Conservation Act (ANILCA) addresses the restriction on the take of fish and wildlife for nonsubsistence uses. The Secretaries have empowered the Federal Subsistence Board (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;

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).

The full closure policy is included as **Appendix A**.

Existing Federal Regulation

Unit 25A — Sheep

Unit 25A — Arctic Village Sheep Management Area – 2 rams by Federal registration permit only. Federal public lands are closed to the taking of sheep except by rural Alaska residents of Arctic Village, Venetie, Fort Yukon, Kaktovik, and Chalkyitsik hunting under these regulations. Aug. 10 – Apr. 30

Proposed Federal Regulation

Unit 25A — Sheep

*Unit 25A — Arctic Village Sheep Management Area — 2 rams by Federal registration permit only. Federal public lands, **except the drainages of Red Sheep Creek and Cane Creek during the period of Aug. 10–Sept. 20 in accordance with State regulation 5AAC 92.003(i)**, are closed to the taking of sheep except by rural Alaska residents of Arctic Village, Venetie, Fort Yukon, Kaktovik, and Chalkyitsik hunting under these regulations.¹* Aug. 10 – Apr. 30

Existing State Regulations

Unit 25A — Sheep

Residents, one ram with full-curl horn or larger Aug. 10 – Sept. 20

OR

Three sheep by permit available online at hunt.alaska.gov or in person in Fairbanks and Kaktovik beginning Sept. 19. The use of aircraft for access to hunt sheep and to transport harvested sheep is prohibited in this hunt except into and out of the Arctic Village and Kaktovik airports. No motorized access from the Dalton Highway. Oct. 1 – Apr. 30

One ram with full-curl or larger for nonresidents Aug. 10 – Sept. 20

Extent of Federal Public Lands

Federal public lands comprise approximately 76% of Unit 25A and consist of 74% U.S. Fish and Wildlife Service managed lands and 2% Bureau of Land Management managed lands.

Customary and Traditional Use Determinations

Residents of Arctic Village, Chalkyitsik, Fort Yukon, Kaktovik, and Venetie have a positive customary and traditional determination for sheep in Unit 25A.

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.

Regulatory History

Requests to open and close the Red Sheep and Cane Creek drainages in the Arctic Village Sheep Management Area (AVSMA) to non-Federally qualified users have been before the Federal Subsistence Board nine times since 1991. The issue has been contentious. See **Map 1**.

In 1995, the AVSMA, which is closed to all but Federally qualified subsistence users, was expanded to include the Red Sheep and Cane Creek drainages. The initial closure was established to provide for continued subsistence use of sheep in the area (FSB 1995). In 2006, the Board addressed Proposal WP06-57, submitted by Alaska Department of Fish and Game (ADF&G), which requested removal of the Federal closure within the AVSMA. 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 a population survey and a revised analysis.

In July 2006, the U.S. Fish and Wildlife Service submitted 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 following completion of a sheep population survey. Results of the survey found that the sheep population in these drainages was healthy, so the Board adopted the Special Action to lift the closure effective for the 2006 season. Subsequent to action on Special Action WSA06-03, ADF&G submitted Proposal WP07-56, which requested lifting the Federal closure within the Red Sheep and Cane Creek drainages. The Board adopted this proposal in May 2007 because sheep populations in these drainages were determined to be healthy (FSB 2007:305).

