

# **EASTERN INTERIOR ALASKA Subsistence Regional Advisory Council**



*Carl Johnson*

*Lone caribou on the frozen Teklanika River in Denali National Park & Preserve.*

**Meeting Materials**  
February 20–21, 2012  
Fairbanks

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**EASTERN INTERIOR ALASKA SUBSISTENCE REGIONAL ADVISORY COUNCIL**

Pikes Waterfront Lodge, Fairbanks  
February 20 and 21, 9:00 am – 5:30 p.m.

**DRAFT AGENDA**

**PUBLIC COMMENTS:** Public comments are welcome for each agenda item and for regional concerns not included on the agenda. The Council appreciates hearing your concerns and knowledge. Please fill out a comment form to be recognized by the Council chair. Time limits may be set to provide opportunity for all to testify and keep the meeting on schedule.

**PLEASE NOTE:** These are estimated times and the agenda is subject to change. Contact staff for the current schedule. Evening sessions are at the call of the chair.

\*Asterisk identifies action item.

- 1. **Roll Call and Establish Quorum** (*Secretary or Council Coordinator*)
- 2. **Call to Order** (*Chair*)
- 3. **Invocation**
- 4. **Welcome and Introductions** (*Chair*)
- 5. **Review and Adopt Agenda\*** (*Chair*) ..... 1
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  - B. Vice-Chair
  - C. Secretary
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  - C. 805(c) Report/Summary of Federal Subsistence Board Action on Fisheries Proposals
- 9. **Public and Tribal Comment on Non-Agenda Items**
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B. Select date and location of winter 2014 meeting*	
<b>14. Closing Comments</b>	
<b>15. Adjourn (Chair)</b>	

**To teleconference** into the meeting, call the toll free number: 1-877-638-8165, then when prompted enter the passcode: 9060609

The U.S. Fish and Wildlife is committed to providing access to this meeting for those with a disability who wish to participate. Please direct all requests for accommodation for a disability to the Office of Subsistence Management at least five business days prior to the meeting.

If you have any questions regarding this agenda or need additional information, please contact Eva Patton, Council Coordinator at 907-786-3358 or contact the Office of Subsistence Management at 1-800-478-1456 for general inquiries.

**EASTERN INTERIOR ALASKA SUBSISTENCE REGIONAL ADVISORY COUNCIL**  
**DRAFT Meeting Minutes**  
**October 16-17, 2012**  
**Pike's Waterfront Lodge**  
**Fairbanks, Alaska**

**Call to Order**

The meeting was called to order by Chair Sue Entsminger at approximately 8:30 AM.  
Invocation was led by Council member Larry Williams.  
Moment of silence for Council member Isaac Juneby.

**Roll Call**

The following Council members were present and a quorum established: Sue Entsminger (Chair), Lester Erhart, William Glanz, Andy Bassich, Joseph Matesi, Andrew Firmin, Virgil Umphenour, and Larry Williams, Sr. Donald Woodruff participated via teleconference. New Council member James Roberts excused absence.

**Welcome and Introductions**

The following persons were present at the start of the meeting and/or on subsequent days:

Government Agency Employees

Eva Patton - Fish and Wildlife Service, Office of Subsistence Management, Council Coord. Anchorage  
Gene Virden - Federal Subsistence Board, Bureau of Indian Affairs, Anchorage  
Bud Cribly - Federal Subsistence Board, Bureau of Land Management, Anchorage  
David Jenkins - Fish and Wildlife Service, Office of Subsistence Management, Anchorage  
Don Rivard - Fish and Wildlife Service, Office of Subsistence Management, Anchorage  
Jerry Berg - Fish and Wildlife Service, Interagency Staff Committee, Anchorage  
Pat Petrivelli - Interagency Staff Committee, Bureau of Indian Affairs, Anchorage  
Nancy Swanton - Interagency Staff Committee, National Park Service, Anchorage  
Dan Sharp - Interagency Steering Committee, Bureau of Land Management, Anchorage  
Fred Bue - Yukon Area Manager, Fish and Wildlife Service, Fairbanks  
Gerald Maschmann - Fish and Wildlife Service, Fairbanks  
Jeremy Mears - Fish and Wildlife Service, Fairbanks  
Eric Wald - Fish and Wildlife Service, Arctic National Wildlife Refuge, Fairbanks  
Steve Berendson - Fish and Wildlife Service, Yukon Flats National Wildlife Refuge  
Mark Bertram - Fish and Wildlife Service, Yukon Flats National Wildlife Refuge  
Mimi Thomas - Fish and Wildlife Service, Yukon Flats National Wildlife Refuge  
Barbara Cellarius - National Park Service, Wrangell-St. Elias  
Amy Craver - National Park Service, Denali  
Deb Cooper - National Park Service, Anchorage  
Greg Dugeon - National Park Service, Fairbanks  
Tom Liebscher - National Park Service, Fairbanks  
Marcy Okada - National Park Service, Yukon Charley/Gates of the Arctic, Fairbanks  
Ruth Gronquist - Bureau of Land Management, Eastern Interior Field Office, Fairbanks  
Lenore Heppler - Bureau of Land Management, Eastern Interior Field Office, Fairbanks  
Jeannie Cole - Bureau of Land Management, Eastern Interior Field Office, Fairbanks  
Jason Post - Bureau of Land Management, Fairbanks  
Heather Leba - Alaska Department of Fish and Game, Anchorage  
Jeff Park - Alaska Department of Fish and Game, Fairbanks  
Rita St. Louis - Alaska Department of Fish and Game, Fairbanks

Alida Trainor - Alaska Department of Fish and Game, Subsistence Division, Anchorage  
Sarah Hazell - Alaska Department of Fish and Game, Subsistence Division, Anchorage  
Caroline Brown - Alaska Department of Fish and Game, Subsistence Division, Fairbanks  
Steve Hayes - Alaska Department of Fish and Game, Anchorage  
Jason Caikoski - Alaska Department of Fish and Game, Fairbanks  
Jennifer Yuhas – Alaska Department of Fish and Game, Anchorage

#### Tribal Organizations

Victor W. Lord, Nenana Tribe  
Randell Jimmie, Nenana Tribe  
Helium Edwardson, Tanana Tribe and TRM AC  
Alyssa Frothingham, Tanana Chiefs Conference  
Jennifer Fate, Doyon (via teleconference)

#### NGO's/Public

Jill Klein, YRDFA, Anchorage  
Darlene Herbert, Fairbanks  
Dana Herbert, Fairbanks  
M. Rosa, Tok resident

#### **Review and Adoption of Agenda**

The Council requested to review of many state and federal fisheries proposals and listed which ones relevant to the Yukon they wished to take up specifically. Council added a couple presenters under agency reports. The Council unanimously adopted the amended agenda.

#### **Review/Approval of Minutes**

The Council unanimously approved the minutes from the previous meeting as written.

#### **Council Members' Reports and Concerns**

Council members provided introductory remarks and noted the following issues and concerns:

##### **Bill Glanz**

- Helped organize community meet and greets with Park Service Rangers to improve relations.
- 1 day caribou hunt with 200 permits was a madhouse with camps and rifles running around.
- Just saw 2,000 caribou on Steese Highway on drive in – beautiful wonderful to see.
- In Circle hardly anyone put there fishwheels in the river this year just a couple nets on opening.
- Helped distribute cow caribou from troopers to the elders in community – worked well.

##### **Larry Williams**

- Concerned about poor Chinook run this year, many people didn't get anything at all.
- Due to low numbers of Chinook and high price of gas many people didn't fish at all.
- Had a successful moose season at home, enough for everybody to get a moose.
- Seeing the results of elders teaching not to take cow moose so they can reproduce
- Community of Venetie manages their own resources based on thousands years knowledge
- Good fall harvest of caribou, community shares in the bounty

- Was looking forward to working with Isaac and hear his ideas and his concerns. Thinking of him and all the things that he accomplished for his Native people and the way he spoke up in an intelligent way and made himself heard and made his presence felt. I thank him for that.

### **Andy Bassich**

- Chinook salmon on the Yukon River is a great concern, but thinks managers did a very good job even though didn't make escapement made some progress.
- Only saw salmon in Eagle during the pulse protection closures – otherwise fished out.
- Strong support from community to voluntarily not fish for Chinook – focused on Chum
- Caribou wasn't usual – very few people got caribou in his area but hopes 40 mile plan will work.
- Really appreciated Isaac Juneby humor and passion about topics of concern, very good listener. Isaac was giving and helped teach the Han language and culture at the local school in Eagle. Everyone misses him.

### **Andrew Firmin**

- Keeping an eye on and approaching mining companies in Upper Chandalar
- Community hasn't had caribou – Porcupine Caribou Herd not migrating where can harvest them.
- Have to go to Arctic village to harvest caribou rather than looking 300 miles up-river for them.
- Moose population ok if people try hard will get a moose – accepted to just harvest bulls.
- Salmon run was “quite the show” but managers did their best.
- Fort Yukon had 30 days of closures with only one 36-hour opener in the middle – one big pulse.
- Worked with Gene Sandone on project to fly fish from lower river commercial – shipped ~ 3,000 lbs. salmon to give to elders and food program some received fish instead of fishing this year.
- Lower river fish shipping program seemed to work well but some didn't like idea – like welfare.
- Took 9 youth on and 3 elders on a 10-day canoe trip from Arctic Village to Beaver – was great!
- Had a culture permit to harvest moose with the youth for teaching them how to live on the land.

### **Virgil Umphenour**

- Attended the North Pacific Fisheries Management Council in April with Craig Fleener
- Testified together on Chinook and chum by-catch – was a lot of testimony from western Alaska
- Very concerned about effects of hatchery salmon on wild stocks in the ocean
- Suggests everyone read books “King of Fish” and “Salmon without Rivers” on salmon history
- Concerned about lowering escapement goals because not meeting escapement
- We are not learning from our history on resource management issues
- Salmon impacted by hatcheries, trawlers, increased fishing at sea Area M. with big nets

### **Joe Matesi**

- Tribal consultation is a concern, thought discussion and comments during Red Sheep Creek issue was a step in the right direction
- Need to have that Native Liaison position filled
- Feels his role is to support subsistence users, so we need to address Black River issue
- Shares Virgil's concerns and hope can focus on learning from history for salmon management.

- Some people are getting moose around Yukon Flats – not sure population is better though.
- Wants the bison from Wildlife Center to be introduced into Yukon Flats region.
- Concerned from BOG meeting that RAC requested meat on bone should include caribou in all four of the subunits of Unit 25 but regs. that came out only apply to subunit 24A.

**Sue Entsminger**

- Speaks highly of the wolf control program that was conducted in Unit 12 and 13 of her area and people are telling her there is more moose now so it's a viable program – people are happy.
- Her family share meat with Mentasta Village often, her son has agreement as guide to share meat with the community and they really appreciate it.
- Suggests incentive program for urban hunters to care for meat and share with people in village – otherwise a lot of meat and parts local people would eat like head meat get left out in the field.
- Has been attending Batzulnetas Culture Camp for years – it was an awesome experience to share.
- Chisana caribou hunt happening but little participation because so far away to travel.
- Attended SRC meeting in Slana for Wrangell Park – many Slana people attended – good meeting.
- Really missing Isaac Juneby, knew him for years, was looking forward to working with him on the Council. He was very special and always had a smile for everyone.

**Lester Erhart and Donald Woodruff** were delayed by weather but joined the meeting later (Lester arrived in person and Donald attended the entire meeting by teleconference).

**Public and Tribal Comment**

**Jennifer Fate, Doyon Director**, gave an update on federal subsistence meetings she had attended representing Doyon and Eastern Yukon Region. Her family has a fish camp on the Yukon and she grew up commercial and subsistence fishing. She noted this year the fishing closures in Area 5 B and C were so short it was punitive. It strangled the ability to teach the culture through the traditional rituals and discipline of subsistence lifestyle. The Doyon Board sees subsistence fishing as a critical cultural right for shareholders, it's very important to have input on fishing regulations to ensure people can still fish.

**Victor Lord, Village of Nenana**. Encouraged to hear discussion on the importance of cultural aspects of subsistence, fishing and fish camps – feels culture at fish camps is disappearing. Came to the meeting to ask the Federal Subsistence Board through the RAC to address the North Pacific Fisheries Management Council on by-catch issue. Plea to the Board to make a change.

**Jack Lorrigan, USFWS Office of Subsistence Management Native Liaison**. Introduced himself as the new Native Liaison staff for OSM. Noted part of his role is to bring the cultural viewpoint to the regulatory process so that proposals hopefully will reflect some of the cultural and traditional lifestyles that are being managed.

**Yukon River 2012 Salmon Season Overview:** by Jeremy Mears USFWS, (co-presentation by ADFG and USFWS).

Since 1998 Yukon River salmon stocks have experienced variable and difficult to predict production levels. Some low parent year escapements have produced high returns and some high escapement years have produced unexpected poor returns. The 2012 run of Chinook experienced the fifth consecutive season of below average to poor salmon production with low returns despite typically adequate

escapement levels. The Chinook run was also late. Conversely both summer and fall chum outlooks projected above average run strengths.

Both USFWS and ADF&G staff participated in numerous meetings over the winter to share information and receive public input on conservation management approaches in preparation for a poor season. Key conservation approaches included starting subsistence fishing “windows” early (initiated on May 31 in Dist. 1) and protection of the first pulse of Chinook by closing one subsistence fishing period in each section of the Yukon chronologically as the pulse migrated up the river. No directed commercial fishing for Chinook salmon was conducted and sale of commercially caught Chinook by-catch was not allowed. Due to the slow development of the Chinook run and overlap with the chum run, subsistence fishing was restricted to 6-inch or smaller mesh in Dist. 1 through 3 and Sub district 4A in order to conserve Chinook but yet allow harvest of abundant summer chum.

As the Chinook run remained weak throughout the run more subsistence restrictions were put in place – restricting mesh use to 6 inches or less in more areas on the coast, Yukon, and some tributaries and reduced subsistence fishing periods in all areas.

Even with management actions the estimated U.S./Canada border passage of 34,200 Chinook was well below the international escapement goal range of 42,500 – 55,000 with no surplus available for the Canadian harvest share as stipulated in the Yukon River Salmon Agreement. Chinook salmon escapement objectives were met on the East Fork Andreafsky, Nulato, and Salcha Rivers but were *not* achieved on the Anvik, Chena or below the Canadian border.

The summer chum run was above average with an estimated run of 2 million fish. Commercial fishing openings for chum were conducted strategically in an attempt to avoid Chinook by-catch.

The fall chum pulses were consistent and on track for a total run size over 900,000 which is considered adequate for escapement needs, escapement and surplus for commercial harvest. Subsistence fishing restrictions were lifted after passage of Chinook to allow fishing for fall chum 7 days a week in most areas outside of commercial fishing openings.

The fall Coho run was also adequate to attain escapement objectives and provide some relief as a food alternative to Chinook or missed opportunity for summer chum harvest during extended closures to protect Chinook. It was acknowledged that many subsistence fishers made an effort to voluntarily reduce their Chinook harvest or not fish Chinook at all, making an effort to replacing family’s food needs with Chum and Coho salmon or other subsistence foods.

Area Manager Steve Hays also answered questions for the RAC. Overall the RAC expressed appreciation for the hard work and efforts to manage the fishery as best and equitably as possible under difficult circumstances. The managers noted that they realized the hardships faced by many communities in not being able to get their Chinook needs met but stressed that there were not enough Chinook returning to meet these basic needs. Some RAC members noted the closures were nearly complete for their region with 30 days of closures and only a 36 hour opening it was hardly worth to get a fish wheel operating, set up, dig a hole, and then it has to be shut down.

Andy Firmin – community of Fort Yukon requested a local test fishery by coordinated locally to get more precise information on fish passage in specific parts of the river rather than generalized from just a couple sonar projects and the counts at Rampart Rapids fish wheels.

Larry Williams – notes they had quite a few Chinook going up the Chandalar and that they rely on elders from the community (Venetie) to help regulate the fishing locally by talking to people that are fishing in excess and asking them to pull their nets – make sure nobody goes overboard on harvesting Chinook. The community works together to make sure enough salmon will escape so that they will continue to return. He notes the whole village participates, recognizing they have to take care of the good think they have (Chinook on the Chandalar).

### **Federal Subsistence Fisheries Proposals**

**Review of Federal Fisheries Proposals:** Don Rivard and David Jenkins of OSM reviewed all relevant Yukon Federal Fisheries Proposals FP13-01, FP13-02, FP13-03, FP13-06/07/08, FP13-09/10, FP13-11, FP11-08. The State main comments for Customary Trade proposals was to be on the record for supporting the refining of definitions of customary trade and significant commercial enterprise. The Council was presented with written comments provided by Tanana Chiefs Conference and also heard public testimony on the customary trade proposals seeking to limit monetary exchange and curtail trade of subsistence caught Chinook with non-rural residents.

A representative of the Tanana Tribal Council and AC spoke against all proposals that sought to limit customary trade of Chinook due to it being a very important source of traditional trade for thousands of years and small amounts of income that is important for supporting subsistence activities. The testimony also focused on the importance of trade or sale of subsistence caught Chinook to friends and family living in urban environments for employment opportunities but who still desired to eat their traditional foods and maintain traditional cultural and community ties.

The Council discussed and made motions on the following Federal Subsistence Proposals:

#### **Federal Fish Proposal #                      EIRAC Recommendation**

**FP13-01                      No Action – defer to home region RAC**

Justification: The Council reviewed the information on this proposal and deemed it an issue only affecting the Western Interior RAC region, deferring any action on the proposal to the region it originated from.

**FP13-02                      Support**

**Justification:** The Council expressed that aligning Federal salmon marking requirements with existing State requirements would reduce regulatory complexity, making it easier on subsistence salmon harvesters. The Council concurred with the OSM analysis that adoption of this regulation is not anticipated to impose any additional burden on federally qualified subsistence users since they are already required to mark the salmon they take. The council viewed this action as an easy housekeeping item and voted to support it unanimously.

**FP13-03 Support**

**Justification:** The Council listened to analysis from both OSM and the State on this proposal and discussed at length what the conservation pros might be as well as debating the impact to local users as opposed to the impact on all federally qualified subsistence fishers who use the resource. All but two Council members supported this proposal in part to concur with the Western Interior RAC support for this issue in their region but also citing that they felt the conservation concern cited in the proposal warranted action. The two members opposed felt there was not enough evidence for a conservation problem for pike in the proposal area and that many subsistence users who depend on the pike for subsistence would be negatively impacted.

**FP13-07 Support (6 support, 3 opposed, 1 absent)**

**Justification:** The Council considered the OSM and State analyses and also read submitted tribal comment on these proposals. The Council also heard public testimony from Tanana, Rampart, Manly AC and Tanana Tribal Council representatives which opposed all three Customary Trade proposals. The Council also recounted long discussions as part of the Tri-RAC Working Group on these proposals and the difficulty of trying to prevent a few abusers with an overarching and vaguely defined regulation. Much of the Council concurred they understood the importance of the long traditions customary trade and contemporary uses such as the younger generation in many villages having to live in urban areas for wage income but desiring to maintain contact with their culture and traditional foods presented through public testimony by a Tanana representative. However overall the Council expressed a need to use every measure possible in an effort to protect and increase the Chinook salmon returns and notes that by supporting the EIRAC specific proposal (FP-13-07) that it would be implemented only in times or Chinook conservation concerns and trade restrictions could be lifted again when the escapement improved.

**FP06 and 08 No Action**

**Justification:** Unanimously approved no action on proposal FP13-06 and 08 due to the action taken on Proposal 07.

**FP13-09/10 Support (5 support, 3 oppose, 2 absent)**

**Justification:** The council discussed at length the pros and cons of this proposal and the difficulty of protecting salmon uses for subsistence and getting into tricky territory of defining priority for one subsistence use over another. Some Council members saw the language and definitions too difficult to specify which may cause a lot of confusion among subsistence fishers about what was family consumption and what was customary trade, noting that small amounts of cash generated were also important for subsistence. The Council was split but supported this proposal 5 to 3 seeing it as a measure that might provide some protecting for direct subsistence consumption of Chinook under times of low abundance.

**FP13-11 Oppose (1 support, 7 oppose, 1 abstain, 1 absent)**

**Justification:** Council members discussed at length and recalled previous TRI-RAC discussion on this proposal the one member supporting it argue that if a \$ amount was not spelled out in the regulation then

there would be no way to define or enforce commercial enterprise. Others pointed out that the limitation should be on amount of fish, not how much it was sold for because the ultimate intent was to reduce harvest of Chinook salmon. Some Council members noted large sales of Chinook were not an issue in their village and even less so in times of low abundance but that some sale of subsistence fish was important as a means of sharing and the dollar limit may hamper that. Several Council members expressed concern not knowing how other villages function were wary of imposing a specific dollar limit that could impact them.

**FP11-08**                    **Deferred** – EIRAC requests that the TRI-RAC committee meet to define Significant Commercial Enterprise and refine definition of Customary Trade.

### **State Fisheries Proposals to Board of Fish**

**Review of State Fisheries Proposals:** Don Rivard of OSM provided basic background introduction to Yukon area proposals of interest to the Council. State liaison Jennifer Yuhas, ADF&G subsistence division Caroline Brown, ADF&G area manager Steve Hayes and USFWS fisheries manager Fred Bue all helped provide supporting information for the Councils review of fisheries proposals. The Council discussed and took action on the following proposals:

**Proposal 97** reduces Northern Pike bag and possession limits in the Yukon River from Holy Cross to Paimute Slough.

**Recommendation:** Support

**Comments:** The EIRAC made specific comments in support of the companion Federal proposal 13-03 and applied that same discussion in support of this proposal. The Council discussed at length what the conservation effect might be as well as debating the impact to local users as opposed to the impact on all federally qualified subsistence fishers who use the resource. Council members supported this proposal in part to concur with the Western Interior RAC support for this issue in their region and also noted that they felt the conservation concern cited in the proposal warranted action.

**Proposal 130** reviews ANS numbers for Yukon-Northern area salmon species.

**Recommendation:** Support with modification: extend data range considered to 20 years.

**Comments:** The EIRAC notes that it has been many years since ANS was revisited and the current numbers are based on data from 1990 - 1999. The Council feels these numbers could be updated to reflect more subsistence harvest data currently available, understanding that years in which there were subsistence harvest restrictions would not be used to evaluate normal harvest patterns. The Council supports re-evaluating ANS with the recommended modification of considering a longer time range of 20 years of data that may better reflect the range of harvest variability.

**Proposal 131** Yukon River pulse protection for Chinook salmon.

**Recommendation:** Support

**Comments:** The EIRAC is in agreement with the YK Delta and Western Interior RAC on the Yukon that this proposal is a step in the right direction for Chinook salmon conservation and equitable management for all subsistence users along the river.

**Proposal 132** prohibits the sale of Chinook salmon

**Recommendation:** Support

**Comments:** Prohibiting the sale of incidentally caught Chinook salmon in the chum salmon commercial fisheries would discourage targeting them intentionally during commercial openings and require retaining Chinook for subsistence purposes only.

**Proposal 137** develops an optimal escapement goal for Yukon River summer chum salmon stocks originating above Pilot Station.

**Recommendation:** Oppose

**Comments:** The EIRAC believes lowering escapement goals and allowing a commercial harvest right up to the OEG would be detrimental to the Yukon River ecosystem, citing the importance of spawning Chum salmon for fish and wildlife food and nutrient inputs in the system.

**Proposal 138** modifies the Fall Chum Salmon Management Plan trigger point from 500,000 to 400,000 in the Yukon River Drainage.

**Recommendation:** Oppose

**Comments:** The EIRAC believes lowering the trigger point to allow more commercial harvest of fall chum would be detrimental to the Yukon River ecosystem. Additionally, the Council stressed the importance of fall chum and Coho as the primary subsistence food in years of low Chinook salmon returns and felt upper river communities would be harmed by expanding the fall chum salmon commercial fishery.

**Proposal 141** allows concurrent subsistence and commercial fishing periods in Dist. 1-3 of the Yukon River.

**Recommendation:** Support

**Comments:** Aligning salmon management by conducting commercial fishing periods concurrent with subsistence openings would allow for longer windows of time for salmon to pass unhindered during closures. This proposal would eliminate the restrictions on subsistence fishers during commercial openings.

**Proposal 142** opens Yukon river District 5-D (Stevens Village to Circle) for subsistence fishing from July 4 - 18.

**Recommendation:** Oppose

**Comments:** The EIRAC feels this proposal is counter to the conservation efforts on the river and would be a detriment to that pulse. Because Circle is located on the road system this district may be subject to greater fishing pressures from users driving in from elsewhere if all restrictions were lifted only in District 5 at that time.

**Proposal 143** removes restrictions during the subsistence fall chum season in Yukon Dist. 1, 2 & 3.

**Recommendation:** Oppose

**Comments:** The EIRAC sees the need to protect fall chum salmon and Coho from increasing commercial harvest pressures due to its importance for subsistence. The Council stressed Fall chum has always been important to the subsistence way of life for upriver communities and is the only salmon many families are able to harvest for subsistence in years of low Chinook returns.

**Proposal 144** restricts gillnets to 35 meshes in depth in the Yukon River drainage.

**Recommendation:** Support

**Comments:** The EIRAC views this as an evident conservation measure needed to protect Yukon River Chinook stocks for the reasons stated in the proposal.