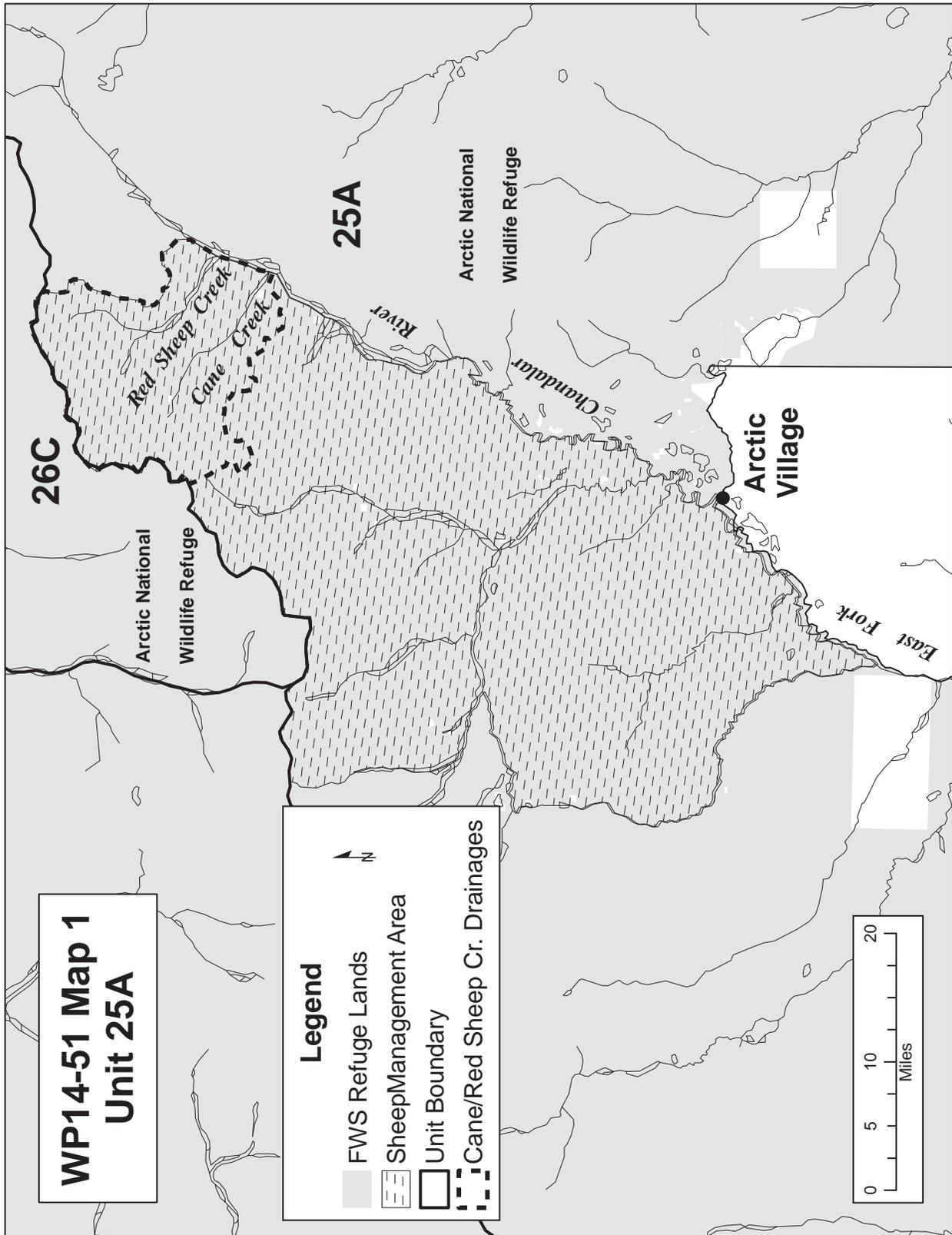
In January 2012, the Board adopted wildlife proposal 12-76 to close the Red Sheep and Cane Creek drainages to non-Federally qualified users for sheep hunting. Both the Eastern Interior and the North Slope Regional Advisory Councils supported this closure. Eight Arctic Village residents testified in favor 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 in his 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 State’s proposal to require hunter education and ethics orientation did not “go far enough”; 3) 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 4) the Arctic National Wildlife Refuge staff supports the closure (FSB 2012:224–226). The Board passed the motion.

For additional regulatory history on this closure see **Appendix B**.

Biological Background

The current ADF&G management objectives for the Unit 25 sheep population are to manage for a maximum sustainable harvest of Dall sheep rams with full-curl or larger horns (Caikoski 2011).

Surveys were conducted in 2006, 2007, 2008, and 2012 within the Red Sheep and Cane Creek drainages. Densities of sheep have remained stable with a density of 1.7 sheep/mile² in 2006 (Payer 2006) and 1.8



sheep/mile² in 2012 (Wald 2012). In 2006, a total of 188 sheep were counted from Red Sheep and Cane Creek, while 197 sheep were counted in 2012. Although densities of sheep in the area are low relative to other areas in the Brooks Range, this is probably a reflection of the poor habitat quality of the area (Payer 2006). In 2008, during a sheep population-composition survey, 130 sheep in 20 groups were observed (Payer 2008) with a ratio of 59 lambs:100 ewes, suggesting good productivity. A 2012 survey from Red Sheep to Cane Creek counted 113 ewe-like animals, 35 lambs, 35 “other” rams, and 14 mature rams (Wald 2012).

In 1991, the density of Dall sheep in the Red Sheep and Cane Creek drainages was estimated to be 2.25 sheep/mile² (Mauer 1996), which was higher than that found during surveys in 2006 (1.7 sheep/mile² and 2012 (1.8 sheep/mile²). The sheep population may have declined during this interval despite harvest restrictions for non-Federally qualified users. This is consistent with trends observed in other Brooks Range sheep populations, and likely reflects incomplete recovery from weather-related declines during 1990–1994 (Mauer 1996). Thirty-two of 96 rams (33%) were classified as “mature” in the 2006 survey (Payer 2006) and 6 of 14 rams (43%) were classified as “mature” in the 2007 survey. The “mature” category included rams with full-curl horns as well as larger-bodied rams having horns with massive bases and horn tips pointing upwards. These latter rams may have been less than full curl, but could not be differentiated from full-curl rams from a fixed-wing aircraft.

Mauer (1996) estimated sheep density in the southern part of the AVSMA between Cane and Crow Nest Creeks to be only 0.2 sheep/mile². Most of the sheep that Mauer (1996) observed in this area were clustered around mineral licks between Crow Nest and Ottertail Creeks. Similarly, Payer (2006) surveyed the area between Ottertail and Crow Nest Creeks (but not the remainder north of Ottertail Creek to Cane Creek), and observed 87 sheep, 85 of which were associated with two mineral licks.

There are significant differences in sheep abundance and distribution within the AVSMA (Mauer 1990). Specifically, the region north of Cane Creek has supported a sheep density approximately eight times greater than the region between Crow Nest and Cane Creeks. This is probably related to differences in geology and vegetation; shale formations that occur more commonly north of Cane Creek support more vegetation and therefore this area supports more sheep (Smith 1979).

Harvest History

Arctic National Wildlife Refuge staff members have engaged in outreach efforts to encourage Federally qualified users to document their harvests in general, as well as their use of the AVSMA for sheep hunting. Nonetheless, data on reported use of the AVSMA by Federally qualified users is sparse, and just how many sheep are harvested by Federally qualified subsistence users in the AVSMA is not known. Compliance with the harvest permit system is generally low for residents of Arctic Village, consistent with harvest reporting in other parts of rural Alaska (cf. Andersen and Alexander 1992). A total of six Federal permits to harvest sheep in the AVSMA were issued between 1991 and 2004; none were returned (USFWS 2007). Between 2005 and 2007, 27 Federal registration permits were issued for the AVSMA; 4 sheep were reported harvested and 23 harvest reports were not returned. No permits were issued in 2008 and 2009. Four permits were issued in 2010 for the AVSMA, and of these, one sheep was reported harvested (USFWS 2011).

Some information from household surveys is available on sheep harvests by Arctic Village, Fort Yukon, and Kaktovik residents (**Table 1**), although the data does not specify location of harvest. ADF&G household survey data indicates that Arctic Village residents harvested three sheep in 1993, one in 1996, and five in 1997 (**Table 2**) (ADF&G 2011). Dinero (2003) reported that 5 (14%) of 35 Arctic Village

Table 1. The use and harvest of Dall sheep based on household surveys (ADF&G 2011).

Community	Study Year	Percentage of Households					Dall Sheep Harvest				
		Using Sheep (%)	Hunt-ing Sheep (%)	Harvest-ing Sheep (%)	Giving Sheep (%)	Receiv-ing Sheep (%)	Reported (Number)	Expanded to House-holds Not Surveyed (Number)	Lower Estimate (Number)	Higher Estimate (Number)	95% Con-fidence Interval (+/- %)
Arctic Village	1997							5			
	1996							1			
	1995							0			
	1994							0			
	1993							3			
	Fort Yukon	1998							0		
1997								0			
1996								0			
1995								0			
1994								0			
1993								0			
1987		9	3	0	0	9	0	0	0	0	0
Kaktovik ^a		1992	70		28	32	64	33	44	32	56
	1986	75		9	9	68	15	17	10	24	41
	1985	79		21	21	74	37	47	28	66	40

Blank cell=question not asked or information not available.