**Proposal 145**

**Recommendation:** No action based on 144.

**Comments:** Same as Proposal 144

**Proposal 146** allow only 6-inch mesh gillnet gear in the Yukon River drainage.

**Recommendation:** Support

**Comments:** The EIRAC views this as a necessary conservation measure to protect larger, older Chinook salmon and to support better quality of escapement for the reasons stated in the proposal. The Council notes from their own experience 7 ½ inch mesh is no longer sufficient as a conservation tool because it catches the remaining larger salmon returning to the Yukon.

**Proposal 147** allows drift gillnets in subsistence fishery Dist. 4-A up to Ruby.

**Recommendation:** Oppose

**Comments:** The EIRAC feels this would greatly expand fishing pressure on salmon stocks that are of ongoing conservation concern. The Council notes from their own experience that larger Chinook salmon generally swim further out in the river and are likely bound for Canada. Fish wheels currently in use are should be sufficient to obtain community fish needs.

**Proposal 148**

**Recommendation:** No action based on 147.

**Comments:** Same as proposal 147.

**Proposal 149** creates harvest reporting system for Yukon subsistence salmon.

**Recommendation:** Support with modification: make changes to the wording of State Reg. 5 AAC 01.230 (pg. 138 ADFG AYK fish regulations book) as follows:

Fish *shall* be taken for subsistence purposes *with* a subsistence fishing permit.

1. *Each subsistence fisherman shall keep accurate daily records of historical catch, number of fish taken by species, location and date of the catch, and other information that the department may require for management or conservation purposes.*

**Comments:** The EIRAC vote on this proposal was split with a vote of 5 support, 4 oppose and one absent. Council members in support of this proposal state it is an effort to achieve greater accuracy and daily recording of all subsistence fish harvests to assist in understanding harvest timing during the salmon run. The supporting members feel the requirement to report will result in a higher return of subsistence fish harvest data than catch calendars or post season surveys currently do and will better track fish harvests. The Council members opposed to this proposal discussed the imposition the requirement may pose to subsistence fishers, stressing that the daily reality of rural life could easily result in a legal citation for inadvertent non-compliance and undermine the subsistence way of life. They emphasize that voluntarily catch calendar recording and participation in post-season surveys is widely supported and reporting is generally honest and accurate.

**Proposal 154** closes the Black River and its tributaries to sport fishing for king salmon.

**Recommendation:** Support with modification as follows: Close to all sport fishing for king salmon: the Black River from Chalkyitsik upriver to the Salmon Fork and the Salmon Fork and its tributaries upstream to the border beginning July 1st to September 30<sup>th</sup>.

**Comments:** The local villages of Fort Yukon and Chalkyitsik have curtailed fishing for Chinook in this area because of conservation concerns and efforts to allow the population to rebound for subsistence in the future. The communities are concerned that there are no spawning ground closures in place as a protective measure for these stocks. Sport fishing is currently allowed in the area during spawning and can intercept or stress the Chinook on their spawning grounds or on their migratory path to Canada

**Briefing on Federal Subsistence Board –State of Alaska Memorandum of Understanding:** Jerry Berg, USFWS Interagency Staff Committee, and Jennifer Yuhas, ADF&G Federal Subsistence Liaison, provided an overview of the process to date on revising the draft MOU based on the previous feedback and suggested edits from all RAC's and solicited further comments.

**Eastern Interior RAC comments on MOU:**

- Generally the EIRAC noted they supported the previous MOU and felt it was working but had questions and concerns from the last meeting that the Communication or data sharing protocols could use some work.
- Pleased to see tribes referenced in several places now in the MOU and is very supportive of that – doesn't recall if that was a specific EIRAC comment before but says it should be. Appreciated that tribes are now included in language of MOU.
- Appreciates the work done to make the MOU more plain language and appreciated efforts to include Councils in review and editing.
- Would like to see in the wildlife part of things they work more closely together with the State like they do on the fisheries management.
- Points out that in areas like Unit 12 and 20E there are really good working relationships on the wildlife side and recognizes the challenges of differing land management agencies.
- Feel State – Federal collaboration on caribou has been good. See pooling of resources and avoiding duplication of effort as important.
- Requests tribal or community consultation on fish and wildlife management efforts as a matter of courtesy so there are no surprises – especially when actions require helicopter overflights etc.

The Council discussed the Western Interior RAC's comments on participation at Board of Fish/Game and understood their request to be to have equal time allowed in front of the Board as the Advisory Committees in the State regulatory process.

- The Council Passed a motion to include language in the MOU that would ensure both the AC and RAC representatives are allowed equal time to present to the State Board of Game/Fish.
- Subsequently the IERAC voted unanimously to Support the memorandum of understanding between the State and Federal government as written (draft MOU presented to the Council) with the one edition as noted above.

**Federal Subsistence Regulatory Cycle briefing and request for RAC feedback:** David Jenkins, OSM Policy Coordinator provided update on adjustments to the regulatory cycle in response to previous RAC requests and solicited more feedback on the current meeting schedule.

**Council Comment/Motions on Regulatory Cycle:**

EIRAC unanimously supported a motion was to support expanding the RACs windows for having meetings but to leave the Federal Subsistence Board meetings as is currently established. Other general discussions were that all EIRAC members realized there were many important meetings to try to schedule around such as BOF and BOG and others and that currently the January Board meetings seemed to be able to accommodate that. Generally the EIRAC preferred to have winter meetings occurring well before spring since subsistence activities get busy by April.

The Council did request in the future to try to avoid scheduling South Central RAC meetings at the same time since there were often overlapping issues each group may want to participate on or the same support staff desired at both meetings.

**Annual Report Reply:** OSM staff and EIRAC Council Coordinator provided further updates and information to the Council in addition to briefly reviewing the Federal Subsistence Board reply letter to the EIRAC 2011 Annual Report included in the meeting book.

**Fisheries Resources Monitoring Program:** Don Rivard, OSM fisheries biologist provided an update on the status of the Fisheries Resource Monitoring Program development of priority information needs to guide the call for research proposals. Feedback from the Council was solicited to help identify critical subsistence fisheries research and monitoring needs for the Eastern Interior and Yukon region. The Council requested studies on ‘quality of escapement’ for salmon such as age/size composition, habitat utilization and effects of climate change or natural disasters such as fires, erosion or flooding events on natal streams and spawning habitat. Predator/prey relationships.

**Discussion on the ADF&G sponsored Chinook Salmon Symposium:** The Council was invited and encouraged to attend this special symposium; however, no travel funds were provided for public participation by the State and the Federal programs were under travel restrictions due to budget cuts. The Council discussed which members may be able to attend, representing their tribe or AC. ADFG confirmed the meeting would be teleconferenced (listen only).

**Council Charter Review:** David Jenkins, OSM Policy Coordinator covered the current Charter that basics of what responsibilities and duties could be changed or not by the Council.

**\*The Council unanimously approved the Current Council Charter as written.**

### Agency Reports

**OSM Briefings:** David Jenkins, OSM Policy Coordinator and Eva Patton Council Coordinator provided brief updates on OSM staffing changes, current budget outlook, Regional Advisory Council application/nomination process, upcoming Rural Determination review process, and Tribal consultation policy.

**National Park Service:** Deborah Cooper, Associate Regional Director for the Alaska Region of the National Park Service gave an update in regard to the State’s sport hunting season. The Park Service has concerns in response to the most recent liberalizations to the sport hunting program adopted by the Board of Game last winter which became effective on July 1<sup>st</sup>, 2012.

The Park Service is proposing to exclude three liberalizations to predator harvest. These are brown bear baiting, the extension of wolf seasons, and the extension of coyote seasons through the denning period.

The National Park Service has concerns about authorizing sport take of brown bears over bait stations on National Preserves specifically. Baiting for brown bears is a new practice not allowed by any other wildlife managing agency anywhere in North America. In addition to being inconsistent with National Park Service policies, the feeding of bears alters natural behaviors, increases the likelihood of food conditioning, increases the likelihood that bears will be killed in defense of life and property and compromises public safety. Food conditioned bears are more likely to become problem animals and more likely to cause concern for the safety of people using the out of doors.

The Park Service will propose that hunters be precluded from the liberalization of taking denning wolves or coyotes as well as their nursing pups from May 1st through August 9th. This will make the seasons

such that they will continue to be consistent with the current Federal regulations and with prior State regulations.

There will be opportunity for public comment on these proposed compendium additions, and that will be from mid-January to mid-February of next year. I just wanted to give you an update here since you won't be reconvening until after those dates.

The Compendium would extend into Yukon-Charley Preserve, Wrangell-St. Elias and Denali Preserves. Tom Liebscher, chief of natural cultural fire and subsistence resources for the Park Service in Fairbanks and Barbara Cellarius, Wrangell St. Elias National Park and Preserve also tried to help clarify whether the compendium was for one park or would affect all three: "The compendium is signed by each conservation unit superintendent and they are specific to a conservation unit. The overarching language is for consistency".

**\*The Council made a motion to support the National Park Service Proposed Compendium as just presented. The motion failed with 10 NO Votes and 0 Yes votes and the council noted they would provide their opinion by comment letter.**

**Wrangell – St. Elias National Park and Preserve update:**

Barbara Cellarius provided an update for the Park Subsistence programs and specifically the Chisana Caribou Herd hunt. In January 2012 the Federal Subsistence Board authorized a limited harvest of the Chisana Caribou Herd in the southeast portion of Unit 12. Due to conservation concerns the harvest of this herd was closed for many years but an .804 analysis was conducted to allocate a very small hunt. The Park conducted extensive outreach for local feedback on how to best allocate the hunt. Nine hunt permits were issued out of the 14 allowed. Eight hunters reported and two caribou were reported harvested by the closure of the limited hunt period.

Ms. Cellarius provided background on the NPS Subsistence Resource Commission representative appointment process which needs to be approved by the RAC since the regulations in ANILCA stipulate the members have a history of engaging in subsistence activities in the park and be either a member of the local state Advisory Committee or the Eastern Interior Regional Advisory Committee. Sue Entsminger is the current chair and was willing to continue to serve on the Wrangell St. Elias SRC.

**\*The Council made a motion to re-appoint Sue Entsminger to the Wrangell St. Elias SRC. The motion passed unanimously.**

**Yukon-Charley Rivers National Preserve update:**

Tom Liebscher, chief of natural, cultural, fire and subsistence resources in Fairbanks gave a brief update for the preserve, referencing the print information provided in the meeting book. Notes they are making efforts to reach out to the community for input since they don't have a formal SRC for this preserve.

Council member Don Woodruff made a request for more radio collar research to be focused on the Fortymile Caribou herd.

Mr. Liebscher announced his retirement and the Council thanked him for his many years of service to the region.

**Denali National Park and Preserve update:**

Amy Craver, Program Manager for Cultural Resources and Subsistence-Denali National Park and Preserve, provided an update of the Park's wildlife and subsistence project updates. The park is pursuing

a furbearer study due to concerns for decrease in martin in the northwest portion of the park.

Lester Erhart notes that martin populations cycle go up and down in four year cycles. Also he notes that the martin follow the lemming migrations and that the lemmings migrate and move only at night – he notes a big migration that occurs north across the Yukon River by Tanana because his dogs hunt big piles of lemmings at night by the river. He also notes a friend up by Novi who saw lots of lemmings and martin this past fall.

Ms. Craver also presented James Roberts as a new Denali SRC appointment and pleased that he is also a new EIRAC Council member. Denali Park needs to appoint one more SRC position but has had difficulty finding another person who meets the requirements of also serving on a local AC or RAC. It was decided to defer that SRC position until the spring EIRAC meeting so that more time could be used to recruit eligible members who have demonstrated pattern of subsistence use in the park from a resident zone community and eligibility pre-ANILCA.

The Council discussed possible applicants who might qualify and suggested / requested if Council member Lester Erhart would be interested since he does qualify. Mr. Erhart said he would have to think about it.

#### **Alaska Department of Fish and Game:**

Sarah Hazel, ADF&G Subsistence Division, provided a briefing on a recent study documenting the subsistence harvest of wild resources by residents of the Eastern Interior region, specifically communities that may be impacted by the proposed Alaska Pipeline Project. Ms. Hazel noted the mandate of ADF&G subsistence division is mandate is to determine the amount necessary for subsistence for each population or stock, and to provide for customary and traditional uses of subsistence resources. They completed baseline subsistence harvest household surveys in 12 communities in year one of the project. Overall, each in each community 75% to 100% of households participated in subsistence hunting, fishing, gathering, and sharing. Harvest of wild food was over 100lbs. per person each year in all but two communities surveyed and as high as 520lbs. per person per year in Allakaket. The final report is in publication right now.

#### **Yukon Flats National Wildlife Refuge:**

Mark Bertram, wildlife biologist for Yukon Flats NWR gave a brief update on the refuge, highlighting a couple points presented in the print materials provided in the meeting book. Noted they have a new Refuge manager, Steve Berenson. The Refuge has a moose survey planned for the Western half of the refuge later in the fall and ADFG will survey the Eastern half. Also if budgets allow the Refuge plans to initiate a comprehensive conservation plan next year. Council member Don Woodruff asked for clarification on regulations for Refuge lands for what an island is since some areas go dry at low water and other areas flood creating islands at high water, noting that when sloughs go dry actual boundaries are confusing. The Refuge noted they will look into the regulations and get back to the Council on this question.

Council member Larry Williams asks Refuge law enforcement about the tagging of an elders fish net that occurred this past summer in his community of Venetie. Mimi Thomas, Yukon flats Law enforcement officer noted that she communicated with the Tribal Council that the net was unidentified and tagged it with her contact info as a warning/educational notice only and that no citation was issued.

Council member Mr. Williams appreciated the in person discussion with law enforcement at the RAC meeting and their effort to talk with the Tribal Council first before placing the tag on the net. However, Mr. Williams stressed that while they respect for the law, the community does have its own monitoring system whereby they work to conserve the Chinook heading up the Chandalar River to spawn. He notes

that these fish are not Canada bound but that the community works for ensure that only so many Chinook are harvested by the community as a whole so that there are plenty to spawn and will return in subsequent years for grandchildren and future generations. He stressed that the community has unwritten rules to conserve the salmon and everyone knows that once the first Chinook arrives the run lasts only 10 days to two weeks and the elders and tribal Council encourage people to pull their nets when enough fish have been taken. Mr. Williams notes the community takes care of itself with its own traditional rules to protect the fish and moose harvest and have been doing a good job of that.

Officer Thomas offered to come to a Tribal Council or town meeting to answer any regulatory questions in the spring before the fishing season began and offered to be available by phone too.

Council member Andrew Firmin notes that the Refuge provided an excellent written report update and really appreciates their efforts for outreach and youth programs like Camp Noshi.

**Arctic National Wildlife Refuge update:**

ANWR provided a written update on Refuge projects and updates for the meeting book and noted the refuge received over 600,000 comments on their recent Comprehensive Conservation Plan. The Refuge is working on responding to these comments including requests for better consultation with Tribes and the public and continued subsistence opportunity on refuge lands. Based on updated sheep surveys, Arctic Village sheep management area is closed to non-subsistence hunters in 2012. Per the Councils request Refuge wildlife biologist Eric Wald provided an update on the moose population and movement on the Sheenjek, Coleen and Firth-Mancha areas. He notes that while the closure review is technically in 26C, it is recognized that the moose do migrate from old Crow Flats in Canada through the Firth-Mancha and Unit 25 into the Sheenjek and Coleen River areas.

Sue Entsminger note that there is not currently C&T for moose in 26C, and Jerry Berg of USFWS concurs but that if the Council wishes to weigh in on the closure review they can provide input to the Federal Subsistence Board if the Council wishes. The council specifically requested to be involved in this closure review.

Council member Joe Matesi provided a map that was given to him by retired Refuge wildlife biologist Fran Mauer (apparently created by ANWR GIS specialist Alan Brackney) that showed moose radio collar movements in areas of interest to the Eastern Interior region.

Jason Caikoski, ADF&G Wildlife Biologist was introduced by Mr. Wald as the Refuges partner on moose telemetry surveys. Mr. Caikoski provided the latest moose population assessment and movement information for moose in 26 A, B, and C. The last surveys showed an increase and a high bull/cow ratio. They are hoping to survey the Upper Coleen and upper Sheenjek later this fall to get a better picture in Unit 25A. The Board of Game received a proposal to re-open the area to moose hunting and this will be considered as an out of cycle Federal wildlife closure review that effects primarily the North Slope RAC but the Eastern Interior can also comment.

**Yukon River Drainage Fisheries Association:**

Jason Hale of YRDFFA provide a handout on the salmon by-catch updates and provided an overview of their work this past summer. YRDFFA received a grant from Administration for Native Americans to hold cultural fish camps in five villages on the Yukon. Over 190 youth participated in these fish camps this summer with help from elders to teach traditional fishing activities and cultural knowledge.

Also updates on the Inseason subsistence monitoring project funded by USFWS to conduct interviews in 10 communities on the Yukon through the salmon harvest season. Specifically they reported on what percent of respondents in each village reported meeting their subsistence salmon harvest needs for the

year which ranged from 79% in some villages to less than 10% in many other villages.

**Tanana Chiefs Conference Partners for Fisheries Monitoring Program:**

Alyssa Frothingham of TCC gave an update on their FRMP program projects conducted this past summer. Their Henshaw Creek weir on the Upper Koyukuk River counted the most summer chum this year since the weir was implemented with a total count of 292,000 summer chum this season. Only 922 Chinook were counted, considerably less than last year. TCC also held their annual Henshaw Creek science and culture camp – a popular success as always with 12 students attending.

Ms. Frothingham also gave updates on TCC's subsistence sheefish study, subsistence Chinook ASL and genetics sampling program, and a partnership study with AVCP to document feedback from fishers on how many people lack the size mesh required under the conservation restrictions and what the male/female ratios were caught by subsistence fishers. TCC also partnered with Kwik'Pak fisheries to deliver by-catch fish from the lower river commercial fishery to upper Yukon communities.

**Bureau of Land Management – Eastern Interior Field Office:**

Lenore Heppler gave a power point presentation overview of the Eastern Interior Draft Resource Management Plan EIS and updates on the current comment period timeline. The planning area encompasses 30 million acres of which about 6.7 million acres managed by BLM. Due to the size and diversity of the planning area it is broken into four sub-units: White Mountain, Steese, Upper Black River, and Fortymile subunit. After the Draft EIS was released they held a 150 day comment period and public information meetings which will now be extended for another 90 days once another supplement to the EIS is released.

Ms. Heppler noted that the management mandate was multi-use and that BLM areas under the Federal Land Policy Management Act and includes uses such as mining and oil and gas leasing, recreational activities as well as Wild and Scenic Rivers. She notes as a Federal land management agency they are subject to and receive guidance from ANILCA. She discussed the basics of the alternatives presented in the EIS and that the impacts of each would be evaluated in the EIS review to come up with a mix of allowable uses. Mainly the plan addressed mining claims and mining areas.

The Council re-confirms their motion at the last EIRAC meeting in Winter of 2012 that they formed a BLM EIS working group with Joe Matesi to cover the upper Black River unit, Bill Glanz to cover the Steese unit, Andy Firmin on White Mountains, and the late Isaac Juneby was on the Fortymile unit but passed away before the working group held its first teleconference.

The Council re-confirmed it had passed a motion at the last meeting to draft a letter to BLM and the Federal Subsistence Board in support of Alt. B for the Upper Black River unit and to write another general comment letter to point out subsistence concerns brought up by the communities in the other subunits and any subsistence issues that were not adequately addressed by the draft EIS for all 4 subunits. The Council coordinator confirmed work is in progress on these letters but required more feedback from the working group. Due to the pending supplement to the Draft EIS and subsequent 90 day comment period extension there will still be time until February or beyond to submit the letters of behalf of the Council.

**Future Meeting Dates**

The Council reconfirmed **February 20 and 21 for the Winter 2013 meeting** and requested the following weekend as a back-up date if it would be allowed to hold a meeting over the weekend. The Council discussed that although they had initially requested the Winter meeting to be in Tok that the reality of Winter travel and logistics made it more likely for more to be able to actually arrive in Fairbanks. They also all agreed that the regional hub may make it more likely for more participants from communities to

attend, since all village flight first have to come through Fairbanks. The Council did not make a formal motion to change the meeting location to Fairbanks but all verbally agreed on the record to do so.

The Council chose **October 9 and 10, 2013 for their next fall meeting**. The Council also suggested that perhaps if the Western Interior Council was interested that it would be good to hold a joint RAC meeting again.

Council members provided closing remarks.

The meeting adjourned by unanimous consent.

I certify that, to the best of my knowledge, the foregoing minutes are accurate and complete.

\_\_\_\_\_  
Eva Patton, Designated Federal Officer  
USFWS Office of Subsistence Management

\_\_\_\_\_  
Sue Entsminger, Chair  
Eastern Interior Subsistence Regional Advisory Council

These minutes will be formally considered by the Eastern Interior Alaska Subsistence Regional Advisory Council at its winter 2013 public meeting. Any corrections or notations will be incorporated in the minutes of that meeting.

## GUIDANCE ON ANNUAL REPORTS

### Background

ANILCA established the Annual Reports as the way to bring regional subsistence uses and needs to the Secretaries' attention. The Secretaries delegated this responsibility to the Board. Section 805(c) deference includes matters brought forward in the Annual Report.

The Annual Report provides the Councils an opportunity to address the directors of each of the four Department of Interior agencies and the Department of Agriculture Forest Service in their capacity as members of the Federal Subsistence Board. The Board is required to discuss and reply to each issue in every Annual Report and to take action when within the Board's authority. In many cases, if the issue is outside of the Board's authority, the Board will provide information to the Council on how to contact personnel at the correct agency. As agency directors, the Board members have authority to implement most of the actions which would effect the changes recommended by the Councils, even those not covered in Section 805(c). The Councils are strongly encouraged to take advantage of this opportunity.

### Report Content

Both Title VIII Section 805 and 50 C.F.R. 100.11 (Subpart B of the regulations) describe what may be contained in an Annual Report from the councils to the Board. This description includes issues that are not generally addressed by the normal regulatory process:

- an identification of current and anticipated subsistence uses of fish and wildlife populations within the region;
- an evaluation of current and anticipated subsistence needs for fish and wildlife populations from the public lands within the region;
- a recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs related to the public lands; and
- recommendations concerning policies, standards, guidelines, and regulations to implement the strategy.

Please avoid filler or fluff language that does not specifically raise an issue of concern or information to the Board.

### Report Clarity

In order for the Board to adequately respond to each Council's annual report, it is important for the annual report itself to state issues clearly.

- If addressing an existing Board policy, Councils should please state whether there is something unclear about the policy, if there is uncertainty about the reason for the policy, or if the Council needs information on how the policy is applied.
- Council members should discuss in detail at Council meetings the issues for the annual report and assist the Council Coordinator in understanding and stating the issues clearly.
- Council Coordinators and OSM staff should assist the Council members during the meeting in ensuring that the issue is stated clearly.

Thus, if the Councils can be clear about their issues of concern and ensure that the Council Coordinator is relaying them sufficiently, then the Board and OSM staff will endeavor to provide as concise and responsive of a reply as is possible.

### **Report Format**

While no particular format is necessary for the Annual Reports, the report must clearly state the following for each item the Council wants the Board to address:

1. Numbering of the issues,
2. A description of each issue,
3. Whether the council seeks Board action on the matter and, if so, what action the Council recommends, and
4. As much evidence or explanation as necessary to support the Council's request or statements relating to the item of interest.

**Eastern Interior Alaska Subsistence Regional Advisory Council**  
**c/o U.S. Fish and Wildlife Service**  
**1011 East Tudor Road MS 121**  
**Anchorage, Alaska 99503**  
**Phone: 907-787-3888 or 1-800- 478-1456, Fax: 907-786-3898**

MAY 07 2012

RACEI12006.CJ

Mr. Tim Towarak, Chair  
Federal Subsistence Board  
1011 East Tudor Road, MS 121  
Anchorage, Alaska 99503

Dear Mr. Towarak:

The Eastern Interior Alaska Subsistence Regional Advisory Council (Council) appreciates the opportunity to submit this annual report to the Federal Subsistence Board (Board) under the provisions of Section 805(a)(3)(D) and Section 805(c) of the Alaska National Interest Lands Conservation Act (ANILCA). At its public meeting in Fairbanks, Alaska in October 2011, the Council identified concerns and recommendations for its 2011 report, then finalized and approved the report at its winter 2012 meeting in Fairbanks.

**1. Salmon Hatcheries and Impacts on Wild Salmon Stocks**

The Council would like to see the Office of Subsistence Management commit resources to produce studies and/or reports on effects or potential effects of hatchery-produced fish on wild salmon stocks in Alaska and throughout the Pacific Rim. For a decade, this Council has been requesting this type of information and would like to see it made a priority. This type of research can provide indices as to how we can maximize the quality and quantity of salmon that reach spawning grounds.

**2. Tribal Consultation**

Tribal consultation needs to remain a priority in the Federal Subsistence Program. Tribal consultation is part of the trust obligation of the Federal government; all Federal actions should include consultation with tribes. Emphasis should be on government-to-government relationships, with a clear separation between Tribal and ANSCA entities. The Council would have liked to have seen the Office of Subsistence Management Native Liaison filled by now.

**3. Equity in Access to Resources between Upper and Lower Yukon Subsistence Users**

The Council wishes to see fisheries managed up and down the Yukon River to provide for equity among users while still keeping conservation in mind. Some areas of the river have a much lower

Tim Towarak

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catch per unit effort and those areas need to see increased opportunity to harvest. The Council does not wish to see greater restrictions a single area, gear type, or community, but rather to concentrate on equity in access to resources between upper and lower Yukon subsistence issues.