^a The majority of the harvest of Dall sheep by residents of Kaktovik was in Unit 26 (Jacobson and Wentworth 1982).

Table 2 . Summary of Dall Sheep Harvests from Household Surveys in Arctic Village 1993-1997 ADF&G 2011, CSIS Database

Community Name	Study Year	Resource	Percent Harvesting	Percent Receiving	Units	Estimated Harvest	Estimated Pounds Harvested
Arctic Village	1993	Dall Sheep	unkwn	unkwn	Individual	3	312
Arctic Village	1993	Dall Sheep, Male	unkwn	unkwn	Individual	3	312
Arctic Village	1996	Dall Sheep	unkwn	unkwn	Individual	1	104
Arctic Village	1996	Dall Sheep, Male	unkwn	unkwn	Individual	1	104
Arctic Village	1997	Dall Sheep	unkwn	unkwn	Individual	5	520
Arctic Village	1997	Dall Sheep, Sex Unknown	unkwn	unkwn	Individual	5	520

households (out of 40 total households in the community) harvested sheep during the year of his study (1998–1999). At the Board meeting in January 2012, Bob Childers noted that typically between two and five sheep are harvested each year. He also noted that adult rams are generally harvested, although elders prefer ewes or younger sheep because they are easier to eat (FSB 2012:193). Gideon James from Arctic Village testified that there are about two to four good sheep hunters, who then share what they harvest with the Arctic Village residents as well as other villages, including Ft. Yukon (FSB 2012:202).

Harvest success by non-Federally qualified hunters in Red Sheep and Cane Creek drainages averaged 69% from 2006 to 2009 (2010 data not yet available). Sheep harvests under State regulations ranged from 2–7 sheep annually between 2006 and 2009 (**Table 3**). However, between 2006, when the Red Sheep and Cane Creek drainages were re-opened, and 2009, a total of 18 rams were harvested by non-Federally qualified hunters (Payer 2011, pers. comm.).

Table 3. Summary of Dall Sheep Harvest for Red Sheep & Cane Creek Drainages under State regulations ADF&G 2011

Year	Number Hunters	Number Successful Hunts
2006	9	7
2007	5	5
2008	8	4
2009	4	2
2010	Not yet available	
Average	6.5	4.5

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 ties to and are the primary users of 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, and that these areas continue to be culturally significant to them. Extensive discussion included in previous proposal analyses (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 Village (USFWS 1993, 1995). Gustafson (2004), in study of traditional ecological knowledge, discusses the importance and continued use of the Red Sheep Creek Area for sheep hunting. Testimony by Arctic Village residents in 2006, 2007, and 2011 at the Eastern Interior Regional Advisory Council meeting about hunting in the Red Sheep and Cane Creek drainages demonstrates continued hunting in these areas. 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.; Mathews 2011, pers. comm.; John 2011, pers. comm.).

The trip from Arctic Village to Red Sheep Creek is over 100 miles and residents use great effort both physically and economically to hunt sheep in these drainages (Bryant 2011, pers. comm., John 2011, pers. comm., Gilbert 2011, pers. comm., Swaney 2011, pers. comm.). The residents of Arctic Village have repeatedly expressed concerns about non-Federally qualified users hunting sheep in Red Sheep and Cane Creek drainages and have provided testimony and public comment at numerous Council and Federal Subsistence Board meetings to attest to the importance of Red Sheep Creek, to describe their use of the area, and to explain that the presence of non-Federally qualified users has affected their access and reduced their harvest opportunities (EIRAC 2006, 2007, 2011; FSB 1991, 1995, 2006, 2007, and 2011; USFWS 1993, 1995, 1996, 2006, 2007; Swaney 2011, pers. comm.; Gilbert 2011, pers. comm.; John 2011, pers. comm.; and see **Appendix B**).

Among the Gwich'in, there is a story about how Red Sheep Creek was named, which illustrates the link between subsistence and religious practices and beliefs. It also underscores the importance of this area to the residents of Arctic Village. The story relates Red Sheep Creek to the Episcopalian Church, an influential factor in establishing Arctic Village, and sheds some light on why Arctic Village residents consider Red Sheep Creek a revered place (Dinero 2007, 2011, pers. comm.). The story begins with people who were hungry. One day at the church someone spotted caribou moving in the brush. Upon closer inspection people realized they were looking at unusual sheep with red markings, 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.). The story of the red sheep links a prestigious subsistence resource to traditional and modern beliefs and practices, and demonstrates the complementary nature of subsistence to place, tradition, culture, and modern beliefs.

Traditionally Arctic Village residents have harvested sheep in early fall (late August or early September) or in early winter (November) (Caulfield 1983; FSB 2007). "Sheep taste best in the fall," as documented in earlier research (USFWS 1994:353, Proposal 54). Residents generally travel to hunt sheep by boat, then by foot from hunting camps in the fall or by snowmachine in late fall, but not in winter given the dangerous terrain and winter weather (USFWS 1993, Proposal 58).

Arctic Village residents have commented that allowing non-Federally qualified users to harvest sheep in Red Sheep Creek and Cane Creek during the time when Arctic Village residents customarily and traditionally harvested sheep (with the exception of November) affects Arctic Village residents' ability to access an important sheep hunting area. Since 1993, Arctic Village residents have noted to the Board that plane traffic and use by non-Federally qualified users have interfered with their ability to successfully hunt sheep in the Red Sheep and Cane Creek drainages. Residents reported that plane fly-overs "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). Gideon James from Arctic Village explained that Red Sheep and Cane Creek are both very narrow valleys, and consequently flights through the area disturb the sheep (FSB 2012:201). These disturbances have continued to

be described by Arctic Refuge staff (Voss 2011, pers. comm.; Matthews 2011, pers. comm.), and local residents (Swaney 2011, pers. comm., John 2011 pers. comm., Gilbert pers. comm.). 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. Results of this study could help provide managers with guidelines for determining spatial and temporal restrictions to aircraft in areas frequented by this species.

While there may be no clear conservation reasons to close Red Sheep and Cane Creek to non-Federally qualified users, from the perspective of Arctic Village residents, there are reasons related to adverse impacts on subsistence users to do so. Arctic Village residents have testified that allowing non-Federally qualified users to harvest sheep in Red Sheep Creek and Cane Creek during August 10 to September 20 adversely affects their ability to hunt in their traditional hunting area, and impairs their ability to successfully harvest sheep.

Other Alternative Considered

One alternative to a closure would be to move the season opening from August 10 to July 31. Arctic Village residents have stated that the influx of non-Federally qualified users has interfered with their traditional subsistence uses and practices, especially if airplanes displace sheep to higher elevations. The season extension would allow ten additional days at the beginning of the season without competition from non-Federally qualified users. The timing of the season extension may not be preferred by Arctic Village residents as they generally harvest sheep in early fall (late August or early September) or early winter (November). Concerns also have been raised by Arctic Village residents in the past that opening the season too early makes it too hot to care for the sheep meat adequately (FSB 1995:623). Federally qualified subsistence users already have priority to harvest later in the season as the Federal season is currently Aug. 10 – Apr. 30, whereas the State season is Aug. 10–Sept. 20. The Board considered, but did not adopt, this alternative in 2012 (FSB 2012).

Effects of Proposal

If adopted, this proposal would open the Aug. 10 – Sept. 20 sheep hunting season to non-Federally qualified hunters in Red Sheep and Cane Creek drainages and require all sheep hunters, including Federally qualified users, in these drainage to possess proof of completion of an ADF&G-approved hunter ethics and orientation course, thereby incorporating State regulations (5AAC 93.001(i)) directly into Federal regulations. The State has not developed this course, which makes it difficult to anticipate any effects on subsistence users. Details of the State course are needed prior to adopting any proposal based on such a course.

Adopting this proposal and opening this area to non-Federally qualified users may adversely affect subsistence users' access and ability to harvest sheep in the area and thereby fail to provide a meaningful preference for Federally qualified subsistence users.

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 because non-Federally qualified users would be limited to one full curl ram during the hunting season. A harvest of full curl rams would not be expected to reduce the productivity of the local sheep population.

OSM PRELIMINARY CONCLUSION

Oppose Proposal WP14-51.

Justification

Section 815(3) of ANILCA authorizes restrictions on the taking of fish and wildlife for nonsubsistence uses on Federal public lands only if necessary for the conservation of healthy populations of fish and wildlife, to continue subsistence uses of such populations, or pursuant to other applicable law. The proposal under consideration addresses the subsistence use clause of Section 815(3), which provided the basis for the Board's action to close the area to non-Federally qualified users in 2012.