#### **4. Predator Control**

An issue this Council has mentioned time and time again is predator control, specifically the effect of the wolves on moose populations. Public testimony provided at the winter meeting mentioned an increase from seven wolf packs in one particular region in 1978 to 48 wolf packs currently. Specifically, the Board should prioritize wolf management for the Yukon Flats Wildlife Refuge. The Council is also concerned about the Moose Management plan of the Yukon Flats Wildlife Refuge. It appears that much discussion has occurred and surveys have been implemented, but the Council has not seen any final actions or accomplishments.

#### **5. The Impact of Natural Disasters on Salmon Fisheries**

The Eastern Interior Region has seen different types of natural disasters (floods, fires, earthquakes, landslides, etc.) occur in both historic and recent times. The Council would like to see fish data correlated with these natural disasters to learn if these events had any effect on salmon stocks and related subsistence activities.

#### **6. Residency Standards for Subsistence**

The Council has heard and echoes concern regarding individuals who claim rural residency, and are Federally qualified subsistence users, but spent most of the year outside of Alaska or in urban areas. There needs to be some sort of action to establish, monitor and enforce residency standards for subsistence.

Thank you for the opportunity for this Council to assist the Federal Subsistence Program to meet its charge of protecting subsistence resources and uses of these resources on Federal Public lands and waters. We look forward to continuing discussions about the issues and concerns of subsistence users of the Eastern Interior Region. If you have questions about this report, please contact me through Melinda Hernandez, Regional Council Coordinator, with the Office of Subsistence Management at (800) 478-1456 or (907) 786-3885.

Sincerely,

/S/

Susan Enstminger, Chair  
Eastern Interior Regional Advisory Council

cc: Federal Subsistence Board Members  
Eastern Interior Alaska Subsistence Regional Advisory Council



U.S. FISH and WILDLIFE SERVICE  
BUREAU of LAND MANAGEMENT  
NATIONAL PARK SERVICE  
BUREAU of INDIAN AFFAIRS

**Federal Subsistence Board**  
1011 E. Tudor Rd., MS 121  
Anchorage, Alaska 99503-6199



SEP 13 2012

FWS/OSM 12050.CJ

Ms. Susan L. Entsminger, Chair  
Eastern Interior Alaska Subsistence  
Regional Advisory Council  
HC72 Box 800  
Tok, Alaska 99780

Dear Ms. Entsminger:

This letter responds to the Eastern Interior Alaska Subsistence Regional Advisory Council's (Council) 2011 Annual Report as approved at its winter 2012 meeting. The Secretaries of the Interior and Agriculture have delegated the responsibility to respond to these reports to the Federal Subsistence Board (Board). The Board appreciates your effort in developing the Annual Report and values the opportunity to review the issues brought forward concerning your region. Annual Reports allow the Board to become more aware of the issues that fall outside of the regulatory process and affect subsistence users in your region.

The Board has reviewed your Annual Report and offers the following responses:

**Issue 1: Salmon Hatcheries and Impacts on Wild Salmon Stocks**

*The Council would like to see the Office of Subsistence Management commit resources to produce studies and/or reports on effects or potential effects of hatchery-produced fish on wild salmon stocks in Alaska and throughout the Pacific Rim. For a decade, this Council has been requesting this type of information and would like to see it made a priority. This type of research can provide indices as to how we can maximize the quality and quantity of salmon that reach spawning grounds.*

**Response:**

This has been a long standing concern and an issue of great interest to both fishers and fisheries managers in Alaska and other areas along the Pacific Coast of North America, and is too broad and complex an issue for the Office of Subsistence Management (OSM) to undertake on its own. As noted further below, it is also the type of research that neither the U.S. Fish & Wildlife Service (Service) nor OSM would be involved in.

Ms. Susan L. Entsminger

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While much still remains to be learned, there already has been significant research done in this area. Most recently, a May 2012 special issue of the journal *Environmental Biology of Fishes* (Volume 94, Number 1, Ecological Interactions of Hatchery and Wild Salmon) published results from various studies and reviews presented at a conference organized by the Wild Salmon Center in Portland, Oregon. This publication contains a collection of 22 studies conducted by various university scientists and government fisheries researchers addressing potential impacts of hatcheries to wild salmon stocks throughout the Pacific Rim in Russia, Japan, Canada and the United States. Most of the articles pertain to specific hatchery management of other regions but a couple of papers report on beginning investigations of hatchery fish interactions at sea that may be applicable to Western Alaska wild salmon stocks. The Board refers the Council to this journal for further details.

Alaska has specific policies and regulations governing the permitting of hatcheries in areas with healthy wild salmon stocks, most notably the hatchery permit application process (5 AAC 40.110-.240), operation of hatchery permits (5 AAC 40.800-860), and salmon hatchery statutes (AS 16.10.375-480). A summary of the policies, "Salmon Hatcheries in Alaska," is enclosed. Even before a hatchery would be permitted on the Yukon River, it would undergo a rigorous multi-agency and public process. As such, the most likely interactions of Yukon River wild salmon stocks with hatchery salmon would occur in the marine environment. Salmon spend a substantial portion of their life cycle in the marine environment, making ocean conditions and ecological interactions at sea more important factors in driving salmon population dynamics.

Due to the predominantly marine environment of the salmon life cycle, the Service has not conducted research on impacts related to that environment. As such, OSM through its Fisheries Resource Monitoring Program only funds research pertaining to subsistence in inland Federal waters. Issue or information needs addressed in projects must have a direct association to a subsistence fishery within a Federal conservation unit as defined in legislation, regulation and plans. However, the National Oceanic and Atmospheric Administration, university researchers and some non-profit organizations have undertaken some work of this nature. If this Council desires, your Council Coordinator can provide copies of research papers mentioned in this letter or additional research updates.

## **Issue 2: Tribal Consultation**

*Tribal consultation needs to remain a priority in the Federal Subsistence Program. Tribal consultation is part of the trust obligation of the Federal government; all Federal actions should include consultation with tribes. Emphasis should be on government-to-government relationships, with a clear separation between Tribal and ANCSA entities. The Council would have liked to have seen the Office of Subsistence Management Native Liaison filled by now.*

### **Response:**

At its May 9, 2012, meeting in Anchorage, the Board adopted its Tribal consultation policy, which provides the framework for incorporating Tribal consultation into the Federal Subsistence

Ms. Susan L. Entsminger

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Management Program. Adoption of this policy is a tangible step toward improving the government-to-government relations between Federally recognized Tribes and the Federal Subsistence Board and supports the administration's efforts to improve government-to-government relations.

During the process to develop the Tribal consultation policy, the Board heard similar concerns from some Tribes that the relationship of the Alaska Native Claims Settlement Act (ANCSA) Corporations to the government is different from that of the Tribes. Federal law requires Federal agencies to consult with Alaska Native Corporations formed under ANCSA on the same basis as Tribal governments. The Board has developed a separate draft ANCSA Corporation consultation policy to meet the requirements of the law, while recognizing the different relationship the corporations have to the government than the Tribes. Based on ANCSA Corporation comments, the Board delayed adoption of the ANCSA Corporation consultation policy until the Department of the Interior finalizes its consultation policy.

The Board has directed that the Tribal Consultation Workgroup, which drafted the consultation policies, work to develop implementation guidelines for the consultation policies. Membership of this workgroup will be expanded to include Federal land managers and more Tribal and ANCSA Corporation representatives.

The Office of Subsistence Management (OSM) recently selected Jack Lorrigan to fill OSM's Native Liaison position. Mr. Lorrigan brings a strong background and experience working with Tribal governments and will play an instrumental role in the implementation of the Tribal and ANCSA Corporation consultation policies.

### **Issue 3: Equity in Access to Resources between Upper and Lower Yukon Subsistence Users**

*The Council wishes to see fisheries managed up and down the Yukon River to provide for equity among users while still keeping conservation in mind. Some areas of the river have a much lower catch per unit effort and those areas need to see increased opportunity to harvest. The Council does not wish to see greater restrictions on a single area, gear type, or community, but rather to concentrate on equity in access to resources between upper and lower Yukon subsistence issues.*

#### **Response:**

The Board is aware of the difficulties involved in trying to ensure that subsistence users are provided with equitable opportunities to harvest salmon throughout the drainage, particularly when salmon runs are low. Both Federal and State fishery managers take this into consideration when implementing management actions to meet conservation objectives throughout the drainage, including meeting treaty obligations with Canada, and to provide for subsistence harvest opportunities to users throughout the drainage. Most management actions are taken after actively soliciting input from affected users through programs such as the Yukon River Drainage

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Fisheries Association, which receives funding from the Federal Subsistence Management Program. Much of this information is obtained during in-season salmon management teleconferences and harvest interviews, which have been funded through the Fisheries Resource Monitoring Program.

#### **Issue 4: Predator Control**

*An issue this Council has mentioned time and time again is predator control, specifically the effect of the wolves on moose populations. Public testimony provided at the winter meeting mentioned an increase from seven wolf packs in one particular region in 1978 to 48 wolf packs currently. Specifically, the Board should prioritize wolf management for the Yukon Flats Wildlife Refuge. The Council is also concerned about the Moose Management plan of the Yukon Flats Wildlife Refuge. It appears that much discussion has occurred and surveys have been implemented, but the Council has not seen any final actions or accomplishments.*

#### **Response**

The Board recognizes the Council's concerns regarding the status of ungulate populations and future subsistence harvest opportunities. The Board also acknowledges that the Councils have raised this issue on several prior occasions. However, it is important to highlight several key aspects of the Board's Predator Management Policy (May 2004). First, "[t]he Board administers the subsistence taking and uses of fish and wildlife on Federal public lands through regulations that provide for the non-wasteful harvest of fish and wildlife by Federally qualified rural residents, consistent with the maintenance of healthy populations of harvested resources." This language is based on 36 CFR 242.10(a) and 50 CFR 100.10(a). The primary focus and extent of the Board's authority is to regulate subsistence activities. As further stated in the Policy, the Alaska National Interest Lands Conservation Act (ANILCA) and its regulations provide that a "subsistence use" means use of "wild renewable resources for direct personal or family consumption" [ANILCA Section 803]. Finally, the Policy adds: "Wildlife management activities on Federal public lands *other than the subsistence* take and use of fish and wildlife, *such as predator control* and habitat management, are the responsibility of and remain within the authority of the individual land management agencies" (emphasis added).

The U.S. Fish and Wildlife Service (Service), which manages the Yukon Flats National Wildlife Refuge (Refuge), has publicly commented regarding the policies that guide this issue. For example, the Service has commented on wildlife proposals before the Alaska Board of Game to affirm that it is legally precluded from managing National Wildlife Refuges with a singular focus to reduce predator populations to benefit human harvest of prey species. In addition to ANILCA, a number of laws govern management of lands by the U.S. Fish & Wildlife Service, chief among them are National Wildlife Refuge System Administration Act (NWRSSA) and the Wilderness Act. ANILCA includes a list of specific refuge purposes for each refuge in Alaska, and some Alaska specific management requirements for those refuges. The NWRSSA, as amended, mandates that each refuge shall be managed to fulfill both the mission of the National Wildlife Refuge System and the purposes for which the individual refuge was established. The

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NWRSSA requires that refuges be managed to maintain biological integrity, diversity, and environmental health. ANILCA mandates, among other things, that national wildlife refuge lands are managed to allow for conservation of fish, wildlife and habitats in their natural diversity and to provide the opportunity for continued subsistence uses by local residents. Federal regulations affecting subsistence uses note that fish and wildlife resources will be managed to assure stable and continuing populations in their natural diversity. Predator-prey relations play an integral part of maintaining biological diversity and intact ecosystems. As such, when considering intensive management of wildlife populations on refuge lands, the Service must consider the impact to biological diversity and natural ecosystems.

Predator control could also be considered a major Federal action subject to the National Environmental Policy Act requirements, which may require the preparation of an environmental impact statement or an environmental assessment (EA). More specific information on legal requirements and policy guidelines for predator control on Service lands can be found in the enclosed letters to the Council Chair from the Office of the Secretary of Interior (dated December 19, 2006) and from the Regional Chief of the National Wildlife Refuge System, Region 7 (dated July 7, 2010). The Service recently completed an EA for such a request on Unimak Island in the Alaska Maritime National Wildlife Refuge. If the Council would like a copy, the final decision document and EA for this issue can be found at <http://alaska.fws.gov/nwr/planning/nepa.htm>. Alternatively, Council members can request copies of the documents from their Council Coordinator.

While predator control is not currently being implemented on the Yukon Flats National Wildlife Refuge, it has taken steps to increase the moose population and better understand moose-wolf interactions. One of the strategies used to address the low moose numbers on the Refuge was to engage in the Federal regulatory process. Recently, the Board adopted WP10-92, which provided for increased harvest limits of black bear, with the modifications supported by the Council to limit the changes to Unit 25D. Should residents of the Eastern Interior region wish to amend regulations on harvest of wolves as a legitimate subsistence use through hunting or trapping, they are encouraged to submit an appropriate proposal in the next wildlife regulatory cycle. However, proposals identified as predator control measures will not be considered.

Refuge staff also recently completed a study that estimated wolf kill rates of moose in the western Yukon Flats. The study results showed that moose kill rates were highest in early winter (November–December) and primarily included young-of-the-year and adult females. Refuge personnel presented this information during Council meetings in 2011/2012.

The Board acknowledges that predator control is an important, recurring issue with many of the Councils. However, the Board's current policy on predator management would preclude it from initiating predator control measures. Should any person or group desire predator control on any Federal conservation units in Alaska, they would need to contact the respective land manager. Office of Subsistence Management staff could assist in identifying the appropriate people to contact.

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Concerning the Moose Management Plan, the Refuge began collaborating with the Council of Athabascan Tribal Governments (CATG) in 2010 to discuss moose management for the Yukon Flats through an Annual Funding Agreement (AFA). Meetings took place in October 2010 and June 2011. While State and Refuge staff did not attend the second meeting, it was attended by CATG staff, Tribal representatives and invited guests. No meetings have been held since June 2011. Currently, the Refuge is in negotiations with CATG to develop a Fiscal Year 2013 AFA that may include funding for more moose management meetings.

### **Issue 5: The Impact of Natural Disasters on Salmon Fisheries**

*The Eastern Interior Region has seen different types of natural disasters (floods, fires, earthquakes, landslides, etc.) occur in both historic and recent times. The Council would like to see fish data correlated with these natural disasters to learn if these events had any effect on salmon stocks and related subsistence activities.*

#### **Response:**

Natural disasters can certainly affect salmon habitat and populations, and the Yukon River Drainage Fisheries Association passed a resolution at its February 2012 annual meeting recommending that agencies review historical information and document occurrences and work together with local people in the region to monitor forest fires, floods and other natural disasters that likely impact salmon rearing and spawning habitat in the future. Most of this work would best be accomplished by the land management agencies rather than the Office of Subsistence Management. However, if this Council is interested in having work conducted to examine effects of past natural disasters on salmon populations and related subsistence activities within their geographic region, it can work with the Office of Subsistence Management to develop a priority information need for the 2014 request for proposals for the Fisheries Resource Monitoring Program, which will be an agenda topic for all fall Council meetings.

### **Issue 6: Residency Standards for Subsistence**

*The Council has heard and echoes concern regarding individuals who claim rural residency, and are Federally qualified subsistence users, but spent most of the year outside of Alaska or in urban areas. There needs to be some sort of action to establish, monitor and enforce residency standards for subsistence.*

#### **Response:**

To begin addressing this issue, the Board notes that there are current residency standards for Federally qualified subsistence users. Title VIII of ANILCA states that its purpose is to provide subsistence opportunity to “rural residents of Alaska,” and makes several references to “rural residents.” ANILCA does not, however, define “rural residents.” However, Federal subsistence regulations provide the process for determining what areas are considered “rural,” and also define who a “resident” is. Under 36 CFR 242.4 and 50 CFR 100.4, a “resident” is defined as

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any person who has his or her primary, permanent home for the previous 12 months within Alaska and whenever absent from this primary, permanent home, has the intention of returning to it. Factors demonstrating the location of a person's primary, permanent home may include, but are not limited to: the address listed on an Alaska Permanent Fund dividend application; an Alaska license to drive, hunt, fish, or engage in an activity regulated by a government entity; affidavit of person or persons who know the individual; voter registration; location of residences owned, rented, or leased; location of stored household goods; residence of spouse, minor children, or dependents; tax documents; or whether the person claims residence in another location for any purpose.

As you can see, these regulations establish who is a rural resident. These regulations were developed to allow rural residents flexibility in the recognition of the need to travel from their home community for work, educational, health and other purposes; however, the Board understands your concern about monitoring and enforcement of those standards.

Federal land managers and law enforcement officials do "monitor and enforce" residency standards to the best of their ability, but they need the help of all rural residents in addressing this issue. It is extremely difficult to investigate claims that someone is not a rural resident without evidence suggesting that a particular individual does not maintain his or her primary residence in a rural area in Alaska. Absent such evidence, all subsistence users on Federal public lands are presumed to be qualified rural residents.

If an individual or individuals know of a person who is engaging in subsistence activities on Federal lands and waters, but is not an actual rural resident, those individuals with knowledge of such a person need to report him or her to the proper authorities and provide sufficient evidence to warrant an investigation. Federal law enforcement officers regularly receive reports throughout the year of individuals who are suspected in fraudulently claiming rural residency in order to engage in subsistence activities on Federal lands. Those reports are thoroughly investigated in consultation with the Department of Interior Office of the Solicitor.

In closing, I want to thank you and your Council for their continued involvement and diligence in matters regarding the Federal Subsistence Management Program. I speak for the entire Board

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in expressing our appreciation for your efforts and our confidence that the subsistence users of the Eastern Interior region are well represented through your work.

Sincerely,

/S/

Tim Towarak, Chair  
Federal Subsistence Board

cc: Eastern Interior Alaska Subsistence  
Regional Advisory Council  
Federal Subsistence Board  
Interagency Staff Committee  
Pete Probasco, Assistant Regional Director, OSM  
Kathy O'Reilly-Doyle, Deputy Assistant Regional Director, OSM  
Carl Johnson, Council Coordination Division Chief, OSM  
Eva Patton, Council Coordinator, OSM  
Administrative Records

**Eastern Interior Alaska Subsistence Regional Advisory Council  
c/o U.S. Fish and Wildlife Service  
1011 East Tudor Road, MS 121  
Anchorage, Alaska 99503  
Phone: (907) 786- 3888, Fax: (907) 786-3898**

<DRAFT 2>

Mr. Tim Towarak, Chairman  
Federal Subsistence Board  
1011 East Tudor Road, MS 121  
Anchorage, Alaska 99503

Dear Mr. Towarak:

The Eastern Interior Alaska Subsistence Regional Advisory Council (Council) appreciates the opportunity to submit this annual report to the Federal Subsistence Board (Board) under the provisions of Section 805(a)(3)(D) and section 805(c) of the Alaska National Interest Lands Conservation Act (ANILCA). At its public meeting in Fairbanks, Alaska on October 16 and 17, 2012, the Council identified concerns and recommendations for its 2011 report. *(Note: this is a draft ~ the Council will then finalize and approve this report at its winter 2013 meeting).* If you have any questions regarding this correspondence, please contact Eva Patton, Subsistence Council Coordinator, Office of Subsistence Management at 1-80-478-1456 or (907) 786-3358.

**1) Federal closure review of moose populations in Units 25A, 26B, and 26C.**

The Council feels the closure review of the moose population in units 25A, 26B, and 26C directly effects the conservation of wildlife populations in the Eastern Interior region and has direct bearing on continued subsistence opportunity in the region. The Council requests that the closure review be presented to them as part of the Federal Subsistence management review process so that they can also have time to comment or provide input on the review.

**2) National Park Service Compendium on bear baiting.**

The Council is very concerned about the National Park Service compendium update they received via a verbal report from Deborah Cooper at the Eastern Interior Alaska Regional Advisory Council meeting in Fairbanks on October 17<sup>th</sup>. The Park Service announced that in response to the Board of Game liberalizations to the sport hunting program, the Park Service was proposing to add exclusions on park lands to the States harvest seasons and bag limits for brown bear baiting and longer wolf and coyote harvest seasons. Ms. Cooper, Park Service, Anchorage Office stated on the record that “Baiting for  
30 brown bears is a new practice not allowed by any other  
31 wildlife managing agency anywhere in North America. In

32 addition to being inconsistent with National Park Service  
33 policies, the feeding of bears alters natural behaviors,  
34 increases the likelihood of food conditioning, increases  
35 the likelihood that bears will be killed as DLPs -- or in  
36 defense of life and property and compromises public  
37 safety. Food conditioned bears are more likely to become  
38 problem animals and more likely to cause concern for the  
39 safety of people using the out of doors. These concerns  
40 are consistent with best practices widely endorsed by the  
41 scientific community.” (From pg. 325 of transcripts).

The Council's main concern in regard to this Park Service action on the above compendium is that this is viewed as a controversial issue by subsistence users in the affected area and should have been brought forward for full public review and analysis through a formal rule making process. The council notes that the Park Service Code of Federal Regulations published on their webpage states that for compendium under § 1.5 (b) Closures and public use limits states that:

*“Except in emergency situations, a closure, designation, use or activity restriction or condition, or the termination or relaxation of such, which is of a nature, magnitude and duration that will result in a significant alteration in the public use pattern of the park area, adversely affect the park's natural, aesthetic, scenic or cultural values, require a long-term or significant modification in the resource management objectives of the unit, or is of a highly controversial nature, shall be published as rulemaking in the FEDERAL REGISTER. “*

The Council disagrees that baiting for brown bears is a new practice in the region and notes that it was utilized as a hunting method before the establishment of the park.

The Council views these recent additions to the compendium, as noted above, as a back door approach to making changes to hunting regulations and request this action be considered for full public review and Federal rule making processes before a final decision is made.

### **3) Hunting guide concessions in Tetlin National Wildlife Refuge.**

The Council is concerned about new notification procedures for hunting guide concessions in the National Wildlife Refuges and that local rural residents should be notified clearly with ample opportunity to respond for their area. The Council notes an example of a local federally qualified subsistence use family that had conducted guided hunts in their home region for two generations and had cabins in the area before ANILCA was enacted. However, the new notifications were sent as a mass mailing and overlooked. Public meetings to notify of the application openings were apparently conducted in Anchorage, far from rural residents and printed in newspapers they do not have access to. The Council is concerned that qualified subsistence residents that rely on local livelihood for income have equal opportunity to apply to the Guide Concessions in areas where they have lived for generations, with the recognition that living in remote areas requires extra time to receive mail and be able to correspond. The Council requests reconsideration of the past Tetlin National Wildlife Refuge concessions announcement recently conducted since local rural participants were not aware of the change in procedure until

the opportunity had already passed. This subsistence family missed the concession application and is devastated at the loss of the main livelihood that they had held in the TET-01 region since before the inception of the Refuge. As it currently stands, the concession applications for this area will not re-open again for 10 years.

**4) Continued investigation into Chinook management options for rebuilding the run.**

The Council is greatly concerned about Chinook salmon declines on the Yukon River and would like to see greater efforts towards a better management regime. The Council recognizes the challenges of the situation and the ongoing efforts of the both the State and Federal biologists and managers working to solve the situation. However, the Council considers the current population status of Chinook salmon as calling for increased conservation measures and would like to see additional efforts on rebuilding the Yukon Chinook population for future generations.

Sincerely,

Sue Entsminger, Chair

cc: Eastern Interior Alaska Subsistence Regional Advisory Council  
Federal Subsistence Board  
Peter Probasco, Assistant Regional Director, OSM  
Kathy O'Reilly-Doyle, Deputy Assistant Regional Director, OSM  
Carl Johnson, Council Coordination Division Chief, OSM  
Interagency Staff Committee  
Administrative Record

**FEDERAL WILDLIFE CLOSURE REVIEW  
WCR12-22**

**Closure Location:** Unit 25D West

**Current Federal Regulation**

*Unit 25D West — Moose*

*That portion lying west of a line extending from the Unit 25D boundary on Preacher Creek, then downstream along Preacher Creek, Birch Creek, and lower mouth of Birch Creek to the Yukon River; then downstream along the north bank of the Yukon River (including islands) to the confluence of the Hadweenzic River, then upstream along the west bank of the Hadweenzic River to the confluence of Forty and One-Half Mile Creek, then upstream along Forty and One-Half Mile Creek, to Nelson Mountain on the Unit 25D boundary—1 bull moose by Federal registration permit. Aug. 25 – Feb. 28*

*Permits will be available in the following villages:*

*Beaver (25 permits) Birch Creek (10 permits)*

*Stevens Village (25 permits)*

*Permits for residents of 25D west who do not live in one of the three villages, permits will be available by contacting the Yukon Flats National Wildlife Refuge Office in Fairbanks or a local Refuge Information Technician. Moose hunting on public land in Unit 25D West is closed at all times except for residents of Unit 25D West hunting under these regulations. The moose season will be closed by the Yukon Flats National Wildlife Refuge Manager when 60 moose have been harvested in the entirety (from Federal and non-Federal lands) of Unit 25D West.*

**Closure Dates:** Aug. 25 – Feb. 28

**Current State Regulations:**

**Species and Bag limits – Moose**

*Unit 25: lying west of a line extending from the Unit 25D boundary on Preacher Creek, then downstream along Preacher Creek, Birch Creek, and lower mouth of Birch Creek to the Yukon River; then downstream along the north bank of the Yukon River (including islands) to the confluence of the Hadweenzik River, then upstream along the west bank of the Hadweenzik River to the confluence of Forty and One-Half Mile Creek, then upstream along Forty and One-Half Mile Creek, to Nelson Mountain on the Unit 25D boundary*

**Permit/  
Ticket  
Required**

**Open Season**

*TM940*

*Aug. 25–Feb. 28*

**Residents:** *One bull by Tier II permit*

**Nonresidents:**

*no open season*

### **Regulatory Year Initiated: 1993-1994**

#### **Regulatory History:**

Unit 25D was divided by the State into Unit 25D West and Unit 25D East (remainder) in the early 1980s to allow the use of differing regulatory schemes to address the status of the respective moose populations. Permit systems that limit the hunt primarily to residents in Unit 25D West have been in place since the early 1980s due to low moose density and relatively high demand by local residents.