While there may be no clear conservation reasons to close Red Sheep and Cane Creek to non-Federally qualified users, there are reasons based on potential adverse effects to subsistence users to do so. Arctic Village residents have testified that allowing non-Federally qualified users to harvest sheep in Red Sheep Creek and Cane Creek during August 10 to September 20 adversely affects their ability to hunt in their traditional hunting area and impairs their ability to successfully harvest sheep. While the efforts of the proponent to require hunter education and ethics orientation are recognized as good-faith efforts, such efforts do not go far enough to assure that Arctic Village residents have continued opportunity to harvest sheep in the Red Sheep and Cane Creek drainages and to receive the benefits of a subsistence priority.

In addition, adopting this proposal would require Federally qualified subsistence 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 the course.

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

FEDERAL SUBSISTENCE BOARD

Adopted August 29, 2007

PURPOSE

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

INTRODUCTION

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) establishes a priority for the taking of fish and wildlife on Federal public lands and waters for non-wasteful subsistence uses over the taking of fish and wildlife on such lands for other purposes (ANILCA Section 804). When necessary for the conservation of healthy populations of fish and wildlife or to continue subsistence uses of such populations, the Federal Subsistence Board is authorized to restrict or to close the taking of fish and wildlife by subsistence and non-subsistence users on Federal public lands and waters (ANILCA Sections 804 and 815(3)). The Board may also close Federal public lands and waters to any taking of fish and wildlife for reasons of public safety, administration or to assure the continued viability of such population (ANILCA Section 816(b)).

BOARD AUTHORITIES

- ANILCA Sections 804, 814, 815(3), and 816.
- 50 CFR Part 100 and 36 CFR Part 242, Section .10(d)(4).

POLICY

The decision to close Federal public lands or waters to Federally qualified or non-Federally qualified subsistence users is an important decision that will be made as set forth in Title VIII of ANILCA. 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." Any individual or organization may propose a closure. 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.

Like other Board decisions, closure actions are subject to change during the yearly regulatory cycle. In addition, closures will be periodically re-evaluated to determine whether the circumstances necessitating the original closure still exist and warrant continuation of the restriction. When a closure is no longer needed, actions to remove it will be initiated as soon as practicable. The Office of Subsistence Management will maintain a list of all closures.

Decision Making

The Board will:

- Proceed on a case - by - case basis to address each particular situation regarding closures. In those cases for which conservation of healthy populations of fish and wildlife resources allows, the Board will authorize non-wasteful subsistence taking.
- Follow the statutory standard of "customary and traditional uses." Need is not the standard. Established use of one species may not be diminished solely because another species is available. These established uses have both physical and cultural components, and each is protected against all unnecessary regulatory interference.
- Base its actions on substantial evidence contained within the administrative record, and on the best available information; complete certainty is not required.
- Consider the recommendations of the Regional Advisory Councils, with due deference (ANILCA § 805 (c)).
- Consider comments and recommendations from the State of Alaska and the public (ANILCA § 816 (b)).

Conditions for Establishing or Retaining Closures

The Board will adopt closures to hunting, trapping or fishing by non-Federally qualified users or Federally qualified subsistence users when one or more of the following conditions are met:

- Closures are necessary for the conservation of healthy populations of fish and wildlife:
 - a) When a fish or wildlife population is not sufficient to provide for both Federally qualified subsistence users and other users, use by non-Federally qualified users may be reduced or prohibited, or
 - b) When a fish or wildlife population is insufficient to sustain all subsistence uses, the available resources shall be apportioned among subsistence users according to their:

- 1) Customary and direct dependence upon the populations as the mainstay of livelihood,
 - 2) Local residency, and
 - 3) Availability of alternative resources, or
- c) When a fish or wildlife population is insufficient to sustain any use, all uses must be prohibited.
- Closures are necessary to ensure the continuation of subsistence uses by Federally qualified subsistence users.
 - Closures are necessary for public safety.
 - Closures are necessary for administrative reasons.
 - Closures are necessary “pursuant to other applicable law.”