In 1983, a State registration hunt for one bull moose was established, with 60 permits available to residents of Beaver (25 permits) Stevens Village (25 permits), and Birch Creek (10 permits). In 1990, the State established a Tier II permit hunt in Unit 25D West, because the harvestable surplus was deemed insufficient to support all subsistence uses. During the 1990s, an average of 117 permits was issued annually. Beginning in 1990, the Federal Subsistence Board (Board) began promulgating regulations for subsistence use on Federal public lands and initially provided an unlimited number of Federal permits to residents of Beaver, Stevens Village and Birch Creek to harvest bull moose. In 1993, based on 1992 survey information indicating a low density moose population in Unit 25D West, prudent management warranted restricting harvest of moose prior to December when most bull moose shed their antlers. This was done to help ensure the harvest of bulls only. To address both agency and local concerns, the Board adopted Proposal # 60 (P93-60) on April 8, 1993 with modifications to: 1) establish a limited harvest by providing an antlered-bulls-only season; 2) extend the season until December 20; 3) establish a combined State/Federal quota of 30 antlered-bull moose; 4) continue Federal registration permit allocations to comply with the locally-preferred, community harvest management system; and 5) close moose hunting on Federal public lands within the affected area except for residents of Stevens Village, Beaver, and Birch Creek. Moose hunting on Federal public lands in Unit 25D West has been closed since the 1993-1994 regulatory year except for residents of Unit 25D West.

In August 1993, the Board also added a February season for bull moose (1 Feb–20 Feb) and deleted the antler requirement for this February hunt in Unit 25D West. This was the result of a request for reconsideration (R93-02) by Stevens Village and the Dinyee Corporation.

In 1994, the Stevens Village Council submitted a proposal to change the harvest limit from one antlered-bull to any bull and requested a longer season to meet the subsistence needs and traditions of the Village (P94-077). The Board adopted the proposal as modified by the Eastern Interior Regional Advisory Council establishing a harvest season from 25 August to February 28, There were no changes to the overall harvest quota of 30 bull moose for Unit 25D West.

In 2001, the Board expanded the moose hunt in Unit 25D West to include all the residents living in Unit 25D West, not just those living in the villages of Beaver, Stevens Village, or Birch Creek (WP01-43). Those residents living outside of Beaver, Birch Creek, or Stevens Village could obtain moose hunting permits by contacting the Yukon Flats National Wildlife Refuge Office in Fairbanks or a local Refuge Information Technician.

Between 1993 and 1999, State Tier II permits were not valid on Federal public lands. During this period, a maximum of 30 Federal permits and 125 State Tier II permits were issued annually. In 1999, discussions with local residents helped identify a number of steps that could improve moose management on the western Yukon Flats, including revising the harvest quota for moose, reducing the number of Tier II permits and aligning State and Federal hunting seasons (Caikoski, 2008, 2010). In 2000, the Alaska Board of Game lengthened the State season in Unit 25D West to Aug. 25–Feb. 28 to match the Federal season, increased the harvest quota from 35 to 60 bull moose, and reduced the number of Tier II permits from 125 to 75. When a maximum of 60 moose have been harvested on the Federal and State lands the moose season in Unit 25D West would close (P00-60). The number of annual permits, the combined harvest quota, and the closure of Federal public lands to non-Federally qualified users are still in effect.

**Closure Last Reviewed:** 2009—WCR08-22

**Justification for Original Closure (Section 815(3) criteria):**

Section 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 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; or...*

Results from population surveys conducted in 1992 estimated that there were 605 moose in Unit 25D West, which was considerably lower than the population estimate of 1,479 in 1986. Although different population estimation methods were used, managers were concerned about the continued viability of this population based on the decline in the moose population from 1986 and 1992, the low moose density, low survival of yearling cows, high mortality rate on the younger aged moose and cows, and under-reporting of the harvest (FWS 1993). Based on the management goal to limit the harvest to no more than 5% of the population (n=605 in 1992), the Board adopted proposal 93-60 which reduced the maximum allowable take to 30 bulls. Combined with the estimated annual subsistence harvest for Stevens Village, Beaver, and Birch Creek, it was determined that there was not a surplus of moose for nonresidents or residents living outside of the Unit 25D West (FSB 1993). Thus the original closure was implemented for the conservation of a healthy moose population and to ensure subsistence use of this population without competition from outside hunters.

**Council Recommendation for Original Closure:**

The council members for the Eastern Interior Alaska Subsistence Regional Council had not been selected and finalized by the April 1993 Board meeting so there was no recommendation. In 2009, during the last review, the Board recommended to maintain the closure (WCR08-22).

**State Recommendation for Original Closure:**

The State supported the Staff Committee’s modified recommendation as stated above.

**Biological Background:**

In the 1980s, separate surveys areas were established in subunits 25D East and 25D West by the Alaska Department of Fish and Game (ADF&G) and the U.S. Fish and Wildlife Service (USFWS), respectively.

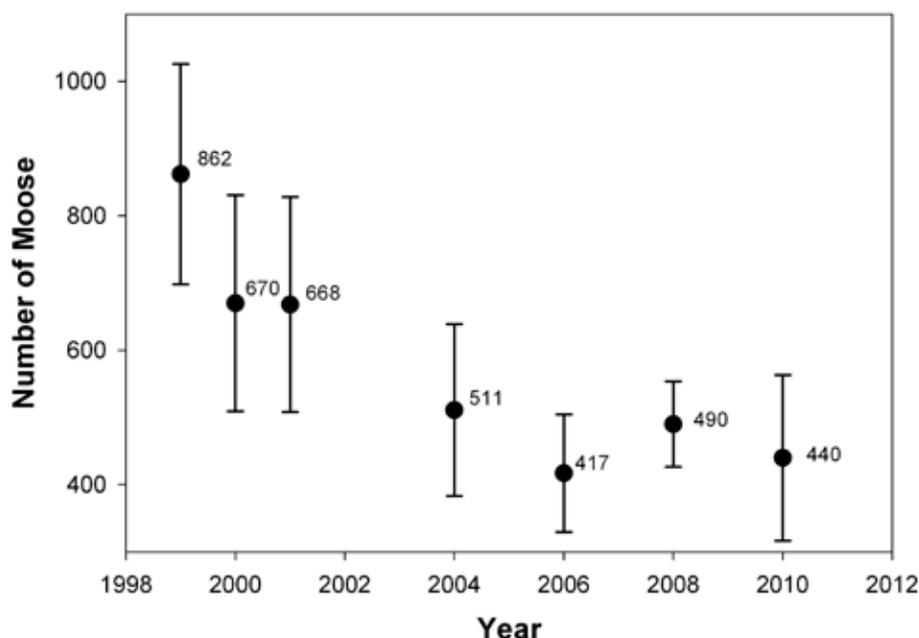
Low moose density in Unit 25D West, combined with relatively high demand for moose by local residents resulted in the use of permit systems that limited hunting primarily for local residents in this area.

The ADF&G initiated a cooperative effort in 2001 to develop a moose management plan for the Yukon Flats. By 2002, the Yukon Flats Cooperative Moose Management Plan (YFCMMP) was completed and endorsed by the Alaska Board of Game (ADF&G 2002). The YFCMMP was designed to promote moose population growth in the Yukon Flats through the following guidelines: 1) improve moose harvest reporting to better document subsistence needs and improve management, 2) reduce predation on moose by increasing the harvest of bears and wolves, 3) minimize illegal cow harvest and reduce the harvest of cows for ceremonial purposes to improve recruitment, 4) inform hunters and others about the low moose population on the Yukon Flats and avenues people could take to help in the effort to increase moose abundance, and 5) use scientific information and traditional knowledge to help make management decisions.

Because moose numbers in the western Yukon Flats area continue to be low relative to the availability of suspected high quality habitat, management objectives included measures to promote substantial growth of the population. Current management objectives include: 1) increase the size of the moose population by 2% to 5% annually in specific hunting areas adjacent to local communities in Unit 25D; 2) work with local residents to improve harvest reporting compliance; 3) manage the population to maintain a minimum of 40 bulls/100 cows as observed during fall surveys; 4) manage to minimize cow moose harvest while the population is rebuilding; and 5) conduct annual surveys to monitor moose population status and trends (Caikoski 2010).

In 1992 it was estimated that there were 602 ( $\pm 22\%$ ) moose in Unit 25D West (Stephenson 2002) which was lower than the previous estimate of 1,479 in 1986 (FWS 1993). Since 1999, population surveys have been conducted in these two subunits utilizing geospatial population estimators (GSPE) which helps standardize the survey methodology and allow for more accurate comparisons (Ver Hoef 2001, 2008; Kellie and DeLong 2006). Survey data indicate that since 1999 moose numbers have been relatively stable in the eastern Yukon Flats and declined in the western Yukon Flats. Densities in the western Yukon Flats area declined from 1999 to 2004 and have remained low but stable since 2004 (**Figure 1**) (Caikoski 2010, Lake 2010). Although the point estimates have declined from a high in of 862 in 1999 to a low of 418 in 2006, there is no significant difference in the point estimates from 1999-2008 due to the high variance associated with the point estimates (Kellie 2009). From 1999 to 2010, the average estimated moose density has been 0.23 (range 0.18 to 0.38) moose/mi<sup>2</sup> (Caikoski 2008, 2010; Lake 2008, 2010). The ADF&G classified the moose population density in the western Yukon Flats (Unit 25D West) as at “extremely low densities” (Caikoski 2008, 2010) and it continues to be low relative to habitat potential (Boertje et al. 2007).

Compared to increasing moose populations in similar habitat on Togiak National Wildlife Refuge (30-60/100 from 1998-2006; Aderman 2008), the calf:cow ratio for Unit 25D West during the 2010 survey (32/100; Lake 2010) was at the lower limit. The most recent bull:cow ratio in 25D West was 35 bull:100 cows (Lake 2010) which is above the 20-30 bulls:100 cows range which is thought to be sufficient for synchronous breeding among all the females during first estrus (Schwartz 2007). All the previous bull:cow ratios, except October 1999, exceeded the management goal of a minimum of 40 bulls per 100 cows during fall surveys as stated in the YFCMMP (ADF&G 2002; Lake 2010). The high bull:cow ratio, and the low number yearling bulls (n=4), seen during the most recent survey suggest that annual recruitment is below what is expected for this population (Lake 2010).



**Figure 1.** Estimated fall moose population (with 90% confidence interval) for the western Yukon Flats portion of Unit 25D West (Lake 2010).

The moose population in Unit 25D appears to be well below the carrying capacity for this area based on the quality and quantity of suitable habitat (Boertje et al. 2007). Moose in the unit appear to be in excellent nutritional condition, and the cows have a relatively high pregnancy and twinning rate (Bertram and Vivion 2002).

**Harvest History:**

Despite fluctuations in the reported harvest from Beaver, Stevens Village, and Birch Creek since the 1993/1994 regulatory year, the annual reported moose harvest has not exceeded the harvest quota of 60 bull moose. Studies indicate that wolf, black bear, and grizzly bear predation of moose calves and wolf predation of adult moose during winter are factors potentially limiting annual recruitment and population growth (Bertram and Vivion 2002, Lake et al. 2009). Any additional unreported harvest of cow moose by local residents would also contribute to limiting population growth (ADF&G 2002, Caikoski 2010). Harvest data via Federal registration permits and the State Tier II harvest is shown in **Table 1** and harvest reported via household surveys conducted by Athabaskan Tribal Government are shown in **Table 2**.

**OSM Recommendation**

- maintain status quo
- initiate proposal to modify or eliminate the closure
- other recommendation

**Justification for the OSM Recommendation:**

The Federal closure for Unit 25D West moose remains important to the residents of Stevens Village, Beaver, and Birch Creek, as it provides a subsistence priority under Section 815-Title VIII of ANILCA.

**Table 1.** Number of moose harvested and recorded by registration permits for the State Tier II permit hunt (TM940) and Federal subsistence hunt for Unit 25D West for regulatory years 2000/2001 to 2010/2011. The Federal subsistence hunt includes the villages of Beaver, Birch Creek, Stevens Village, and Fort Yukon (OSM 2012).

Year	Federal Subsistence Harvest	State Tier II Harvest
2000/2001	9	8
2001/2002	9	4
2002/2003	7	4
2003/2004	2	3
2004/2005	3	1
2005/2006	13	5
2006/2007	8	2
2007/2008	10	2
2008/2009	4	0
2009/2010	1	2
2010/2011	5	11

**Table 2.** Number of reported moose harvested in Unit 25 West (Beaver, Stevens Village, Birch Creek) between 2002/2003-2007/2008a (Council of Athabaskan Tribal Governments 2007, Lake 2010).

Year	Number of Moose Harvested
2002/2003	42
2004/2005 <sup>b</sup>	45
2005/2006 <sup>c</sup>	32
2006/2007 <sup>d</sup>	17
2007/2008 <sup>d</sup>	9

<sup>a</sup> data from Council of Athabaskan Tribal Governments 2003, 2005, 2006, 2007

<sup>b</sup> 42% of Yukon Flats households surveyed

<sup>c</sup> 50% of Yukon Flats households surveyed

<sup>d</sup> all Yukon Flats households surveyed

The moose population in Unit 25D West can only sustain a limited harvest as the moose population remains stable at relatively low population levels, occurs at very low population densities, and the most recent bull:cow ratio is below the YFCMMP stated objective of 40. Increased competition with other State residents if the closure was removed would reduce opportunity for Federally qualified users to hunt moose in this area and thus is not recommended. The State and Federal permit systems, the number of State and Federal permits, and the combined State/Federal harvest quota of 60 bull moose, are the end results of 20 years of a co-management effort between the State and Federal Boards, ADF&G, USFWS, Eastern Interior Regional Advisory Committee, Yukon Flats Fish and Game Advisory Committee, Eastern Interior Alaska Subsistence Regional Advisory Council, Council of Athabaskan Tribal Governments, and local residents. Retaining the closure allows for the continued cooperative management necessary to reduce antlerless moose harvest and to improve harvest reporting. These cooperative efforts are crucial to meeting the existing management objectives and local subsistence opportunity. The next review of the Federal closure for Unit 25D West will be in 2015. The status quo is necessary to continue subsistence uses under ANILCA Section 815(3).

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U.S. Fish and Wildlife Service  
Bureau of Land Management  
National Park Service  
Bureau of Indian Affairs

## Federal Subsistence Board News Release



Forest Service

### For Immediate Release:

January 14, 2013

### Contact:

Andrea Medeiros  
(907) 786-3674 or (800) 478-1456  
andrea\_medeiros@fws.gov

### Federal Subsistence Board Seeks Comments on Rural Determinations Process

The Federal Subsistence Board (Board) is seeking comments on the process used to determine which Alaska communities are rural for purposes of the Federal Subsistence Program. A notice requesting comment by November 1, 2013 was published in the Federal Register (FWS-R7-SM-2012-N248) on December 31, 2012.

The Alaska National Interest Lands Conservation Act (ANILCA) mandates that rural Alaskans be given a priority for subsistence uses of fish and wildlife on Federal public lands. The Board conducts a periodic review of rural determinations. Only communities or areas that are found to be rural are eligible for the subsistence priority under ANILCA.

Following a Secretarial review of the Federal Subsistence Management Program, the Secretaries of the Departments of the Interior and Agriculture tasked the Board to review the rural determination process and recommend changes. The Board has identified the following components of the rural determinations process to be a part of this review: population thresholds, rural characteristics, aggregation of communities, timelines, and information sources. Descriptions of these components and associated questions for public consideration and comment are provided below. Comments will be used by the Board to assist in making decisions regarding the scope and nature of possible changes to improve the rural determination process.

**Population thresholds.** A community or area with a population below 2,500 will be considered rural. A community or area with a population between 2,500 and 7,000 will be considered rural or nonrural, based on community characteristics and criteria used to group communities together. Communities with populations more than 7,000 will be considered nonrural, unless such communities possess significant characteristics of a rural nature.

1. Are these population threshold guidelines useful for determining whether a specific area of Alaska is rural?
2. If they are not, please provide population size(s) to distinguish between rural and nonrural areas, and the reasons for the population size you believe more accurately reflects rural and nonrural areas in Alaska.

**Rural characteristics.** The Board recognizes that population alone is not the only indicator of rural or nonrural status. Other characteristics the Board considers include, but are not limited to, the following: Use of fish and wildlife; development and diversity of the economy; community infrastructure; transportation; and educational institutions.

3. Are these characteristics useful for determining whether a specific area of Alaska is rural?
4. If they are not, please provide a list of characteristics that better define or enhance rural and nonrural status.

**Aggregation of communities.** The Board recognizes that communities and areas of Alaska are connected in diverse ways. Communities that are economically, socially, and communally integrated are considered in the aggregate in determining rural and nonrural status. The aggregation criteria are: 1) Do 30 percent or more of the working people commute from one community to another? 2) Do they share a common high school attendance area? and 3) Are the communities in proximity and road-accessible to one another?

5. Are these aggregation criteria useful in determining rural and nonrural status?
6. If they are not, please provide a list of criteria that better specify how communities may be integrated economically, socially, and communally for the purposes of determining rural and nonrural status.

**Timelines.** The Board reviews rural determinations on a 10-year cycle, and out of cycle in special circumstances.

7. Should the Board review rural determinations on a 10-year cycle? If so, why? If not, why not?

**Information sources.** Current regulations state that population data from the most recent census conducted by the U.S. Census Bureau, as updated by the Alaska Department of Labor, shall be utilized in the rural determination process. The information collected and the reports generated during the decennial census vary between each census; as such, data used during the Board's rural determination may vary. These information sources as stated in regulations will continue to be the foundation of data used for rural determinations.

8. Do you have any additional sources you think would be beneficial to use?
9. In addition to the preceding questions, do you have any additional comments on how to make the rural determination process more effective?

**Submit written comments by one of the following methods:**

**Mail:** Federal Subsistence Board  
Office of Subsistence Management – Attn: Theo Matuskowitz  
1011 East Tudor Road, MS-121  
Anchorage, AK 99503

**E-mail:** [subsistence@fws.gov](mailto:subsistence@fws.gov)

**Hand delivery to Designated Federal Official** at any Federal Subsistence Regional Advisory Council meeting. See the Meetings and Deadlines page of the Federal

Subsistence Management Program's website, <http://alaska.fws.gov/asm/deadline.cfm>, for dates and locations of Council meetings.

You also may call the Office of Subsistence Management at 800-478-1456 or email [subsistence@fws.gov](mailto:subsistence@fws.gov) with your questions.

Information on the Federal Subsistence Management Program can be found at <http://alaska.fws.gov/asm/index.cfm>.

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U.S. Fish and Wildlife Service  
Bureau of Land Management  
National Park Service  
Bureau of Indian Affairs



Forest Service

## Federal Subsistence Board News Release

### **For Immediate Release:**

January 14, 2013

### **Contact:**

Andrea Medeiros  
(907) 786-3674 or (800) 478-1456  
andrea\_medeiros@fws.gov

### **Call for Proposals to Change Federal Subsistence Hunting and Trapping Regulations**

The Federal Subsistence Board is accepting proposals through March 29, 2013 to change Federal regulations for the subsistence harvest of wildlife on Federal public lands for the 2014-2016 regulatory years (July 1, 2014-June 30, 2016).

The Board will consider proposals to change Federal hunting and trapping seasons, harvest limits, methods of harvest, and customary and traditional use determinations. The Board will also accept proposals for individual customary and traditional use determinations from residents of national park and national monument resident zone communities, or those who already hold a Section 13.440 subsistence use permit.

Federal public lands include national wildlife refuges; national parks, monuments and preserves; national forests; national wild and scenic rivers; and national conservation and recreation areas. These lands also include Bureau of Land Management areas that are not part of the national conservation system. Federal subsistence regulations do not apply on State of Alaska lands, private lands, military lands, Native allotments, or Federal lands selected by the State of Alaska or Native corporations.

### **Submit proposals:**

- **By mail or hand delivery**  
Federal Subsistence Board  
Office of Subsistence Management -- Attn: Theo Matuskowitz  
1011 East Tudor Road, MS-121  
Anchorage, AK 99503
- **At any Federal Subsistence Regional Advisory Council meeting**  
See the Meetings and Deadlines page of the Federal Subsistence Management Program's website, <http://alaska.fws.gov/asm/deadline.cfml>, for dates and locations of Council meetings.
- **On the Web at <http://www.regulations.gov>**

Search for FWS-R7-SM-2012-0104, which is the docket number for this proposed rule.

You may call the Office of Subsistence Management at 800-478-1456 or email [subsistence@fws.gov](mailto:subsistence@fws.gov) with your questions.

Additional information on the Federal Subsistence Management Program can be found at <http://alaska.fws.gov/asm/index.cfm>

~~###~~

## 2014–2016 Federal Subsistence Wildlife Hunting and Trapping Proposal

(Attach additional pages as needed).

Name: \_\_\_\_\_

Organization: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

**Submit proposals by  
March 29, 2013**

**Questions?**

Call: (800) 478-1456 or (907) 786-3888

E-mail: [subsistence@fws.gov](mailto:subsistence@fws.gov)

Information on submitting proposals is also available on the Office of Subsistence Management website: <http://alaska.fws.gov/asm/public.cfm>

This proposal suggests a change to (check all that apply):

- |   |  |
|---|--|
| <input type="checkbox"/> Harvest season | <input type="checkbox"/> Method and means of harvest                 |
| <input type="checkbox"/> Harvest limit  | <input type="checkbox"/> Customary and traditional use determination |

- 1 **What regulation do you wish to change?** Include management unit number and species. Quote the current regulation if known. If you are proposing a new regulation, please state “new regulation.”
  
- 2 **How should the new regulation read?** Write the regulation the way you would like to see it written.
  
- 3 **Why should this regulation change be made?**
  
- 4 **What impact will this change have on wildlife populations?**
  
- 5 **How will this change affect subsistence uses?**
  
- 6 **How will this change affect other uses, i.e., sport/recreational and commercial?**

— Please attach any additional information that would support your proposal. —

## **Southeast Alaska Subsistence Regional Advisory Council**

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January 22, 2013

### **Customary and Traditional Use Determination Recommendation Briefing**

#### **Issue:**

The Southeast Alaska Subsistence Regional Advisory Council (SE Council) does not agree that the current method of restricting access to fish and wildlife resources through a customary and traditional use determination process was intended in ANILCA.

Although SE Council recognizes that there are a number of possible solutions, its preferred solution is to eliminate the customary and traditional use determination regulations (36 CFR 242.16 and 50 CFR 100.16) and allocate resources as directed in Section 804 of ANILCA.

#### **Background:**

The current regulations on the Federal customary and traditional use determination process, including the eight factors, were based on pre-existing State regulations. The Federal program adopted this framework, with some differences, when it was thought that Federal subsistence management would be temporary.

The primary purpose of customary and traditional use determinations by the State is to limit the subsistence priority by adopting "negative" determinations for specific fish and wildlife species in specific areas. The customary and traditional use determination process is also used to establish non-subsistence use areas where no species are eligible for subsistence use.

A "positive" customary and traditional use determination in State regulations recognizes subsistence use and provides residents with a legal protection to engage in priority subsistence activities.

Unlike the State process, in which some lands are excluded from subsistence use (nonsubsistence use areas), most Federal public lands are available for subsistence use by rural residents (with some exceptions).

The Federal program uses the customary and traditional use determination process to restrict which rural residents can participate in subsistence. The abundance of fish or wildlife is not a factor in deciding which rural residents can participate in subsistence and some residents may be restricted in times of abundance.

The Federal customary and traditional use determination process is actually a means of closing an area to some rural residents, but there are no provisions for periodic review of this action similar to the review policy on other closures.

A draft policy on customary and traditional use determinations was subject to public comment during the fall 2007 Regional Advisory Council meeting window. The Federal Subsistence Board decided not to take action on the policy in March of 2008.

In October of 2009, Secretary of the Interior Ken Salazar announced that there would be “a review of the Federal subsistence program to ensure that the program is best serving rural Alaskans and that the letter and spirit of Title VIII are being met.”

In a detailed report from the U.S. Department of the Interior in September 2009, the Secretary of the Interior, with concurrence of the Secretary of Agriculture, directed the Federal Subsistence Board to do several tasks:

The first relevant task was to “review, with RAC input, federal subsistence procedural and structural regulations adopted from the state in order to ensure federal authorities are fully reflected and comply with Title VIII (changes would require new regulations).”

The second relevant task was to “review customary and traditional determination process to provide clear, fair, and effective determinations in accord with Title VIII goals and provisions (changes would require new regulations).”