Considerations in Deciding on Closures

When acting upon proposals recommending closure of Federal public lands and waters to hunting, trapping, or fishing, the Board may take the following into consideration to the extent feasible:

- The biological history (data set) of the fish stock or wildlife population.
- The extent of affected lands and waters necessary to accomplish the objective of the closure.
- The current status and trend of the fish stock or wildlife population in question.
- The current and historical subsistence and non-subsistence harvest, including descriptions of harvest amounts, effort levels, user groups, and success levels.
- Pertinent traditional ecological knowledge.
- Information provided by the affected Regional Advisory Councils and Alaska Department of Fish and Game.
- Relevant State and Federal management plans and their level of success as well as any relationship to other Federal or State laws or programs.
- Other Federal and State regulatory options that would conserve healthy populations and provide a meaningful preference for subsistence, but would be less restrictive than closures.

- The potential adverse and beneficial impacts of any proposed closure on affected fish and wildlife populations and uses of lands and waters both inside and outside the closed area.
- Other issues that influence the effectiveness and impact of any closure.

Reviews of Closures

A closure should be removed as soon as practicable when conditions that originally justified the closure have changed to such an extent that the closure is no longer necessary. A Regional Council, a State or Federal agency, or a member of the public may submit, during the normal proposal period, a proposal requesting the opening or closing of an area. A closure may also be implemented, adjusted, or lifted based on a Special Action request according to the criteria in 50 CFR 100.19 and 36 CFR 242.19.

To ensure that closures do not remain in place longer than necessary, all future closures will be reviewed by the Federal Subsistence Board no more than three years from the establishment of the closure and at least every three years thereafter. Existing closures in place at the time this policy is implemented will be reviewed on a three-year rotational schedule, with at least one - third of the closures reviewed each year.

Closure reviews will consist of a written summary of the history and original justification for the closure and a current evaluation of the relevant considerations listed above. Except in some situations which may require immediate action through the Special Action process, closure review analyses will be presented to the affected Regional Council(s) during the normal regulatory proposal process in the form of proposals to retain, modify or rescind individual closures.

/S/ Mike R. Fleagle


Chair, Federal Subsistence Board

/S/ Thomas O. Melius


Board Member, U.S. Fish and Wildlife Service

/S/ Niles Cesar


Board Member, Bureau of Indian Affairs

/S/ Denny Bschor


Board Member, U.S. Forest Service

/S/ Marcia Blaszak


Board Member, National Park Service

/S/ T. P. Lonnie


Board Member, Bureau of Land Management

APPENDIX B REGULATORY HISTORY FOR UNIT 25A SHEEP.

Regulatory Year Initiated: 1991

Proposal number of initial closure and any subsequent proposals: The establishment of the Arctic Village Sheep Management Area (AVSMA) closed Federal public lands to non-Federally qualified users in 1991. The establishment of the AVSMA did not include the Cane Creek and Red Sheep Creek drainages. OSM was not able to find the original proposal for the establishment of the AVSMA. The Federal Subsistence Board (Board) meeting transcript for June 4, 1991 mentions the establishment of the AVSMA at the “last meeting;” however, the previous Board meeting transcript (December 17, 1990) does not include proceedings regarding the AVSMA.

1991 — Proposal 91-21, submitted by Brooks Range Arctic Hunts, requested that the Board remove the closure restriction to allow for the harvest of sheep by non-Federally qualified users in the closure area. The Board rejected the proposal.

1991 — Proposal 91-25, submitted by the Arctic Village Council, requested that the Board include the drainages of Cane Creek and Red Sheep Creek into the Federal closure area. The Board rejected this proposal.

1993 — Proposal P93-58, submitted by the Arctic Village Council, again requested the Board to include the drainages of Cane Creek and Red Sheep Creek within the Management Area. The Board rejected the proposal on the basis that the drainages of Cane Creek and Red Sheep Creek supported adequate numbers of sheep to provide for both subsistence and nonsubsistence harvest.