In a letter to Mr. Tim Towarak in December 2010, Secretary of the Interior Ken Salazar requested that the FSB “review, with RAC input, the customary and traditional use determination process and present recommendations for regulatory changes.”

In their 2011 Annual Report, the SE Council suggested that the Board consider modifying current regulations to be more representative of the way people use subsistence resources. The SE Council suggested the following specific regulatory change:

*Modify 50 CFR 100.16 (a). The regulation should read: “The Board shall determine which fish and wildlife have been customarily and traditionally used for subsistence. These determinations shall identify the specific community’s or area’s use of ~~{specific fish stocks and wildlife populations}~~ **all species of fish and wildlife that have been traditionally used, in their (past and present) geographic areas.**”*

In the Annual Report reply, the Board encouraged the SE Council to develop recommendations in a proposal format for additional review. The Office of Subsistence Management pledged staff assistance if the Council wished to pursue the matter further.

During the March 2012 meeting in Juneau, an update on the Secretarial Review stated that nine Councils felt the customary and traditional use determination process was adequate and only the SE Council had comments for changes to the process.

The SE Council formed a workgroup to review materials and provide a report on the issue during the March 2012 SE Council meeting and develop a recommendation for consideration by the SE Council at the September 2012 meeting.

### **Southeast Council Findings:**

An eight factor framework for Federal customary and traditional use determination analysis was first adopted by the Alaska Board of Fisheries and is not found in ANILCA.

Although there are clearly some instances where it is appropriate to provide a preference to local residents (for instance, an early start to the moose season in Yakutat), the SE Council has a history of recommending customary and traditional use determinations for a large geographic area.

When necessary, the Federal Subsistence Board can restrict who can harvest a resource by applying ANILCA Section 804 criteria:

- Customary and direct dependence upon the populations as the mainstay of livelihood;
- Local residency; and
- The availability of alternative resources.

The ANILCA Section 804 process is a management tool that allows seasons on Federal public lands and waters to remain open to all rural residents until there is a need to reduce the pool of eligible harvesters.

Replacing the Federal customary and traditional use determination eight factors with ANILCA Section 804 three criteria may be a preferred method of restricting who can harvest a resource.

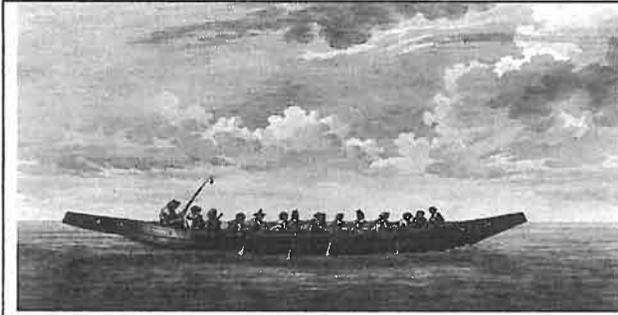
**Action:**

In January 2013, the SE Council sent a letter to the other Federal regional advisory councils regarding the deficiencies in the current customary and traditional use determination process. This letter asks the other councils to review, during their fall 2013 meetings, whether the process is serving the needs of the residents of their region and report their findings to the SE Council. If it is the desire of the other councils, a proposal for amending or eliminating current regulations could be developed for consideration by all the councils.

**Key Contacts:**

Bert Adams, Chair SE Council – 907-784-3357

Robert Larson – SE Council Coordinator – 907-772-5930



**Southeast Alaska Subsistence Regional  
Advisory Council**

**Bertrand Adams Sr., Chair  
P. O. Box 349  
Yakutat, Alaska 99689**

*kaadashan@alaska.net*

RAC SE13001.RL

**JAN 11 2013**

Ms. Susan Entsminger, Chair  
Eastern Interior Alaska Subsistence  
Regional Advisory Council  
HC 72 Box 800  
Tok, Alaska 99780

Dear Ms. Entsminger:

During the spring of 2011, pursuant to the Secretarial Review of the Federal Subsistence Program, the Federal Subsistence Board (Board) sought input from the Federal Subsistence Regional Advisory Councils (Councils) on the current customary and traditional use determination process. The Board subsequently reported to the Secretaries that 9 of the 10 Councils thought the process was working. The Southeast Alaska Subsistence Regional Advisory Council (SE Council) does not agree that the process is being implemented as intended in the Alaska National Interest Lands Conservation Act (ANILCA). We are asking your Council to review your evaluation of the current customary and traditional use determination process (36 CFR 242.16 and 50 CFR 100.16) and join with us in crafting a petition to the Secretaries to address deficiencies in the current regulations. The SE Council's preferred solution is to eliminate the customary and traditional use determination regulations and allocate resources as directed in Section 804 of ANILCA.

The SE Council has formed a workgroup to assist us in evaluating the current customary and traditional use determination process. The workgroup reviewed the 2007 draft Customary and Traditional Use Determination Policy, the public comments to this policy, the 2011 transcripts from all 10 Council meetings, and the 2012 Board transcripts where each of the Councils' input was summarized. The 2007 draft Customary and Traditional Use Determination Policy and the public comments to this policy are enclosed with this letter.

The SE Council workgroup noted that there were inconsistent briefings in 2011 regarding the input sought from the Councils. Different staff presented different levels of information, and in some instances Councils were led to believe other Councils thought the process was working.

Ms. Susan Entsminger

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In addition, there was a lack of direction or background information provided to the Councils that would be necessary to formulate an informed opinion. There was no mention or discussions of the strengths and deficiencies of the current customary and traditional use determination process as detailed in the review of the 2007 draft Customary and Traditional Use Determination Policy.

During its March 2011 meeting, the SE Council included the topic in its 2011 Annual Report. The SE Council made the following recommendation to the Board:

*Given that ANILCA does not require the Board make customary and traditional use determinations, the Council recommends the Federal Subsistence Board eliminate the current regulations for customary and traditional use determinations, and task the Office of Subsistence Management (OSM) with drafting regulations which adhere to provisions contained within Section 804 of ANILCA.*

The current Federal customary and traditional use determination regulations (and the eight factors) were based on pre-existing State regulations. Customary and traditional use determinations are a necessary step in State of Alaska management because only fish and wildlife with a “positive” determination are managed for the subsistence preference and those with a “negative” determination do not have the preference. The decision whether there is or is not a subsistence priority is not necessary under Federal rules because ANILCA already provides rural residents a preference for subsistence uses on Federal public land. The current customary and traditional use determination process is being used to allocate resources between rural residents, often in times of abundance. This is an inappropriate method of deciding which residents can harvest fish or wildlife in an area and may result in unnecessarily restricting subsistence users. The SE Council has a history of generally recommending a broad geographic scale when reviewing proposals for customary and traditional use determinations. Subsistence users primarily harvest resources near their community of residence and there is normally no management reason to restrict use by rural residents from distant communities. If there is a shortage of resources, Section 804 of ANILCA provides direction in the correct method of allocating resources.

The SE Council has determined that the Office of Subsistence Management did not give the directive from the Secretaries the due diligence it deserves and the program would benefit from additional evaluation and dialog. We request your Council reconsider its recommendation to the Board on how well the current customary and traditional use process is serving the needs of the residents in your region. The SE Council is interested in either eliminating or improving the process but, since this is a statewide issue, we do not want to propose a solution that is not supported by the other Councils. We encourage your Council to read the briefing paper provided to you by the SE Council at i winter 2013 Council meeting and review the enclosed background information. We would like your Council to consider what would be most beneficial to your region: eliminate customary and traditional use determinations, change the way customary and traditional use determinations are made, or make no change. After reviewing these materials, we

Ms. Susan Entsminger

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encourage your Council to include this subject as an agenda action item at its fall 2013 meeting. The Office of Subsistence Management has committed personnel to help in your further consideration of the customary and traditional use process at your fall 2013 meeting.

Please address any questions and report any actions taken regarding this request either directly to me or through Mr. Robert Larson, Council Coordinator, U. S. Forest Service, Box 1328, Petersburg, Alaska 99833, 1-907-772-5930, robertlarson@fs.fed.us.

Gunalchéesh (thank you).

Sincerely,  
/S/

Bertrand Adams Sr., Chair

**Enclosures**

cc: Peter J. Probasco, Assistant Director, OSM  
Kathy O'Reilly-Doyle, Deputy Assistant Director, OSM  
Federal Subsistence Board  
Interagency Staff Committee  
Administrative Record

This draft incorporates comments from the Federal Regional Advisory Councils during the fall 2007 meetings, public comments, and internal agency reviews.  
Revised March 4, 2008

**DRAFT**  
**POLICY ON IMPLEMENTATION OF CUSTOMARY AND**  
**TRADITIONAL USE DETERMINATIONS**  
**FEDERAL SUBSISTENCE BOARD**

**PURPOSE**

This policy describes the internal management of the Federal Subsistence Board (Board) and provides explanation to the public regarding the process for making customary and traditional use determinations pertaining to management of hunting, trapping, and fishing on Federal public lands and waters in Alaska. 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**

The Alaska National Interests Lands Conservation Act (ANILCA) defines subsistence uses as "...the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption such as food, shelter, fuel, clothing, tools or transportation...." (ANILCA § 803). Title VIII of ANILCA established a priority for the taking on Federal public lands of fish and wildlife for these subsistence uses by rural Alaska residents (ANILCA § 804). While ANILCA does not require that customary and traditional use determinations be made, nor that the eight factors be utilized in evaluating subsistence uses, implementing regulations require the Board to make customary and traditional use determinations

where the eight factors <sup>1</sup> set forth in the regulations are generally exhibited. Pursuant to the regulations, the Board determines which rural Alaska areas or communities have customary and traditional uses of fish stocks and wildlife populations by evaluating whether or not a community or area seeking a customary and traditional use determination “shall generally exhibit” the eight factors [36 CFR 242.16(b) and 50 CFR 100.16(b)]. For public lands managed by the National Park Service, where subsistence uses are allowed, customary and traditional use determinations may be made on an individual basis [36 CFR 242.16(b) and 50 CFR 100.16(a)]. While the Board has generally focused on the eight factors since the inception of the Federal Subsistence Management Program, it recognizes that the discretion of ANILCA is much broader. And that all of these factors need not be present or given equal weight in considering whether to make a specific customary and traditional use determination.

## **BOARD AUTHORITIES**

- ANILCA, 16 U.S.C. 3101 et seq.
- The regulatory framework for the Federal Subsistence Board is contained in 36 CFR Part 242 and 50 CFR Part 100.

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<sup>1</sup> The eight factors are as follows [36 CFR 242.16(b) and 50 CFR 100.16(b)]:

1. A long-term consistent pattern of use excluding interruptions beyond the control of the community or area;
2. A pattern of use recurring in specific seasons for many years;
3. A pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local characteristics;
4. The consistent harvest and use of fish or wildlife as related to past methods and means of taking; near, or reasonably accessible from, the community or area;
5. A means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations, including consideration of alteration of past practices due to recent technological advances where appropriate;
6. A pattern of use which includes the handing down of knowledge of fishing and hunting skills, values, and lore from generation to generation;
7. A pattern of use, in which the harvest is shared or distributed within a definable community of persons; and;
8. A pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social, and nutritional elements to the community or area.

## **POLICY**

The purpose of ANILCA is to provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so [ANILCA § 101(c)]. The users provided for under ANILCA are rural Alaska residents, and the uses which are subsistence uses are those that are customary and traditional.

The customary and traditional use determinations that the Board makes must be based on a community's long term consistent pattern of use of a fish stock or wildlife population. But nothing in 36 CFR 242.16(b) and 50 CFR 100.16(a) states that a specific wildlife population or fish stock has to be defined in terms of a specific geographical area.

The taking of resources for subsistence uses, and those uses themselves may be dynamic and adaptive, and change over time in response to environmental, technological, demographic, and social influences. The Board provides for these changes, in part by considering regional, temporal, and cultural variation.

ANILCA describes subsistence use as that which is by rural Alaska residents and customary and traditional. Not all uses are customary and traditional. In the absence of a specific customary and traditional use finding, all rural residents are the eligible pool of users. If a customary and traditional use finding was adopted from the State program, the Board may expand or further limit that finding. In the event that the Board has already made a customary and traditional use finding, the Board also may expand the existing finding, or more narrowly delineate the finding. In all instances, the Board makes a decision based upon the best available information.

Customary and traditional use determinations are not intended to be an additional hurdle that subsistence users must pass in order to qualify as a subsistence user under ANILCA. Rather, customary and traditional determinations are a means of identifying uses as provided for under ANILCA.

ANILCA Section 803 defines subsistence uses to mean "customary and traditional uses of wild, renewable resources" and Section 804 requires that the taking for "nonwasteful subsistence uses" be given a priority over the taking for other uses. All "subsistence uses" as defined in Section

803 qualify for the Section 804 subsistence priority. To the extent that a particular population is relatively unimportant for subsistence purposes, this likely would be reflected in relatively low taking and thus customary and traditional use of the population. For all customary and traditional use determinations, Section 804 requires that the taking for subsistence uses be given a priority over nonsubsistence uses.

### **Decision Making**

The Board shall:

- Adhere to the statutory standard of customary and traditional use in making customary and traditional use determinations. Need for sustenance is not the standard.
- Base its determination of customary and traditional use on information of a reasonable and defensible nature contained within the administrative record.
- Make customary and traditional use determinations based on a holistic and flexible application of eight factors outlined in 36 CFR 242.16(b) and 50 CFR 100.16(b), and whether a community or area generally exhibits them. Together, the eight factors elucidate the economic, nutritional, cultural, and social character of customary and traditional resource harvest and use.
- Consider the knowledge, reports, and recommendations of the appropriate Regional Advisory Council regarding customary and traditional use of subsistence resources in making its decisions [36 CFR 242.16(b) and 50 CFR 100.16(b)].
- Consider comments and recommendations from the State of Alaska and the public [ANILCA § 816 (b)].

### **Additional Guiding Considerations:**

The Board recognizes that:

- It may extrapolate based on information from other, similarly situated communities or areas if no information exists for a certain community or area.
- Assessment of the eight factors can vary due to regional, cultural and temporal variations.

- It has discretion in deciding whether the eight regulatory factors are generally exhibited. Inherent in that general discretion is the specific discretion to determine the geographical extent of the area relevant to the use of a specific fish stock or wildlife population. There is no rigid regulatory requirement that a customary and traditional use determination be made only for an area for which actual use had been demonstrated; the area encompassed by a customary and traditional use determination may be broader.
- ANILCA does not differentiate between natural, introduced, reintroduced or recently migrated species.

**Definitions:**

As defined in ANILCA (§ 803), “subsistence uses” means . . . “[T]he customary and traditional uses by rural Alaska residents of wild renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade.”

The term “policy” means the general principles by which the Board is guided in the management of its affairs. Nothing in this policy is intended to enlarge or diminish the rights and responsibilities mandated by Title VIII. Nor is it intended to create any right or benefit enforceable at law by any party against the United States or any person.

**PUBLIC COMMENTS SUBMITTED IN RESPONSE TO  
THE FEDERAL SUBSISTENCE BOARD'S  
DRAFT POLICY  
ON  
IMPLEMENTATION OF CUSTOMARY AND TRADITIONAL USE  
DETERMINATIONS**

**OFFICE OF SUBSISTENCE MANAGEMENT  
ANCHORAGE, ALASKA  
JANUARY 25, 2008**

Introduction: Comments on the draft policy on implementation of customary and traditional use determinations were submitted by thirteen different entities, including the State of Alaska, the Alaska Federation of Natives, as well as two Subsistence Regional Advisory Councils (Southcentral and Western Interior), two individuals (Erik Weingarth and Chuck Burkhardt), three tribal councils (Mount Sanford Tribal Consortium, Ninilchik Traditional Council, Yakutat Tlingit Tribe), two Regional Corporations/Nonprofits (Ahtna, Inc., and Central Council of Tlingit and Haida Indian Tribes of Alaska), and two statewide fisheries groups Kenai River Sportfishing Association and United Fishermen of Alaska). Some sets of comments mirrored each other, so that while fourteen sets of comments were received, there was considerable overlap among some of them. Opinions on the draft policy varied, ranging from supporting the draft policy in principle, to recommending complete overhaul of how the Federal Subsistence Board implements customary and traditional use determinations. The full set of comments follows.

# Southcentral Subsistence Regional Advisory Council

## Comments on Draft C&T Policy

### Decision Making

The Board shall:

- Adhere to the statutory standard of customary and traditional use in making customary and traditional use determinations. Need for sustenance is not the standard.
- Base its determination of customary and traditional use on information of a reasonable and defensible nature contained within the administrative record.
- Make customary and traditional use determinations based on a holistic application of eight factors, as outlined in 36 CFR 242.16(b) and 50 CFR 100.16(b), and whether a community or area generally exhibits them.

Together,

the eight factors elucidate the economic, nutritional, cultural, and social character of customary and traditional resource harvest and use.

- Defer to the Regional Advisory Councils' ~~Consider the~~ knowledge, reports, and recommendations of the appropriate Regional Advisory Council regarding customary and traditional use of subsistence resources in making its decisions [36 CFR 242.16(b) and 50 CFR 100.16(b)].
- Consider comments ~~and recommendations~~ from the State of Alaska and the public [ANILCA § 816 (b)].

### Additional Guiding Considerations:

The Board recognizes that:

- It may extrapolate based on information from other, similarly situated communities or areas if no information exists for a certain community or area..
- Assessment of the eight factors can vary due to regional, cultural, and temporal Variations, and Regional Advisory Council knowledge are particularly important, or study standards.
- It has discretion in deciding whether the eight regulatory factors are generally exhibited. Inherent in that general discretion is the specific discretion to determine the geographical extent of the area relevant to the use of a specific fish stock or wildlife population. There is no rigid regulatory requirement that a customary and traditional use determination be made only for an area for which actual use had been demonstrated; the area encompassed by a customary and traditional use determination may be broader.
- ANILCA does not differentiate between natural, introduced, reintroduced or recently migrated species.

**WESTERN INTERIOR REGIONAL COUNCIL'S ACTIONS ON THE  
DRAFT POLICY ON IMPLEMENTATION OF CUSTOMARY AND TRADITIONAL USE  
DETERMINATIONS**

During the October 30 – 31, 2007 public meeting in Galena, Alaska, the Western Interior Regional Council passed unanimously to support the Southcentral Regional Council's modifications to the policy. Those modifications are summarized below. Underlined text is an addition and lined through text are deletions.

On Page 3 of the Draft Policy:

**Decision Making**

The Board shall:

- Defer to the Regional Advisory Councils' Consider the knowledge, reports, and recommendations of the appropriate Regional Advisory Council regarding customary and traditional use of subsistence resources in making its decisions.
- Consider comments ~~and recommendations~~ from the State of Alaska and the public.

Chuck Burkhardt  
PO Box 272  
Gustavus, AK. 99826

Federal Subsistence Board  
Attn: Theo Matuskowitz  
Office of Subsistence Management  
3601 C Street, Suite 1030  
Anchorage, AK. 99503

Federal Subsistence Board and Staff:

I am writing to you with my comments in regards to your "Customary and Traditional Use Determination" policy draft paper that is out for comment from the public until December 1, 2007.

I think that your policy for Customary and Traditional Use (C&T) determinations is basically illegal and against the letter and intent of ANILCA Title VIII. It appears you have adopted the way the State of Alaska has used C&T determinations to restrict subsistence users. As you are well aware, the State of Alaska is not in compliance with ANILCA Title VIII. This is why you are charged with providing a preference for subsistence uses on Federal public lands.

As you may know, I have been the author of a couple of proposals to modify C&T determinations in the Federal lands around Gustavus. My request for C&T for fish in the Gustavus area was met by opposition from Hoonah, the Southeast Regional Advisory Council and even you before I filed a request for reconsideration and threatened getting an attorney to your staff. The whole process took a couple of years and an incredible amount of my time (not to mention yours), just so I could fish on federal lands under Federal regulations in an area as close or closer to my residence as it is to Hoonah. Much of the opposition that I could surmise was based on race. (Gustavus was not considered "native enough", even though we are just as dependant on fish and game as any other similarly situated rural community in general and Hoonah in particular). Your C&T policy has succeeded in pitting rural community against rural community, and is illegal under ANILCA Title III. You are using your C&T policy to restrict subsistence users from their subsistence rights under ANILCA Title VIII.

Nowhere in ANILCA Title VIII do I read that rural residents have to pass a "C&T use test" the way you are applying it. ANILCA is simple, all rural residents are supposed to be afforded a priority for the non-wasteful taking of wild renewable resources on Federal public lands no matter where they are. ANILCA requires that no restrictions can be placed on rural residents unless all other non subsistence uses are first restricted, and then only based on three criteria set out in Section 804; Customary and direct dependence upon the populations as the mainstay of livelihood, local residency, and the availability of alternative resources. To do otherwise, which you have been doing violates the letter,

spirit, and intent of ANILCA Title VIII. I am amazed that you have not yet been sued over this egregious violation of Federal law.

By way of this letter I am formally requesting that the Federal Subsistence Board take immediate and positive action to promulgate formal rulemaking to eliminate the need and requirement of C&T determinations. In addition, all existing C&T determinations should be removed from Federal regulations so that all rural residents have a preference for subsistence uses of wild renewable resources on all Federal lands in the State of Alaska. Any additional restrictions on rural residents should only be done under ANILCA section 804, and only after all other competing non-subsistence uses have been eliminated. To do less, violates the letter, intent, and spirit of ANILCA Title VIII and risks additional litigation against the Federal government in this matter.

Respectfully,

Chuck Burkhardt

/s/

To: Theo Matuskowitz and Subsistence Board

From: Erik Weingarh, Box 74, St. Marys Ak. 99658

Re: Customary and Traditional use Policy Draft.

To me some of this draft is o.k. as I am a rural subsistence user . Though I am constantly fighting for my right to feed my family. Example gear restrictions that we have used for generations and times when we can fish. Let be known my subsistence has changed because of rash ideas by people who know nothing of what I go thru to feed my family. Why do you allow the sale of subsistence fish??? This draft should prohibit the sale of subsistence caught fish. I am not well represented by the fed. government when High Seas fishing has degraded my subsistence. We should come first. Us on the lower Yukon have suffered enough. There is to much confusion on what to do. Do not point the finger at I who feeds a family.

Thanks for listening.

Erik Weingarh



PO Box 357 • Gakona Alaska 99586 • (907) 822-5399 • Fax (9

November 28, 2007

Theo Matuskowitz  
Office of Subsistence Management  
3601 C Street, Suite 1030  
Anchorage, Alaska 99503

RE: Comments on Draft Customary & Traditional Use Policy

Dear Mr. Matuskowitz:

I have reviewed the Draft Policy and these are my comments. They are in order of the paragraphs as presented in the Draft.

#### Purpose

I would delete the word "INTERNAL" in the opening sentence. There is and have been considerable criticism in the past of there being too much internal activities with in the Federal Agencies on ANIKCA matters. I suggest you replace the wording with, "Subsistence Management Policies of the Federal Subsistence Board", or words to that effect.

Line 5. "This Policy is intended only to clarify existing practices under current statue and regulations". This should be the heading for this paragraph. The last sentence should be deleted as it already under Definitions, (further, it may well be that readers would only go this far and not continue, feeling that nothing of any value could be added to this discussion).

#### Introduction

Line 10 & 11, top of page two is problematic. The term "shall generally exhibit" should be recalled and perhaps reinstated with something like.. "Shall reflect in general community practices or consumptive uses, as measured by the eight factors".

Board Authorities:

No Comment

## Policy

Paragraph one - No comment

Paragraph two - The second sentence confuses the issue. It should be footnoted and/or correlated in a separate discussion on GMU Boundaries.

Paragraph three - Need to reflect the severity of the impact of Climate changes since the time that ANILCA came into being.

Paragraph four - No comment

Paragraph five - I agree, however the costs of attending meetings and contending with the regulatory framework is cost prohibitive for small Tribes and communities that can only be serviced by planes. Whether intended or not this is the reality and some means must be developed within the draft policy to offset this plain fact.

Paragraph six - Line four beginning with..."to the extent that a particular population.." is problematic and should be deleted in its entirety. I think I know what it means but by the time I have read the whole sentence I don't anymore.

## Decision Making

Bullet one - No comments

Bullet two - Very problematic. I would delete and rewrite. Information related to Subsistence is in part artistic, in part, practices and in part science. It is never, ever just administrative.

Bullet three - What we do as a subsistence people can at times be called sacred or even noble, or intrinsic ably valuable but I resist it being called "Holistic". The question here is: why should we not have the term "practices" instead of "character" in the sentence?

Bullet four - I would feel much more comfortable in the regulatory framework if the sentence would be expanded to read, "Consider, rely, or utilize the knowledge etc. et al..."

Bullet five - No comments

## Additional Guiding Considerations

No comment

## Definitions

No comment

## Summary

Although good, I don't consider the Policy as complete yet. It certainly lacks reference or recognition of the tremendous burden we have to contend with in Habitat, due to Climate changes. There is also, the tendencies of Policy to overlook the fact that trails are not roads. All hunters or gatherers in a customary sense rely on trails as a tool to acquire the resources, whether it be berries, wood or game. ATVs are only a tool no more important than the trail itself. This principle should be outlined in these drafts. Finally missing is the issue of shelter. Too properly accommodate subsistence uses or patterns, the issue of shelter needs to be addressed. At one time cabins were used for all subsistence purposes in the rural arena. They were shared and maintained for those purposes. With the advent of ATVs it seems that shelter is no longer recognized as a

valid part of Subsistence. I differ with that thought. Shelter gives me the opportunity to practice that which I have always practiced. It is much more important to the subsistence way of life than an ATV.

Thank you for the opportunity to provide these comments.

Sincerely,

/S/ 

Wilson Justin

Cc MSTC Board  
Elaine Sinyon  
Shawn Sanford



... ADMINISTRATION ... COUNCIL  
P.O. Box 39070  
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November 30, 2007

Federal Subsistence Board  
Attn: Theo Matuskowitz  
Office of Subsistence Management  
3601 C. Street, Suite 1030  
Anchorage, Alaska 99503  
Fax: (907) 786-3898  
Email: [subsistence@fws.gov](mailto:subsistence@fws.gov)

**Re: Comments of the Ninilchik Traditional Council (NTC) on the proposed Policy on Implementation of Customary and Traditional Use Determinations**

Dear Federal Board Members,

Below are the comments of the Ninilchik Traditional Council (NTC) on the Federal Subsistence Board's proposed Policy on Implementation of Customary and Traditional Use Determinations.

1. Pursuant to the applicable FSB regulations, C&T use determinations are made for an area or community. Thus, the FSB may include a community within a larger rural area when making a C&T use determination. This is a problem for Native Villages that have been surrounded in their traditional territory by an ever-expanding non-Native population. The FSB, for example, included the Happy Valley area with the community of Ninilchik in making C&T use determinations for salmon and other fish in the Kenai drainage. Some members of the FSB argued that the percentage of the area's population using salmon in the Kenai drainage was not significant enough to demonstrate C&T use of those fish stocks. Fortunately, this argument did not succeed for salmon.<sup>1</sup> A

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<sup>1</sup> The draft Policy does not directly addresses the "significant" percentage of the area population argument made primarily by Board member Edwards when he opposed a positive finding for salmon and other fish in the Kenai drainage for Ninilchik. NTC's arguments regarding the bad policy implications and illegality of applying some arbitrary threshold percentage when making C&T use determinations are made in detail in its RFR filed with the FSB on 30 May 2006. Ninilchik incorporates those arguments here and will not repeat them. The Policy should be amended to explicitly reject the "significant" percentage rationale and argument made by Board member Edwards and rejected by the majority of the Board when it found that Ninilchik has C&T use of salmon stocks in the Kenai drainage.

surrounded Tribe's C&T use determinations and thus its subsistence rights are in constant jeopardy if the FSB misuses its discretion and dilutes the Tribal community's established patterns of use by including it as a small part of a large area dominated by non-tribal residents.

The draft Policy should be amended to limit the FSB discretion when making C&T determinations for Native Villages surrounded by a growing non-Native population. Congress clearly intended to protect the subsistence way of life of Alaska Native Villages. And there can be no dispute that Native Villages have C&T uses of the resources in their traditional areas. Their C&T uses should not be put at risk because other non-tribal members who do not share the tribal subsistence way of life choose to reside in the area surrounding the Village. The FSB has the discretion to make "community" versus area determinations, and it should exercise this discretion when looking at surrounded Native Villages. A Native Village's C&T uses should be determined separately from a larger area or larger community in cases where the larger area or community does not share the Native Village's subsistence culture and way of life.

2. The Policy should clarify that a positive C&T use determination does not necessarily mean that all communities with C&T use of the same fish stock or wildlife population have identical needs or uses of that resource, or are entitled to the same harvest regime. For example, Lime Village is only one of many communities with C&T use of moose and caribou populations in that area of Alaska. Lime Village, however, has a unique harvest and reporting regime for those wildlife populations due to the Village's C&T use patterns and its subsistence needs. On the other hand, OSM has advised the SCRAC that it cannot allow Ninilchik to use a fish wheel in the Kenai for salmon unless all other eligible communities (or even all other eligible individual rural residents) are also entitled to use a fish wheel. OSM so advises despite the fact that no other community has expressed any interest in a fish wheel on the Kenai River. Moreover, only Ninilchik has demonstrated to the SCRAC a community pattern of sharing, preserving and other C&T uses that require the harvest of larger numbers of fish at specific times of the season, thus the need for a more efficient means of harvest like a fish wheel.

When a community with a positive C&T use determination seeks a method, means or bag limit for a particular resource, that community's use patterns and needs should be allowed to proceed on the merits without the FSB following a policy that every other community (or individual) with C&T use of that resource must be afforded the same harvest opportunity even if no other community has expressed any interest in such an opportunity. The Policy should provide the FSB with discretion to provide different harvest regulations for communities based on each individual community's use patterns, needs and regulatory proposals. Moreover, the Policy should recognize that the RACs

are uniquely suited to sort through these kinds of harvest issues for the distinct communities in their respective regions, and such RAC recommendations should be given great deference.

3. NTC supports the position adopted by the South Central RAC at its meeting in Anchorage in October, 2007 that amends the draft Policy to explicitly acknowledge that RAC recommendations regarding C&T use determinations are due deference by the Federal Subsistence Board (FSB).

The fourth bullet under the heading "Decision Making" in the draft Policy states that the FSB shall "consider the knowledge, reports and recommendations of the appropriate Regional Advisory Council" (RAC). Section 805(c) of ANILCA (16 U.S.C § 3115(c)), however, requires the FSB to follow a RAC recommendation unless the recommendation is "not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs." As acknowledged in the 24 January 2007 brief of the FSB in Alaska v. Fleagle (the "Chistochina" case) at footnote 25, page 36:

If . . . the ANILCA priority extends only to the specific resources which have been customarily and traditionally taken, then the C&T determination would "concern the taking of fish and wildlife." In that situation a Regional Advisory Council's recommendation regarding a C&T determination would appear to be subject to the provisions of 16 U.S.C. § 3115(c).

Once the FSB has made a determination that a rural area or community does not have C&T use of a fish stock or wildlife population, current FSB regulations and practice foreclose the application of the ANILCA priority to that subsistence resource for that area or community. Therefore, consistent with the FSB litigation position taken above, and the letter and intent of ANILCA, RAC recommendations regarding C&T use determinations are due section 805(c) deference. The Policy should explicitly acknowledge this requirement.

4. NTC also supports the SCRAC position that the final bullet under the "Decision Making" section of the draft Policy should be amended to strike any reference to considering "recommendations" from the State of Alaska and the public. The term "recommendations" has a specific and important meaning related to the authority and deference given to RACs in section 805(c) of ANILCA as described above. Title VIII of ANILCA neither requires nor allows the FSB to defer to "recommendations" from the State or public. The Policy should not confuse the issue by stating that the FSB will "consider the comments and recommendations from the State of Alaska and the public."

5. NTC also agrees with the SCRAC that the second bullet of the "Additional Guiding Considerations" section of the draft policy should be amended to explicitly

acknowledge that RAC knowledge and recommendations are particularly important in cases where "assessment of the eight factors can vary due to regional, cultural, and temporal variations." During enactment of ANILCA, Congress recognized the value and necessity of ensuring that rural residents with knowledge of local conditions were empowered in the subsistence management regime.

[T]he national interest in the proper regulation, protection and conservation of fish and wildlife on the public lands in Alaska and the continuation of the opportunity for a subsistence way of life by residents of rural Alaska require that an administrative structure be established for the purpose of enabling rural residents who have personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands in Alaska.

Section 801(5) of ANILCA. Assessing the eight criteria in light of regional, cultural and temporal variations is a task particularly well suited for RACs, and this expertise should be recognized in the policy and deferred to by the FSB.

6. The Policy should be amended to include a section under Guiding Considerations that states that after the FSB has made a positive C&T determination for a community or area, there will be a strong presumption that the determination is valid, and that the Board will only consider a proposal to modify or rescind a C&T use determination if the proponent has demonstrated substantial new information supporting the proponent's claim. This will prevent a community from having to constantly defend a C&T determination from a hostile State Administration or sport/commercial user group hoping to find a changed Board or more favorable political situation. It will also save OSM staff time and effort better spent on more productive areas supportive of subsistence uses. C&T uses are established over a substantial period of time and do not just disappear over a few years because some group disagrees with the priority for subsistence uses. Once a positive C&T use determination has been made, it should remain in place except for highly unusual circumstances.

7. The Policy should be amended to require that, for Native Villages, C&T uses of all fish stocks and wildlife populations shall be presumed in the entire area traditionally used by the Village. Above all else, the subsistence way of life as customarily and traditionally practiced by Alaska Tribes is characterized by the opportunistic use of resources where available and when needed. Alaska Tribes used their entire territory to hunt, fish and gather. They took what they needed when and where resources were available. They used all the resources available. They did not catch and release, but used what they caught and gathered. It should be presumed that Alaska Native Villages have C&T uses of all resources within the areas traditionally used by the Village. Moreover, the Policy should acknowledge that Village traditional use areas may overlap

because of kinship relationships, sharing, bartering and other Tribal relationships, agreements and circumstances. In passing the 1992 Alaska State Subsistence law the legislature recognized that "customary and traditional uses of Alaska's fish and game originated with Alaska Natives." Section 1 of chapter 1, SSSLA 1992. The Policy should recognize this fact and incorporate the presumption that Native Villages have C&T use of all resources throughout the Tribe's traditional use area.

8. The Policy should state that it is the FSB's intent to implement C&T use determinations such that all rural communities and areas shall have the use of sufficient "public lands" to satisfy their subsistence needs, thereby satisfying the clear intent of Title VIII of ANILCA. The federal subsistence priority only applies to federal "public lands." Some rural areas and communities, however, are surrounded by State and private lands. Moreover, many lands selected by Alaska Native Village and Regional corporations were selected primarily because of their importance for subsistence hunting, fishing and gathering. Congress recognized in Title VIII that the continuation of the opportunity for subsistence uses "by Alaska Natives on Native lands is essential to Native physical, economic, traditional, and cultural existence." Section 801(a) of ANILCA. Yet, in a great oversight and injustice, and because of the McDowell decision and the continued refusal of the Alaska Legislature to allow a vote on a "rural" constitutional amendment, Native lands are considered "private" lands under State jurisdiction, and do not fall under the protection of the ANILCA subsistence priority. Some Native lands are even classified as non-subsistence use areas under Alaska law and regulations. ANILCA's purpose of ensuring the opportunity for the continuation of subsistence uses cannot be accomplished if C&T use determinations do not provide sufficient opportunity for surrounded rural communities to take the amount of fish and wildlife resources they need from those public lands accessible to the community. C&T subsistence uses are above all opportunistic. Subsistence users go where they must to harvest what they need. In the case of surrounded Villages, C&T uses must be recognized on the public lands accessible to the community, and must include sufficient public lands to provide the opportunity to fully satisfy the community's subsistence needs. The Policy should acknowledge the FSB's responsibility when making C&T use determinations to ensure that all rural communities have the right to subsistence hunt, fish and gather on public lands to the extent necessary to fully satisfy their subsistence needs.

NTC thanks the Federal Board for the opportunity to make the above comments. NTC looks forward to working with FSB and OSM if there are questions regarding the above comments.

Sincerely,  
/S/

Ivan Encelewski  
NTC Executive Director



## YAKUTAT TLINGIT TRIBE

716 OCEAN CAPE ROAD P.O. BOX 418 YAKUTAT, ALASKA 99689  
PHONE (907) 784-3238 FAX (907) 784-3595

December 7, 2007

Mr. Theo Matuskowitz  
Federal Subsistence Board  
Office of Subsistence Mgmt  
3601 C Str., Suite 1030  
Anchorage, AK 99501

Subject: Policy on Implementation of Customary and Traditional Use Determinations

The Yakutat Tlingit Tribe would like to make a few comments regarding your draft policy to be discussed at the upcoming Federal Subsistence Board meeting next week.

Although your draft policy state that your board feels it needs to “provide explanation to the public regarding process” we have concern that this is just another layer of policy to be interpreted.

We have concern about the use of State customary and traditional use findings. The State of Alaska’s refusal to comply with ANILCA is what necessitated Federal takeover. We believe that the State is continuing to fight the subsistence rural customary and traditional use.

Your draft policy states: “In all instances, the Board makes a decision based upon best available information. You don’t elaborate on where and how that information is gathered. We believe that the Federal Subsistence Board should state somewhere in their policy that they will strongly consider information received from the Regional Advisory Councils, Tribes and ANSCA Corporations.

We ask that you keep in the forefront the reason that ANILCA provides for customary and traditional uses by Alaska residents of wild and renewable resources. The majority of users are Alaska Native although Congress was not willing to say so. We as a people have fought long and hard to continue our traditional and cultural ways. We want to continue as a people; yet it seems that laws, policies, and regulations are made to chip away at our rights.

Thank you for the opportunity to respond.

Sincerely,

/S/

Victoria L. Demmert, President  
Yakutat Tlingit Tribe

Cc: YTT Tribal Council  
YTT General Manager  
Carrie Sykes, Subsistence & Sustainable Development Specialist



November 28, 2007

Federal Subsistence Board  
Attn: Theo Matuskowitz  
Office of Subsistence Management  
3601 C. Street, Suite 1030  
Anchorage, Alaska 99503  
Fax: (907) 786-3898  
Email: subsistence@fws.gov

Re: Comments of the Ahtna Tene Nene' Subsistence Committee on the proposed Policy on Implementation of Customary and Traditional Use Determinations

Dear Federal Board Members,

Below are the comments of the Ahtna Tene Nene' Subsistence Committee on the Federal Subsistence Board's proposed Policy on Implementation of Customary and Traditional Use Determinations. The Subsistence Committee represents the Federally recognized tribes in the Ahtna region on subsistence uses.

1. The Subsistence Committee supports the position adopted by the South Central RAC at its meeting in Anchorage in October, 2007 that amends the draft Policy to explicitly acknowledge that RAC recommendations regarding C&T use determinations are due deference by the Federal Subsistence Board (FSB).

The fourth bullet under the heading "Decision Making" in the draft Policy states that the FSB shall "consider the knowledge, reports and recommendations of the appropriate Regional Advisory Council" (RAC). Section 805(c) of ANILCA (16 U.S.C § 3115(c)), however, requires the FSB to follow a RAC recommendation unless the recommendation is "not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs." As acknowledged in the 24 January 2007 brief of the FSB in Alaska v. Fleagle (the "Chistochina" case) at footnote 25, page 36:

If . . . the ANILCA priority extends only to the specific resources which have been customarily and traditionally taken, then the

C&T determination would “concern the taking of fish and wildlife.” In that situation a Regional Advisory Council’s recommendation regarding a C&T determination would appear to be subject to the provisions of 16 U.S.C. § 3115(c).

Once the FSB has made a determination that a rural area or community does not have C&T use of a fish stock or wildlife population, current FSB regulations and practice foreclose the application of the ANILCA priority to that subsistence resource for that area or community. Therefore, consistent with the FSB litigation position taken above, and the letter and intent of ANILCA, RAC recommendations regarding C&T use determinations are due section 805(c) deference. The Policy should explicitly acknowledge this requirement.

2. The Subsistence Committee also supports the SCRAC position that the final bullet under the “Decision Making” section of the draft Policy should be amended to strike any reference to considering “recommendations” from the State of Alaska and the public. The term “recommendations” has a specific and important meaning related to the authority and deference given to RACs in section 805(c) of ANILCA as described above. Title VIII of ANILCA neither requires nor allows the FSB to defer to “recommendations” from the State or public. The Policy should not confuse the issue by stating that the FSB will “consider the comments and recommendations from the State of Alaska and the public.”

3. Ahtna Tene Nene’ also agrees with the SCRAC that the second bullet of the “Additional Guiding Considerations” section of the draft policy should be amended to explicitly acknowledge that RAC knowledge and recommendations are particularly important in cases where “assessment of the eight factors can vary due to regional, cultural, and temporal variations.” During enactment of ANILCA, Congress recognized the value and necessity of ensuring that rural residents with knowledge of local conditions were empowered in the subsistence management regime.

[T]he national interest in the proper regulation, protection and conservation of fish and wildlife on the public lands in Alaska and the continuation of the opportunity for a subsistence way of life by residents of rural Alaska require that an administrative structure be established for the purpose of enabling rural residents who have personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands in Alaska.

Section 801(5) of ANICLA. Assessing the eight criteria in light of regional, cultural and temporal variations is a task particularly well suited for RACs, and this expertise should be recognized in the policy and deferred to by the FSB.

4. The Policy should be amended to include a section under Guiding Considerations that states that after the FSB has made a positive C&T determination for a community or area, there will be a strong presumption that the determination is valid, and that the Board will only consider a proposal to modify or rescind a C&T use determination if the proponent has demonstrated substantial new information supporting the proponent's claim. This will prevent a community from having to constantly defend a C&T determination from a hostile State Administration or sport/commercial user group hoping to find a changed Board or more favorable political situation. It will also save OSM staff time and effort better spent on more productive areas supportive of subsistence uses.

5. The Policy should be amended to require that, for Native Villages, C&T uses of all fish stocks and wildlife populations shall be presumed in the entire area traditionally used by the Village. Above all else, the subsistence way of life as customarily and traditionally practiced by Alaska Tribes is characterized by the opportunistic use of resources where available and when needed. Alaska Tribes used their entire territory to hunt, fish and gather. They took what they needed when and where resources were available. They used all the resources available. They did not catch and release, but used what they caught and gathered. It should be presumed that Alaska Native Villages have C&T uses of all resources within the areas traditionally used by the Village. Moreover, the Policy should acknowledge that Village traditional use areas may overlap because of kinship relationships, sharing, bartering and other Tribal relationships, agreements and circumstances. In passing the 1992 Alaska State Subsistence law the legislature recognized that "customary and traditional uses of Alaska's fish and game originated with Alaska Natives." Section 1 of chapter 1, SSSLA 1992. The Policy should recognize this fact and incorporate the presumption that Native Villages have C&T use of all resources throughout the Tribe's traditional use area.

6. The Policy should state that it is the FSB's intent to implement C&T use determinations such that all rural communities and areas shall have the use of sufficient "public lands" to satisfy their subsistence needs, thereby satisfying the clear intent of Title VIII of ANILCA. The federal subsistence priority only applies to federal "public lands." Some rural areas and communities, however, are surrounded by State and private lands. Moreover, many lands selected by Alaska Native Village and Regional corporations were selected primarily because of their importance for subsistence hunting, fishing and gathering. Congress recognized in Title VIII that the continuation of the opportunity for subsistence uses "by Alaska

Natives on Native lands is essential to Native physical, economic, traditional, and cultural existence.” Section 801(a) of ANILCA. Yet, in a great oversight and injustice, and because of the McDowell decision and the continued refusal of the Alaska Legislature to allow a vote on a “rural” constitutional amendment, Native lands are considered “private” lands under State jurisdiction, and do not fall under the protection of the ANILCA subsistence priority. Some Native lands are even classified as non-subsistence use areas under Alaska law and regulations.

ANILCA’s purpose of ensuring the opportunity for the continuation of subsistence uses cannot be accomplished if C&T use determinations do not provide sufficient opportunity for surrounded rural communities to take the amount of fish and wildlife resources they need from those public lands accessible to the community. C&T subsistence uses are above all opportunistic. Subsistence users go where they must to harvest what they need. In the case of surrounded Villages, C&T uses must be recognized on the public lands accessible to the community, and must include sufficient public lands to provide the opportunity to fully satisfy the community’s subsistence needs. The Policy should acknowledge the FSB’s responsibility when making C&T use determinations to ensure that all rural communities have the right to subsistence hunt, fish and gather on public lands to the extent necessary to fully satisfy their subsistence needs.

7. Ahtna Tene Nene’ also takes the position that C&T use determinations for public lands managed by the National Park Service (NPS) should not be made on an individual basis, but rather on a community or area basis like all other public lands in Alaska. The current applicable regulation (36 CFR 242.16(a)) provides that the FSB “**may**” make C&T use determinations for NPS public lands on an individual basis. Thus, the regulations provide the FSB with discretion to make such C&T determinations for NPS public lands either by area or community or on an individual basis. The Policy should provide that the FSB will not exercise its discretion to make C&T use determinations on an individual basis.

The FSB regulations demonstrate the fallacy and inconsistency with attempting to make C&T use determinations on an individual basis. The regulations (36 CFR 242.16(b)) set forth eight criteria for making C&T use determinations for “a community or area.” Many of the eight criteria apply explicitly to community or area patterns of use. The first criterion, for example, which the FSB in practice considers one of the most important factors, is a “long-term consistent pattern of use, excluding interruptions beyond the control of the **community or area**”. 36 CFR 242.16(b)(1)(emphasis added). Several other of the eight criteria speak explicitly in terms of community or area, and many of the rest imply community or area patterns of use rather than merely individual use. In fact the only place “individual” C&T use is even mentioned in the regulations is to provide discretion to make such determinations for NPS public lands. The regulations are completely void of any criteria for making C&T use determinations for an

**individual. Individual determinations would thus be arbitrary and illegal under the current regulations. The Policy should express the FSB's position that it will not use its discretions to make C&T use determinations on an individual basis.**

**The Ahtna Tene Nene' Subsistence Committee thanks you for the opportunity to make the above comments, all of which we firmly believe are vital to protect our way of life and to ensure a fair, legal and successful federal subsistence management program.**

**Sincerely,**

**/S/**

**Linda Tyone,  
Chairperson**



## CENTRAL COUNCIL

*Tlingit and Haida Indian Tribes of Alaska*

ANDREW P. HOPE BUILDING

### Office of the President

320 W. Willoughby Avenue • Suite 300

Juneau, Alaska 99801-9983

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December 7, 2007

Mr. Theo Matuskowitz  
Federal Subsistence Board  
Office of Subsistence Management  
3601 C Street, Suite 1030  
Anchorage, AK 99501

**Subject: Policy on Implementation of Customary and Traditional Use Determinations**

The letter is to provide comments on the draft Customary and Traditional Use Determination Policy proposed by the Federal Subsistence Board.

The Central Council Tlingit and Haida Indian Tribes of Alaska (CCTHITA) is a federally recognized Indian Tribe that serves 20 villages and communities and represents over 26,000 members.

The proposed policy has been thoroughly reviewed and it is our position that the Customary and Traditional Use Determination Policy not be implemented. ANILCA does not require, define or provide criteria for customary and traditional use; rather it is a recommendation from the State of Alaska to the Secretary of the Interior. (According to the, "White Paper: Policy Administrative Direction Needed To Resolve Significant Issues Between State and Federal Subsistence Programs" of the Alaska Department of Fish and Game.) There have been many problems with interpretation of Title VIII of ANILCA; this additional policy will just provide another layer which would lead to further misinterpretation of the intent of Title VIII. In addition, there are issues with the eight factors that have been used to make the determinations; assessment of the factors can vary due to regional, cultural and temporal variations making consistent use of factors difficult.

**The policy is not required to recognize customary and traditional users of subsistence and the Federal Subsistence Board should keep with ANILCA Title VIII as the policy to determine subsistence uses.**

If the Federal Subsistence Board decides to proceed with the proposed policy, there are due deference issues that need to be addressed. Because the State of Alaska did not comply with ANILCA, federal takeover occurred and state regulations were adopted by reference in the federal regulations. This has caused much confusion and has also given the State more due deference than was intended by ANILCA. It is our position that stronger due deference must be provided to the Regional Advisory Councils and if their recommendations are not adopted that written rationale be provided. This requirement needs to be followed for customary and traditional use determinations, rural determinations, special and temporary actions including emergency closures, and all other proposed policies.

Because of the possible impacts to Native subsistence rights, we strongly recommend that you carefully consider all comments from all Native organizations prior to making any decisions on this policy and ask that you respond in writing the comments that we have provided.

Thank you for considering our comments for this proposed policy. Please contact CCTHITA at (907) 463-7197 or 209-0792 if you have any questions or need additional information about our comments.

Sincerely,

/S/

William E. Martin  
President

**ALASKA FEDERATION OF NATIVES**  
1577 "C" Street, Suite 300 – Anchorage, Alaska 99501  
(907) 274-3611 Fax: (907) 276-7989

December 1, 2007

Federal Subsistence Board                      via email: [subsistence@fws.gov](mailto:subsistence@fws.gov)  
Attention: Theo Matuskowitz  
Office of Subsistence Management  
3601 C Street, Suite 1030  
Anchorage, AK 99503

RE:    Comments on Draft Customary and Traditional Use Policy

Dear Federal Board Members:

On behalf of the Alaska Federation of Natives (AFN), thank you for the opportunity to comment on the Federal Subsistence Board's proposed Policy on Implementation of Customary and Traditional Use Determinations. While we believe the eight criteria used for identifying customary and traditional (C&T) uses should be amended, we recognize that current regulations require the Board to make its determinations using the eight factors. For the most part we support the proposed Policy regarding the making of C&T use determinations. We do believe it needs to be amended in several important ways.

1. First, AFN supports the position taken by the South Central Regional Advisory Council (SCRAC) at its meeting in Anchorage in October, 2007, which called for amendments to the draft policy to expressly acknowledge that RAC recommendations regarding customary and traditional (C&T) use determinations are due deference by the Federal Subsistence Board (FSB) in accordance with Section 805(c) of ANILCA (16 U.S.C. §3115(c)). *See also* 50 CFR §100.16 (c) and §100.10(e). The fourth bullet under the heading "Decision Making" calls upon the FSB to merely "consider" the RAC recommendations regarding C&T use of subsistence resources, and does not expressly state that the FSB will give deference to the RAC recommendation in accordance with Section 805(c). Indeed, the Policy does not make a clear distinction between the consideration given to the recommendations of the RACs and the comments and "recommendations" it receives from the State and the general public. *Compare* the fifth bullet under "Decision Making," which provides that the FSB will "consider comments and recommendations from the State of Alaska and the public" *with* the fourth bullet which states that the FSB will "consider . . .the recommendations of the appropriate [RAC]."