1995 — Proposal 95-54, submitted by the Arctic Village Council, again requested the Board to include the drainages of Cane Creek and Red Sheep Creek into the Federal closure area. A representative of Arctic Village told the Board that Cane Creek and Red Sheep Creek drainages contain many allotments and traditional cultural sites and that this area is the key sheep hunting area for the village. The Board was told by the proponents that the issue was one of displacement of the subsistence users because of considerable air traffic causing the sheep to remain high in the mountains where Arctic Village hunters cannot get to them; and because Arctic Village hunters could not compete with nonlocal hunters using more sophisticated equipment such as more powerful scopes and the use of aircraft to track sheep. The Board recognized that the issue was not one of resource abundance, as staff reported the population could support both subsistence and nonsubsistence harvests. The Board tabled the proposal in April 14, 1995 until they could revisit it in June 1995, after the Arctic Refuge staff had worked with Arctic Village residents. The Board adopted the proposal with a commitment to review the issue the following year. Following that Board’s decision, the Alaska Department of Fish and Game (ADF&G) submitted a Request for Reconsideration 96-06, which was rejected by the Board.

1996 — Proposal 96-55, submitted by the ADF&G, requested to exclude Cane Creek and Red Sheep Creek from the Federal closure area. The analysis of Proposal 96-55 included the results of an Arctic National Wildlife Refuge monitoring project: In a 30-day period during the previous sheep hunting season, forty-two aircraft events by guides based in Red Sheep Creek, who were guiding hunts in drainages east of Red Sheep Creek, were observed. The Board rejected the proposal, expressing disappointment with the absence of dialogue between the State and Arctic Village.

2005 — A 2005 analysis of the Federal closure of the Unit 25A sheep regulations for the Management Area was conducted by OSM staff. The closure was evaluated using three criteria: 1) How the current resource abundance is related to the management objectives for the species, 2) the current resource population trend, and 3) the current hunter harvest trend and/or hunter effort. OSM staff reached a preliminary conclusion that there was no current need for the regulatory closure based on the evaluation of the three criteria, and recommended the affected Councils initiate a proposal to modify or eliminate the closure. OSM staff presented the closure review analysis at the fall 2005 Council meetings. The North Slope and Eastern Interior Regional Councils recommended maintaining the closure after reviewing the closure analysis at their fall 2005 meetings. The Councils felt that the information presented in the closure review analysis did not support the need to eliminate the closure.

2012 — In the motion to close the Red Sheep and Cane Creek drainages, Federal Subsistence Board member Geoff Haskett noted the following: “The Arctic National Wildlife Refuge supports the closure of Red Sheep and Cane Creek drainages in the Arctic Village Sheep Management Area of Unit 25A to non-Federally qualified users during the August 10th, September 20th season to ensure the continuation of traditional subsistence uses of sheep by Arctic Village hunters. Pressure from non-local hunting is affecting the use of and access to traditional prime sheep hunting areas and camp area. These areas have a long history of cultural and subsistence use and are important to residents of Arctic Village. This is clearly evidenced by the number and location of Native allotments, cultural sites and ethnographic studies documenting a long, rich history in this area. They [Arctic Refuge staff] go on to say the user conflict in these drainages is both perceived and real. Arctic Village sheep hunting is carried out in these drainages when other resources, caribou, moose and sheep, are not readily available closer to the community. The hunt is very costly and difficult logistically, therefore the village generally pools its resources to support only their best hunters. To return unsuccessful posed financial hardship on families and the communities. Hunters have stated they’ve turned around because non- local hunters were present on or near the prime area for camping and sheep hunting and the low flying aircraft activity in the drainages has resulted in displacement of sheep to higher elevations and to more distant locations. Complaints of displacement of Arctic Village hunters in this area have been recurring and are a major topic of discussion at annual Refuge/village informational meetings since these drainages were reopened to local – non-local hunters in 2006 and my Refuge folks are telling me this has been a major point of discussion and just a major concern for the...five years since then,. . .(FSB 2012:226-227).” The Board subsequently voted to close the drainages to non-Federally qualified users.

Justification for original closure (Section 815(3) criteria): The Board established the AVSMA in 1991 in response to concerns raised by residents of Arctic Village, who felt that non-Federally qualified hunters interfered with sheep hunting by Arctic Village residents. In 1995, the Board extended the original boundary of the AVSMA to include the Cane Creek and Red Sheep Creek drainages, but then eliminated these areas from Federal closure in 2007. The Board also established the management area to facilitate better harvest reporting. The AVSMA was established in response to social concerns of Federally qualified users to continue subsistence uses (Section 815(3) criteria), and not in response to any biological concerns about the status and trends in the sheep population.