Section 805(c) of ANILCA provides that the Secretary *shall consider . . . the recommendations of the regional advisory councils concerning the taking of fish and wildlife on the public lands within their respective regions for subsistence uses.*" In the

past, the FSB has taken the position that C&T determinations are not due 805(c) deference because they do not concern the taking of fish and wildlife. Under current regulations, the ANILCA priority only extends to those fish stocks or wildlife populations that have been customarily and traditionally taken by residents of a particular community or area. Therefore, the C&T determinations clearly concern a subsistence user's ability to take fish and wildlife. Moreover, the FSB, in its briefing in *Alaska v. Fleagle*, (at page 35, n.25), has acknowledged that the C&T determinations "concern the taking of fish and wildlife." That interpretation is the correct one and should be expressly acknowledged in the draft Policy. RAC recommendations regarding C&T use are entitled to deference under section 805(c) to the same degree as their recommendations with regard to seasons, bag limits and other factors relative to the taking and use of fish and wildlife. Accordingly, the fourth bullet under the heading of "Decision Making" should be amended to read as follows:

- Shall accord Section 805(c) deference to Regional Advisory Council recommendations regarding customary and traditional use of subsistence resources in making its decisions.

2. AFN also recommends that the second bullet under the heading of "Additional Guiding Considerations" be amended to read as follows:

- Assessment of the eight factors can vary due to regional, cultural, and temporal variations, making the knowledge, reports and recommendations of the appropriate Regional Advisory Council particularly important.

ANILCA mandates that local rural residents with knowledge of the conditions and requirements have a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands. Congress found it to be in the national interest "that an administrative structure be established for the purpose of enabling rural residents who have personal knowledge of local conditions and requirements to having a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands in Alaska." Section 801(5) of ANILCA, 16 U.S.C. 3111(5). That role is essential in assessing the eight criteria and should be expressly recognized in the Policy.

3. AFN also recommends amending the policy to provide that once an Alaska Native Village has established C&T uses of all fish stocks and wildlife populations, that the finding will be presumed to extend to all public lands near or reasonably accessible to the Village, including all areas traditionally used by the Village. Congress fully expected Native communities to be able to retain the opportunity to maintain local subsistence practices and customs and understood that subsistence use activities were grounded in and by local self-regulating forces:

[T]he phrase "customary and traditional" is intended to place particular emphasis on the protection and continuation of the taking of fish, wildlife, and other renewable resources in areas of, and by persons (both Native and non-Native) resident in, areas of Alaska in which such uses have

played a long established and important role in the economy and culture of the community and in which such uses incorporate beliefs and customs which have been handed down by word of mouth or example from generation to generation. H.R. No. 96-97, 96<sup>th</sup> Cong., 1<sup>st</sup> Sess. Part I at 279 (1979).

The policy goal of ANILCA is to preserve cultural systems and activities which underlie subsistence uses. A primary component of subsistence use patterns involves opportunistic taking of fish or game *as needed and as available*. Subsistence uses historically took place within particular areas customarily used by the Villages. In other words, Alaska Natives used all the resources available to them within their community's traditional use area. Therefore, the Policy should state that Alaska Native Villages have C&T uses of all resources within the area they traditionally used for hunting, fishing and gathering.

4. Because many Villages are now surrounded by state and private lands, the Policy should also provide that the FSB will implement its C&T regulations and determinations in such a way that ensures communities surrounded by State and private lands will have reasonable access to federal "public lands" in order to harvest all subsistence resources that were customarily and traditionally used by the Native Villages.

5. AFN also concurs in the comments of the Ahtna Tene Nene' Subsistence Committee that the Policy should prevent opponents of subsistence from filing repeated requests for reconsideration of the FSB's positive C&T determinations. The Policy should state that the Board will only consider a proposal to modify or rescind a positive C&T determination if the proponent of the proposal has demonstrated substantial new information supporting the proponent's claim.

Thank you for consideration of our comment. Please let us know if you have questions.

Sincerely,

/S/

Julie Kitka  
President

/chd

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

### OFFICE OF THE COMMISSIONER

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December 7, 2007

Mr. Michael Fleagle, Chairman  
Federal Subsistence Board  
3601 C Street, Suite 1030  
Anchorage, AK 99503

Attn: Theo Matuskowitz  
e-mail at [subsistence@fws.gov](mailto:subsistence@fws.gov)

Dear Mr. <sup>Mike</sup>Fleagle:

On September 12, 2007, the Federal Subsistence Board (Board) published a draft policy on implementation of "customary and traditional use" (C&T) determinations for public comment. I am providing comments concerning the draft policy on behalf of the State of Alaska (State).

In response to issues repeatedly raised by the State, on October 27, 2005, the Deputy Secretary of Department of the Interior and the Under Secretary for Natural Resources and Environment in the Department of Agriculture directed that a policy be developed for making C&T determinations. The directive acknowledged that the "lack of written procedures or policies allows misunderstandings to develop." The Secretarial direction stated that "for customary and traditional use determinations, the Board should review whether analytic thresholds and benchmarks for certain criteria are needed and appropriate for inclusion in the decision process."

Since receiving Secretarial direction two years ago, Board deliberations on C&T determinations continue to demonstrate that a lack of specific procedures and criteria result in more than just mere "misunderstandings." Continuing problems with the Board's inconsistent application of the federal regulations resulted in numerous requests for reconsideration, one or more lawsuits, and a petition for rulemaking. The Board itself repeatedly has struggled with C&T determinations, asking for clarification from legal counsel during Board deliberations. Many of these problems could be resolved by a policy requiring consistent and documented application of the federal regulations at 36 CFR 242.16 and 50 CFR 100.16.

The State welcomes the Board's pursuit of a policy to "improve understanding and promote consistency . . . [by] clarifying the Board's approach to these decisions," but the draft policy does not accomplish either objective. Instead it attempts to justify prior inconsistent applications of Board regulations and promote unlimited discretion in the Board's determination process. It

does not provide guidance in the form of procedural steps, identifiable criteria, or analytic thresholds that are necessary to prevent inconsistent and unjustified C&T determinations. The record clearly confirms that such thresholds, criteria, and procedural steps are needed in order to reduce the ongoing contentious debate by the Board members, their advisors and staff, the State, and the public and in order to reduce avoidable litigation.

We request the draft policy be revised to provide clear administrative procedures for Board evaluation of the eight regulatory factors for making C&T determinations, as the Secretaries directed. The Board must consider specific criteria and establish a record for its determinations showing they are consistent with existing regulatory provisions and are supported by substantial evidence, as required by the federal Administrative Procedures Act when factual determinations, such as C&T determinations, must be made. This request supports the intent of ANILCA to provide a priority for federal subsistence uses of fish and wildlife without causing unnecessary restriction of state subsistence and other nonsubsistence harvests. In Attachment A, please find section specific comments that address deficiencies in the draft policy that must be addressed in order to comply with ANILCA and Board regulations.

Two years have transpired since the Board received Secretarial direction and over a year since the Secretarial response to the State promised imminent adoption of a policy. If the Board cannot provide clear procedural steps, criteria, and threshold analyses for making C&T determinations in a policy, then timely rulemaking is needed. Attachment B requests very simple changes to the current regulations which are designed to resolve apparent ambiguities that contribute to the need for policy guidance. We request that this language be incorporated into the policy to guide interpretation and establishment of procedures in application of existing regulations, or in the alternative, that this language be adopted into revised regulations. Adoption of these changes in the policy or regulations would require the Board to establish a record demonstrating compliance with ANILCA and Board regulations when addressing proposals related to customary and traditional determinations.

Sincerely,

/S/

Ken Taylor  
Deputy Commissioner

Attachment A: Section Specific Comments on the Draft Policy

Attachment B: Requested amendments to regulations clarifying procedures by the Board

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Attachment A, Page 1 of 6

### **ATTACHMENT A: Section Specific Comments on Draft C&T Policy**

**Title:** The title, “POLICY ON IMPLEMENTATION OF CUSTOMARY AND TRADITIONAL USE DETERMINATIONS,” is not reflective of the intent of the draft policy. Consistent with Secretarial direction, the intent is to explain the process for making C&T use determinations. Nothing in the draft policy speaks to “implementation” of the determinations once they are made, nor should the policy do so.

**PURPOSE:** The first sentence states: “This policy describes the internal management of the Federal Subsistence Board . . .” However, nothing in the draft policy describes “internal management” of the Board; e.g., who gathers available information and conducts analyses of C&T proposals, the mechanism for presenting information and analyses to the Board, whether or not those analyses are available for public review, consultation with the State, and the Board procedures for establishing an administrative record of the information that is used to evaluate C&T proposals.

The first sentence continues: “This policy . . . provides explanation to the public regarding the process for making customary and traditional use determinations . . .” The policy fails to meet this objective. No process is contained within the policy. Instead, the policy attempts to describe and justify the Board’s broad and inconsistent range of interpretations of the regulatory factors for making C&T determinations.

The first sentence specifies that the policy addresses C&T use determinations “pertaining to management of hunting, trapping, and fishing on Federal public lands and waters in Alaska.” The Board’s authority granted in ANILCA is to ensure a priority for C&T harvest of fish and wildlife by rural residents on federal public lands—not management of hunting, trapping, and fishing. The State of Alaska retains its traditional authority and responsibility for sustainable management of fish and wildlife on state, private, and federal lands under ANILCA Section 1314, while Title VIII provides the mechanism by which the Board shares authority with the State to regulate taking for subsistence uses through the Board’s limited authority to authorize take by rural residents that would otherwise be prohibited under state law and its authority to close federal public lands to nonsubsistence harvest where necessary in order to ensure the subsistence priority. Regulating harvest is only one management tool. It is not the management of hunting, trapping, and fishing. The sentence could be modified to “management of subsistence take on federal public lands . . .”

The second sentence states: “This policy recognizes the unique status of the Regional Advisory Councils . . .” No explanation is provided for what constitutes “unique” status. The policy in fact fails to explain the federal Solicitor’s recent instructions to the Board that it does not give deference to the councils when making C&T determinations. This is a major policy decision that must be included in the policy, along with the procedural steps for consideration of information from the councils specified in regulation (36 CFR 242.16(c) and 50 CFR 100.16(c)).

**Policy:** The draft policy selectively quotes the purposes of ANILCA contained in Title I: “The purpose of ANILCA is to provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so [ANILCA § 101(c)].”

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This section of Title I actually states:

It is further the intent and purpose of this Act consistent with management of fish and wildlife in accordance with recognized scientific principles and the purposes for which each conservation system unit is established, designated, or expanded by or pursuant to this Act, to provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so.

In context, providing “the opportunity” is conditioned upon consistency with (1) scientifically principled fish and wildlife management, and (2) enabling purposes of each conservation system unit. Nowhere does the draft policy provide any guidance that reflects these conditions in the decisionmaking process. The authors might argue that these conditions are considered when the Board authorizes actual harvest regulations, but they are not; and because a legal priority attaches once the C&T determination is made, it is much more difficult to consider these conditions after a determination is made. In practice, this procedure leads to unnecessary restrictions on other uses where there are conservation concerns and ignores the enabling purposes of units. Consistency with the state’s highly successful management of sustainable fish and wildlife populations and consistency with enabling purposes of the units are rarely discussed in the Board’s administrative record or deliberations.

The draft policy’s selective quote from Title I implies that providing the subsistence opportunity is the only purpose of ANILCA. The Board’s procedures echo this implication by omitting any deliberation of other uses and purposes despite numerous directives. For example, purposes in Title I include, among many others: preserving lands with recreational values for benefit and use (Section 101(a)); preserving recreational opportunities such as fishing and sport hunting (Section 101(b)); and “adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people” (Section 101(d)). In addition, section 815 of Title VIII prohibits restrictions on the taking of fish and wildlife for nonsubsistence uses unless necessary for conservation of fish and wildlife, public safety, administration, continuing subsistence uses, or pursuant to other law. Despite the fact that C&T determinations nearly always lead to direct or indirect restrictions on other users, the Board, ignoring the prohibition in section 815, has frequently failed to ensure that a positive C&T determination is necessary.

In the second paragraph, the first sentence states unambiguously: “The customary and traditional use determinations that the Board makes **must be based on** a community’s long term consistent pattern of use of a fish stock or wildlife population.” (Emphasis added) Nothing in the rest of this section comports to that statement, as detailed below:

1. The first sentence is clear, but nothing in the draft policy indicates how the Board distinguishes a “long term consistent pattern of use” from the absence of such a pattern. Recent C&T use determinations by the Board were based on as little use as “infrequent,” “sporadic,” “incidental,” and only once in 70 years. Each of the eight regulatory factors refers to a “pattern of use,” a “consistent” use, or a traditional use, yet the policy and the Board’s current process includes no requirement to evaluate or find substantial evidence of any harvest before making a C&T determination.

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Attachment A, Page 3 of 6

2. The first sentence also makes it clear that the C&T determination must be based on a “fish stock or wildlife population.” That statement is somewhat consistent with but less complete than 50 CFR §100.16(a) and 36 CFR §242.16(a): “These determinations shall identify the specific community’s or area’s use of specific fish stocks and wildlife populations.” (Emphasis added) This direction is contradicted by the second sentence of this paragraph in the draft policy, which states: “nothing in [federal regulations] states that a specific wildlife population or fish stock has to be defined in terms of a specific geographic area.” This comment is contrary to the regulation’s intent, prior Board standards, and responsible management.

First, fish stocks and wildlife populations inhabit specific geographic areas and are managed accordingly. The draft policy however, is so vague and attempts to convey so much discretion to the Board that it arguably could be interpreted, for example, to allow the Board to treat all moose in Alaska as a single population or all salmon as a single stock.

Second, the Board must evaluate whether a community generally exhibits eight regulatory factors for the C&T determination based on community use of specific stocks or populations, resulting in that community’s C&T eligibility for priority takings of those specific stocks or populations on federal lands. The regulatory factors include: “The consistent harvest and use of fish or wildlife . . . near, or reasonably accessible from, the community or area.” Only specific geographic areas are reasonably accessible to the community. Otherwise the draft policy could apply a C&T determination across the state.

3. The third paragraph in the Policy section states “Subsistence uses are dynamic and adaptive . . .” We agree. But the statute and regulations provide a priority use for those subsistence uses, specifically takings, that are customary and traditional—not all uses anywhere anytime of any fish and wildlife. The regulations direct that such uses “shall generally exhibit” eight factors and all of those factors address a long-term “pattern,” “consistent,” or “traditional” use. This paragraph appears intended instead to justify the Board’s rendering C&T determinations without evidence of any prior long-term, consistent pattern of harvest and consumption.
4. The fourth paragraph in the Policy section states: “In the absence of a specific customary and traditional use finding, all rural residents are the eligible pool of users.” This statement, taken at face value, would mean that all rural residents from Barrow to Hyder have a priority use for fish and wildlife where federal harvests are authorized but the Board has not made a C&T determination. Some of these priorities have remained in place since inception of the federal program in 1990 — 17 years later. If one of these populations were to decline, the harvest could be closed to the nonrural residents, retaining a subsistence priority harvest opportunity for residents who have never harvested in the area and for fish and wildlife that are not reasonably accessible. The draft policy provides no guidance for completing C&T determinations for all subsistence uses of fish and wildlife. The policy needs to define the phrase “more narrowly delineate”

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Attachment A, Page 4 of 6

- an existing C&T finding and other terms used in this paragraph and also explain the circumstances that would compel such action and the required information to support it.
5. The fifth paragraph of the Policy section of the draft policy abhors “Overly narrow standards,” yet rhetorically notes: “overly broad standards for customary and traditional use could extend protections of ANILCA to uses that are not customary and traditional.” Such protections are allocations of fish and wildlife and are prohibited by section 815 of ANILCA. Such broad C&T determinations immediately establish a priority for harvest by certain residents over other residents. While the allocation may not be readily apparent until the federal land is closed to the non-federally qualified residents, the allocation is in effect even where federal harvest limits mirror state limits. Unnecessary, overbroad C&T determinations made in violation of section 815’s clear directive may result in allocations to unqualified users by authorizing uses of methods and means, extra seasons and bag limits, and customary trade, despite the fact that such taking and use is not customary and traditional. Unnecessary and overbroad C&T determinations may also exempt rural residents from the purchase of state fishing licenses, decreasing the funds available for conservation and management of fisheries. Such overly broad and missing C&T determinations must be rectified within a time frame clearly established in this policy. No guidelines in the draft policy address this issue.
  6. The statement “[c]ustomary and traditional use determinations are not intended to be an additional hurdle . . .” is rhetorical. The law provides a priority for customary and traditional subsistence use. To have such protection as defined, the Board must make a determination based on some criteria. Administrative determinations are not a hurdle but a necessary step for effective allocation of limited resources among resource users. The law also requires no unnecessary restriction on nonsubsistence use, but the policy provides no timeline or clear criteria for correcting prior overly broad C&T determinations in order to prevent those determinations from being a hurdle to federal nonsubsistence users (including state subsistence users).
  7. The last paragraph of the policy section indicates that a population that “is relatively unimportant for subsistence purposes” should still receive a C&T determination, and surmises that the lack of importance “likely would be reflected in relatively low customary and traditional use of the population.” This assertion is inconsistent with the Board’s regulations and requires further explanation and revision because a population that is relatively unimportant for subsistence purposes and is harvested at a relatively low level would not demonstrate several of the eight factors that define a C&T use and would rarely “generally exhibit” the factors required for a positive determination. The draft policy implies that any level of use constitutes a C&T use. This is an example of “overly broad standards for customary and traditional use” described above. If a use of a “specific fish stock or wildlife population” generally exhibits the eight regulatory factors, it is an important use. The policy should require the Board to evaluate substantive evidence and find that a use generally exhibits the eight factors before making a positive C&T determination and should require the Board to revisit and remove C&T determinations for those specific fish stocks and wildlife populations in those areas and for those communities where such harvest does not exhibit the factors.

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### **Decision Making:**

The second bullet needs to be revised to clarify that the Board must establish criteria for substantial evidence demonstrated on the administrative record to support C&T determinations. Instead, the draft policy loosely directs that the determination be based “on information of a reasonable and defensible nature contained within the administrative record.” The policy must include definitions for the phrase “reasonable and defensible,” as well as criteria for evaluating information as substantial evidence to justify a C&T determination. Too often the past conflicts involving C&T determinations occurred because the determinations were based on hearsay, opinion, or philosophy regarding community uses that never occurred, or determinations were made for locations not reasonably accessible for subsistence uses of fish or wildlife. Similarly, the Board does not generally discuss the eight factors on the record but instead relies on analyses done by federal staff that are in the written record but not evaluated by the Board on the record.

The third bullet states that the federal Board will make C&T use determinations “based on a holistic application of the eight factors . . . and whether a community or area generally exhibits them.” This provision appears to provide the federal Board with unlimited flexibility in how it evaluates and assigns weight to the eight factors. Such unlimited discretion is the foundation for what courts commonly refer to as “arbitrary and capricious” agency decisionmaking. The phrase “Together, the eight factors elucidate the economic, nutritional, cultural, and social character . . .” offers no guidance to the Board on the use of these important evidentiary guides. The draft policy would better serve the Board by clarifying the procedures and evidence necessary to address the eight regulatory factors rather than including an additional undefined “character” as a requirement.

The fourth bullet needs to clarify what “consider” means in terms of the weight of council information. Also, the regulation citations should be corrected to 36 CFR 242.16(c) and 50 CFR 100.16(c).

The fifth bullet omits other references in ANILCA that require consultation with the State of Alaska, such as 802(3). It fails to recognize the state’s authority and responsibility for the management of fish and wildlife on all lands except as specifically diminished by federal law.

### **Additional Guiding Considerations**

The third bullet states: “There is no rigid regulatory requirement that a customary and traditional use determination be made only for an area for which actual use has been demonstrated; the area encompassed . . . may be broader.” If a C&T determination can be made for an area in which actual harvest has not been demonstrated, then the policy should indicate which of the eight regulatory factors allows this. If neither historical nor contemporary taking of a specific fish or wildlife stock or population in a particular geographic area has been documented, there is no rationale to support making a positive C&T determination. This overly broad direction is unsupported by the regulations in 50 CFR §100.16(a) and 36 CFR §242.16(a), which specifically require: “These determinations shall identify the specific community’s or area’s use of specific fish stocks and wildlife populations.” A C&T determination is expressed in the regulations at 50

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CFR §100.24 and 36 CFR §242.24 as a geographic area for which there is a demonstrated customary and traditional use of specific stocks of fish or wildlife populations. If the Board intends to expand its C&T determination process to allow positive C&T determinations unsupported by demonstrated use, then the Board must adopt changes to its regulations. It cannot rely on a policy that requires violation of its regulations or which “interprets” its regulations so as to give them no effect.

### **Additional Guiding Considerations**

The first bullet on this page states that ANILCA does not differentiate between natural, introduced, reintroduced, or recently migrated species. The draft policy should clearly explain how the Board will evaluate the eight factors for each of these four categories of species. More specifically, it must consider under what circumstances the Board would conclude that there is a C&T use of an introduced or reintroduced species. We realize that the Board has granted C&T and a subsistence use priority for recently introduced species and believe that these determinations should be revisited and corrected because there can be no substantial evidence documenting a long term pattern of use for such populations.

### **Definitions**

“Policy” is defined as being the general principles by which the federal Board is guided in the management of its affairs. However, this draft “policy” fails to provide any meaningful principles to guide the Board’s actions in the management of its affairs. Instead, it provides incorrect and incomplete opinions and representations. It does not provide specific criteria, analytical thresholds, an established step-by-step process, or any procedures for the Board to use to ensure that its C&T determinations are subject to uniform standards and supported by substantial evidence.

## ATTACHMENT B

### **Petition for Rulemaking: Modify 50 CFR Part 100, Subpart B—Program Structure and 36 CFR Part 242, Subpart B—Program Structure**

According to 50 CFR §100.18(b) and 36 CFR §242.18(b), “Proposals for changes to subparts A and B of this part shall be accepted by the Secretary of the Interior in accordance with 43 CFR part 14.” This petition requests that Subpart B be modified to incorporate the following changes, as shown with additions underlined and deletions by strikethrough:

#### **50 CFR §100.16 and 36 CFR §242.16 Customary and traditional use determination process.**

(a) The Board shall determine which specific fish stocks and wildlife populations have been customarily and traditionally used for subsistence. These determinations shall identify the specific community’s or area’s use of specific fish stocks and wildlife populations. The Board shall consistently apply the regulatory definition of “customary and traditional use” found at 50 CFR 100.4 and 36 CFR 242.4 and make findings on the record based on substantial evidence for any decisions concerning customary and traditional use. For areas managed by the National Park Service, where subsistence uses are allowed, the determinations may be made on an individual basis.

(b) A community or area shall generally exhibit the following factors, which exemplify customary and traditional use. The Board shall make customary and traditional use determinations based on consistent application of each of the following factors, providing a written record of the Board’s thorough analysis of each criterion, and specifically enumerating each use and the substantial evidence of such use:

- (1) A long-term consistent pattern of use, excluding interruptions beyond the control of the community or area;
- (2) A pattern of use recurring in specific seasons for many years;
- (3) A pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local characteristics;
- (4) The consistent harvest and use of fish or wildlife as related to past methods and means of taking; near, or reasonably accessible from, the community or area;
- (5) A means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations, including consideration of alternation of past practices due to recent technological advances, where appropriate;
- (6) A pattern of use which includes the handing down of knowledge of fishing and hunting skills, values, and lore from generation to generation;
- (7) A pattern of use in which the harvest is shared or distributed within a definable community of persons; and
- (8) A pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social, and nutritional elements to the community or area.

(c) The Board shall take into consideration the reports and recommendations of any appropriate Regional council and the State of Alaska regarding customary and traditional uses of subsistence resources.

(d) The Board shall not authorize closures of fish and wildlife uses by non-federally qualified users, while allowing use by federally qualified users, unless the Board first makes specific written findings of customary and traditional use of the specific fish stock or wildlife population by each community or area for which use is allowed. The Board shall apply customary and traditional use findings only to an area in which there is substantial evidence that the customary and traditional use occurred.

~~(d)~~ (e) Current determinations are listed in § 100.24. The Board shall review all current determinations within three years to ensure that such determinations are supported by a written record including substantial evidence of each customary and traditional use of a specific fish stock or wildlife population.



December 4, 2007

Theo Matuskowitz  
Office of Subsistence Management  
3601 C Street, Suite 1030  
Anchorage, AK 99503  
subsistence@fws.gov

**FAX: (907) 786-3898**

**Re: Comments on *Draft Customary and Traditional Use Determination Policy***

Dear Mr. Matuskowitz,

The Office of Subsistence Management has called for public comment concerning a *Draft Customary and Traditional Use Determination Policy* which is currently posted on the Federal website <http://alaska.fws.gov/asm/pdf/draftctpolicy.pdf>. According to a press release, dated November 30, 2007 from the Office of Subsistence Management, comments on this Draft Policy are due by email, FAX or mail by 5 p.m. Alaska Time, December 7, 2007.

The following comments are provided by Kenai River Sportfishing Association (KRSA) and specifically address the *Draft Customary and Traditional Use Determination Policy*.

**Policy Purpose and Background:**

At the outset the stated purpose of the draft policy is to:

*“describe the internal management of the Federal Subsistence Board (Board) and provide explanation to the public regarding the process for making customary and traditional use determinations pertaining to management of hunting, trapping, and fishing on Federal public lands and waters in Alaska” and “This policy is intended only to clarify existing practices under the current statute and regulations.”*

This is an important effort that if done properly will facilitate a greater level of understanding among the affected publics and a clear and predictable set of guidelines that are useful to Board members. Without policy that defines clear and predictable guidelines for determination of what is and is not customary and traditional use, there is an inherent risk that over time C and T determinations by the Board become arbitrary and capricious. The purpose of policy should be to prevent the appearance of arbitrary and capricious decision making by the Board, not enshrine it under the guise of needing a “dynamic” or “flexible” approach to decision making.

Additionally, such policy can give clear direction to the Regional Advisory Councils (RACs) that make C and T recommendations to the Board. To date, such clear policy direction to the RACs has been absent. As such over time there has not been consistent and coherent rationale for C and T recommendations from RACs, both individually and collectively, to the Board. Without a policy of clear and understandable guidelines for RACs to follow, the administrative record of their recommendations has become inconsistent, and thus incoherent, when viewed as a whole.

### **Review and Comments:**

KRSA's review of the policy suggests that the current draft lacks specifics, is ambiguous in its application and does little to address its stated purpose. The current draft policy fails to provide the public, the RACs and the Board with any meaningful clarity to:

- how the Board will make C&T determinations,
- what information will be considered, and
- what weight the eight criteria play in the decision making process.

KRSA finds it disturbing that although the eight criteria are found in the document (as a footnote) there are several places within the draft policy where their application to the decision making process is muddled and/or diminished.

When the Federal government in 1990 took over the subsistence program in the wake of the *McDowell* decision, it promulgated express regulations to govern the critical C&T determinations. 50 CFR 100.16. The mandatory criteria (i.e., "the Board **SHALL** make customary and traditional use determinations based on the following factors:" (emphasis added) 100.16(b)) reflect the statutory language of Title VIII and Congressional intent. Specifically, the criteria focus on "long term consistent pattern[s] of use", handing down customs and practices over "generations", and demonstrations of community "reliance" on subsistence resources including "substantial cultural, economic, social and nutritional" reliance. 100.16 (b) (1)-(8).

The primary message within this draft policy seems to be that the Board has unlimited flexibility in how it evaluates and assigns weight to the eight factors. That misses the mark entirely relative to the earlier stated purpose of the policy. Specific examples of our concerns follow:

- The draft references the Federal Board charge to make C&T determinations "*based on a community's long term consistent pattern of use of a fish stock or wildlife population.*"

Yet within the draft there is no definition of *long term* and we are left to wonder how this statement is aligned with past board decisions which granted C&T to species that were not available to communities in any long term sense. What is meant by long term – a day, month, or decade?

- Two statements appear in the draft policy: "*The customary and traditional use determinations that the Board makes must be based on a community's long term consistent pattern of use of a fish stock or wildlife population*" and "*nothing in 36 CFR*

*242.16(b) and 50 CFR 100.16(a) states that a specific wildlife population or fish stock has to be defined in terms of a specific geographical area”.*

The statements appear contradictory and as such make application of either portion of the policy meaningless.

- The draft policy lacks specifics. For example, does the draft policy intend to give unlimited latitude to the Board to assign C&T on a species level or a stock level? Stocks are geographically defined as subsets of species. So which is it? And exactly which of the eight criteria grant the authority to the Board to utilize this expanding and more liberal interpretation?
- The draft policy states that the Federal board will make C&T use determinations “*based on a holistic application of the eight factors... and whether a community or area generally exhibits them.*”

This statement is the root of the problem with how the Federal Board has preceded in the past with regard to C&T determinations and highlights the exact area where the Board needs to clarify their process. The eight criteria exist for a reason. We strongly believe the substance of this policy, and service to the public, will be greatly enhanced with a more structured discussion of how the eight criteria will be applied and what weight the individual criteria carry. This draft goes in exactly the wrong direction by muddling the application of criteria and leaving unfocused the degree to which a community must meet them and how the Board intends to apply them.

- The draft states: “*There is no rigid regulatory requirement that a customary and traditional use determination be made only for an area for which actual use has been demonstrated; the area encompassed... may be broader.*”

If a determination can be made for an area in which actual use has never been demonstrated, then the policy should indicate which of the eight factors allows for this and what extension of the stock or population level it applies.

If neither historical nor contemporary use of a particular geographic area can be documented, what rationale could possible support making a positive C&T use finding?

- The draft states: “*ANILCA does not differentiate between natural, introduced, reintroduced, or recently migrated species.*”

While this may possibly be true, it is so illogical and inconsistent with the concept of long term use that it escapes all but the most seasoned bureaucrat. How can one possibly conclude that a long term consistent pattern of use can exist for a species that is only recently present?

- In addition to making positive C and T determinations, the draft policy notes the board is responsible for determining which uses are not customary and traditional: “*Not all rural*

*uses are customary and traditional, and it is the responsibility of the Board to determine, based on the information before it, which rural uses are customary and traditional,” and “At the same time, overly broad standards for customary and traditional use could extend protections of ANILCA to uses that are not customary and traditional.”*

By advocating unlimited flexibility in how to evaluate and assign weight to the eight factors, the draft policy, by default, generates overly broad standards for determining what customary and traditional use is and absolutely no framework to evaluate what it is not.

KRSA believes the Board’s effort to be all inclusive and broad in their determinations is the fundamental problem the draft policy was supposed to address. In that vein, this draft policy fails miserably to provide consistent and coherent guidelines.

If the “flexibility” and intentional vagueness of the draft policy for C and T determinations is adopted, the Board will have essentially moved from a realm of having no policy on such guidelines to the realm of having a policy that has no guidelines.

Institutionalizing an arbitrary and capricious course of action seems contrary to the intent of ANILCA and to the very reason of having a bureaucratic process in place. Adoption of this draft policy as presented will continue to cloud C and T determinations with the appearance of an arbitrary and capricious nature and leave members of the public, the RACs and the Board itself with serious questions and concerns about the process for how such C and T determinations are made.

**Summary:**

In sum, KRSA believes the draft policy does little to clarify or lend structured predictability to the process of determining C and T. Rather, language within the draft intentionally muddles the decision making process with contradictory and qualifying statements.

KRSA firmly believes the public and the process will be far better served by a more direct effort to place in policy the Board’s application of the eight criteria, a definition of long term use, and an unambiguous explanation of the geographic area of use is factored in when making C and T determinations. KRSA looks forward to working with staff in an effort to make those improvements.

Thank you for the opportunity to provide comment on this very important matter.

Respectfully,

Ricky Gease, Executive Director  
Kenai River Sportfishing Association



## UNITED FISHERMEN OF ALASKA

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December 7, 2007

Theo Matuskowitz  
Federal Subsistence Board  
3601 C St., Suite 1030  
Anchorage, AK 99503  
By email : [subsistence@fws.gov](mailto:subsistence@fws.gov)

### **Re: Draft Customary and Traditional Use Policy**

Dear Mr. Matuskowitz:

United Fishermen of Alaska (UFA) is an umbrella association representing 36 Alaska commercial fishing organizations participating in fisheries throughout the state and its offshore waters. We also represent hundreds of individual fishermen members, many of whom are federally qualified rural subsistence users.

After reviewing the draft "Policy on Implementation of Customary and Traditional [C&T] Use Determinations", at our annual Fall meeting, the UFA Board of Directors believes that additional issues need to be considered before adoption of a policy. While it is encouraging to note that the Federal Subsistence Board (FSB) has recognized the need for a formally adopted C&T policy, we are concerned that the proposed language does not adequately address some of the basic shortcomings of the FSB process. UFA appreciates the opportunity to comment and offers the following points to express some of our concerns with the draft document as it is written.

While the "Purpose" section indicates that "the intention of the policy is to clarify existing practices under the current statute and regulations", the existing practice is widely perceived to be biased and arbitrarily applied and has drawn criticism for not providing clear criteria and a defensible record of the process.

Although the "Introduction" section states that implementing regulations require that the FSB make C&T determinations using the eight factors, the body of the policy is not explicit enough in establishing the mechanism to ensure this required consideration. For example, the wording "based on a holistic application of eight factors" is vague and subject to different interpretations. Also, the existing process whereby the FSB seems to function as a rubber stamp for RAC recommendations will not adequately provide the defensible record of how and by whom the eight factors are considered.

The policy also states that determinations "must be based on a community's long term consistent pattern of use" and that "in all instances, the Board makes a decision based upon the best available information." However, without accountability in the decision making process, it is unclear how the "best information" can be elevated above the level of hearsay.

Theo Matuskowitz

Under “Additional Guiding Considerations:” UFA is concerned that the “[FSB] may extrapolation based on information from other, similarly situated communities or areas if no information exists for a certain community or area.” without substantive definition of what constitutes “similarity”.

Although UFA has additional concerns about specific wording of the draft document, we hope that the previous comments will assist the FSB in establishing a publicly accepted set of procedures based on valid information reviewed by using a consistently applied set of well defined criteria.

Thank you for your consideration,



Joe Childers  
President

MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Druggers Association • Alaska Independent Tendermen's Association • Alaska Longline Fishermen's Association  
Alaska Shellfish Association • Alaska Trollers Association • Armstrong Keta • At-sea Processors Association • Bristol Bay Reserve  
Cape Barnabas • Concerned Area "M" Fishermen • Cook Inlet Aquaculture Association • Cordova District Fishermen United  
Crab Group of Independent Harvesters • Douglas Island Pink and Chum • Fishing Vessel Owners Association • Groundfish Forum  
Kenai Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association • North Pacific Fisheries Association  
Northern Southeast Regional Aquaculture Association • Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation  
Purse Seine Vessel Owner Association • Seafood Producers Cooperative • Sitka Herring Association • Southeast Alaska Fisherman's Alliance  
Southeast Alaska Regional Dive Fisheries Association • Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association  
United Catcher Boats • United Cook Inlet Drift Association • United Salmon Association • United Southeast Alaska Gillnetters  
Valdez Fisheries Development Association • Western Gulf of Alaska Fishermen

## **BRIEFING ON CONSULTATION WITH TRIBES AND ANCSA CORPORATIONS**

### **I. INTRODUCTION**

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) requires that rural Alaskans be given a priority for the subsistence uses of fish and wildlife on Federal public lands and waters in Alaska. In addition, Executive Order 13175 of November 2000 and the Presidential Memorandum of November 5, 2009 “Tribal Consultation” gave the Secretaries of the Interior and Agriculture specific direction to develop Departmental policy on government-to-government consultation and collaboration with Native American Tribes. The Department of the Interior, in turn, directed the Federal Subsistence Board to develop a government-to-government Tribal consultation policy. In addition, Public Law 108-199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452 as amended by Public Law 108-447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267 provides that “the Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native Corporations on the same basis as Indian Tribes under Executive Order No. 13175.” The Executive order and Presidential Memorandum together with the Congressional mandate defines the Board’s responsibility to engage in regular and meaningful consultation and collaboration with Tribes and Alaska Native Corporations on subsistence matters that may have significant effects on them and their members.

### **II. BACKGROUND**

ANILCA declares that the “...continuation of the opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, on the public lands and by Alaska Natives on Native lands is essential to Native physical, economic, traditional and cultural existence and to non-Native physical, economic, traditional, and social existence. . .” The Federal government has provided for the subsistence priority on Federal public lands and waters in Alaska since 1990. ANILCA also created a system of regional advisory councils to enable rural residents to have a meaningful role in Federal subsistence management. Ten regional advisory councils provide recommendations and information to the Federal Subsistence Board and provide a public forum for issues related to subsistence uses. By regulation the Federal Subsistence Board gives deference to the regional advisory councils’ positions concerning the taking of fish and wildlife unless a regulatory proposal is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. Board deference to regional advisory councils does not affect the government-to-government relationship enjoyed by Tribes.

At its May 2011 meeting, the Board directed that a consultation workgroup comprised of Federal and Tribal representatives be formed to develop Tribal and Alaska Native Claims Settlement Act (ANCSA) corporation consultation policies, with the goal of adopting final policies at its May 2012 meeting. The workgroup subsequently developed draft consultation policies. The Board met with Tribes, ANCSA Corporation representatives, and subsistence regional advisory councils, and sought written comment on these draft policies.

In May of 2012, the Federal Subsistence Board adopted its Tribal Consultation Policy. The policy is founded on the Department of the Interior’s Tribal Consultation Policy and Department of Agriculture’s Action Plan for Tribal Consultation and Collaboration and establishes the framework for regular and meaningful consultation with Federally recognized Tribes in Alaska on ANILCA, Title VIII subsistence matters. The policy includes in its goals provisions for training of Federal staff on government-to-government consultation, offering training to Tribes on the Federal subsistence regulation making process, and a regular review of the policy by the Board. Based on comments received from ANCSA corporations, the Board delayed adoption of the ANCSA Corporation consultation policy until after the

Department of Interior finalized its ANCSA Corporation consultation policy. The Board directed that the consultation workgroup continue to develop implementation guidelines for the Tribal consultation policy and the draft ANCSA Corporation consultation policy. The Board has been following interim implementation guidelines pending the adoption of final implementation guidelines in 2013.

Consultations have been ongoing with Alaska Native Tribes and Corporations during the fiscal year of 2012. Several consultations occurred beginning in December of 2011 at the Providers Conference in Anchorage on the guidelines for consultations, on issues of subsistence and regulatory proposals, during the Board and Southeast RAC combined spring meeting in Juneau on the Angoon Extra-Territorial Jurisdiction petition in March, again in May 2012 to consider the draft guidelines and comments, and also a two day consultation conference call with the Tribes and ANCSA corporations affected by the 2013-2015 proposed fisheries regulations in September 2012. The Regional Advisory Councils were briefed on the Consultation Policy progress at their fall 2012 meetings. These consultations have been entered into the Department of the Interior's data share-point website to satisfy accountability requirements from the Secretaries.

### **III. POSITION of INTERESTED PARTIES**

Feedback from Tribes and Corporations has been favorable. It is observed that consultations will more likely take place when regulations are viewed to be prohibitive or restrictive than regulations that liberalize harvest.

### **IV. FWS POSITION**

Consistent with the policy of the Departments of the Interior and Agriculture, the Service will continue to strive to improve the government-to-government relations with Federally recognized Tribes. We will also consult with ANCSA Corporations in Alaska. We are committed to carrying out the Federal Subsistence Board's Tribal and ANCSA Corporation consultation policies and the development of implementation guidelines.

## Subsistence Harvests and Uses of Wild Resources in Chistochina, Alaska, 2009

### An Overview of Study Findings

Division of Subsistence  
Alaska Department of Fish and Game



November 2012

#### **Background**

The following is a brief overview of research conducted by the Division of Subsistence of the Alaska Department of Fish and Game (ADF&G) in collaboration with Wrangell-St. Elias National Park and Preserve on subsistence harvests of all resources by residents of Chistochina. Funding for this study was provided by the National Park Service through Alaska Regional Natural Resources Project Funds. The study period covers January 1 to December 31, 2009. This study is part of a multiphase study to update the subsistence harvest information for several communities in the Copper River Basin. Year one of this multiyear study documented subsistence uses and harvests as well as demographic and other economic data for the study year of 2009 in Chistochina.

#### **Methods**

The primary data gathering method was systematic household surveys using a modified version of the ADF&G Division of Subsistence standard data gathering instrument. The surveys were conducted face-to-face with community residents. The goal was to interview representatives of all households in Chistochina. In total, 27 households were interviewed, approximately 82% of the year-round resident households. With the help of a local research assistant, household interviews were conducted to collect harvest and use information for all wild resources. Each household had accompanying mapping conducted as well, for each resource, including use area and/or harvest location, amount of harvest, and month of harvest. Participation was voluntary, and individual as well as household-level data are confidential, as are mapped harvest locations. In addition, subsistence users were asked to discuss their observations about resource use and abundance, and their concerns relating to subsistence resources and their continuing opportunities to harvest subsistence resources.

#### **Findings**

In 2009, all Chistochina households used wild resources, 96% of the households attempted to harvest a resource, and 93% of the households successfully harvested wild resources. Subsistence harvests were lower than in previous study year (1987), but continue to be diverse. The mean total harvest was 522 pounds usable weight per household, or 199 pounds per person. On average, this per person harvest is about 0.6 pounds of wild resources per day.

Figure 1 shows the composition of wild resource harvests in pounds usable weight by category for 2009. The composition of the harvest varied by resource category with salmon and large land mammals (specifically moose) making up the largest portions of the harvest. Many households also harvested and used wood but firewood and some furbearers typically not eaten are excluded from the weight

calculations. Table 1 shows the top ten specific resources harvested and used by Chistochina households in 2009.

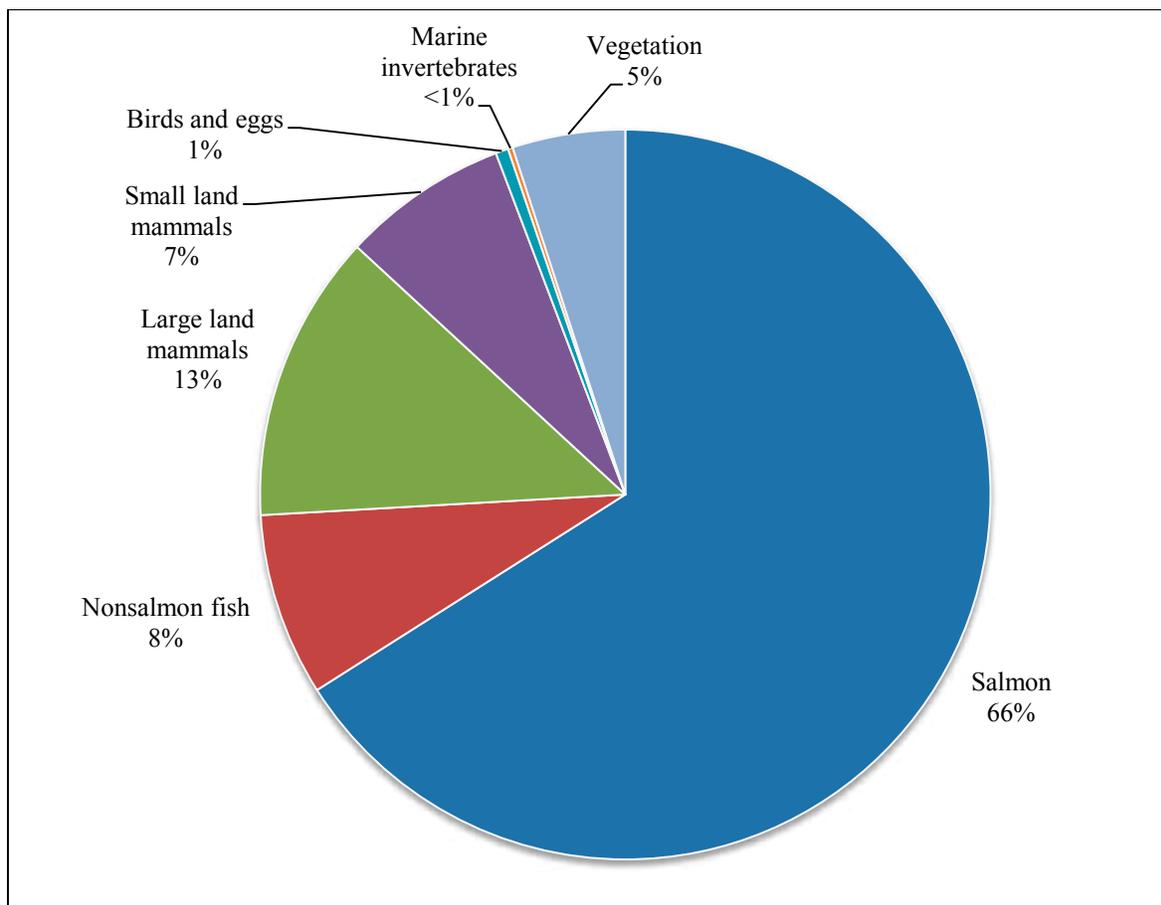


Figure 1.–Chistochina composition of wild resource harvests, pounds usable weight, 2009.

Table 1.–Top ten resources harvested and used, Chistochina, 2009.

Harvested				Used			
Number	Rank	Resource	Pounds per capita	Number	Rank	Resource	Percentage of households using
1	1.	Sockeye salmon	93.5	1	1.	Blueberry	77.8%
2	2.	Chinook salmon	33.7	2	2.	Wood	74.1%
3	3.	Moose	25.4	3	3.	Sockeye salmon	70.4%
4	4.	Snowshoe hare	6.5	4	3.	Moose	70.4%
5	5.	Beaver	5.7	5	5.	Lowbush cranberry	66.7%
6	6.	Burbot	3.9	6	6.	Chinook salmon	59.3%
7	7.	Coho salmon	3.7	7	6.	Spruce grouse	59.3%
8	8.	Blueberry	3.5	8	7.	Lake trout	40.7%
9	9.	Northern pike	3.4	9	7.	Arctic grayling	40.7%
10	10.	Lake trout	2.9	10	7.	Highbush cranberry	40.7%

Source ADF&G Division of Subsistence household survey, 2010.

Although the bulk of the subsistence harvest in 2009 was salmon and moose, almost all households used nonsalmon fish, and vegetation, and many used small land mammals and birds. During the study year, Chistochina households on average used 11 different resources and harvested 9 kinds of resources. The maximum number of resources used by any household was 34. In addition, households gave away an average of 3 kinds of resources and received 5 kinds of resources. In 2009, most Chistochina households (59%) received some resources from the categories of fish and land mammals, while 44% of households reported sharing resources from the category of land mammals. At the species level, moose was the most widely shared land mammal species; 56% of households reported receiving some moose and 33% giving some away. Sharing of the resources bound households together in networks of mutual support and obligation. Further, subsistence activities and uses created a context in which people shared traditional knowledge about harvest locations, fish and wildlife populations and behavior, and respectful relationships with the natural world. In short, subsistence hunting, fishing and gathering were a vital component of the Chistochina economy and way of life in 2009, as they have been for the people living in the area for centuries.

Similar comprehensive subsistence resource use and harvest studies were conducted in Chistochina in 1982, and 1987. In 2009, the total pounds harvested, and the per capita pounds used, were higher than in 1982 but lower than in 1987 (Table 2). When comparing the 2009 total harvests to the 1987 study, there seems to be continuing trends of increasing salmon, and small land mammal harvest, and declining large land mammal harvest. Nonsalmon fish and birds and eggs show a decline in harvest levels as well. In comparison, marine invertebrate harvest has increased slightly but continues to be very small in number of total pounds harvested. When comparing the 2009 total harvest to the 1982 study, large land mammals and vegetation are the only 2 resource categories with a decline in total harvest. At the same time, salmon is the only resource category that has seen continuous increase in harvest and use since the 1982 study.

Table 2.—Total estimated community harvests, pounds usable weight, Chistochina, 1982, 1987, 2009.

Resource category	Harvests by percent usable weight			Harvests by pounds usable weight			Per capita harvests by pounds usable weight		
	1982	1987	2009	1982	1987	2009	1982	1987	2009
Salmon	37.2%	49.5%	66.0%	3,554	10,197	11,371	42.8	129.6	131.0
Nonsalmon fish	7.9%	10.7%	8.1%	758	2,199	1,395	9.1	27.9	16.1
Large land mammals	37.5%	32.1%	12.8%	3,579	6,598	2,200	43.1	83.8	25.4
Small land mammals	4.3%	1.6%	7.4%	408	322	1,269	4.9	4.1	14.6
Birds and eggs	1.3%	0.9%	0.6%	128	186	97	1.5	2.4	1.1
Marine invertebrates	0.0%	0.2%	0.2%	0	34	37	0.0	0.4	0.4
Vegetation	11.7%	5.1%	5.0%	1,118	1,048	860	13.5	13.3	9.9
<b>All resources</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>9,545</b>	<b>20,584</b>	<b>17,229</b>	<b>114.8</b>	<b>261.5</b>	<b>198.5</b>

Sources 1982 and 1987: ADF&G Division of Subsistence, Community Subsistence Information System (CSIS), <http://www.adfg.alaska.gov/sb/CSIS/>; 2009: ADF&G Division of Subsistence household survey, 2010.

**Continuing research**

The Division of Subsistence, in collaboration with Wrangell St. Elias Park and Preserve staff and local communities, will continue research for this project. Study year two covered the communities of Copper Center, Mentasta Lake, Mentasta Pass, Slana, and Slana–Nabesna Road for subsistence harvests from January 1 through December 31, 2010. During study year three, subsistence harvest and use surveys will be conducted in Chitina, Gakona, Kenny Lake, and McCarthy to cover subsistence harvests from January 1 through December 31, 2012.

**For More Information**

Complete results for this project appear in: *M. Kukkonen and G. Zimpelman. 2012. Subsistence harvests and uses of wild resources in Chistochina, Alaska, 2009. Alaska Department of Fish and Game, Division of Subsistence Technical Paper No. 370, Anchorage.*

Technical Paper series reports are available through the Alaska Resources Library and Information Services (ARLIS), the Alaska State Library, and on the Internet: [www.adfg.alaska.gov/sf/publications](http://www.adfg.alaska.gov/sf/publications).

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The Alaska Department of Fish and Game (ADF&G) administers all programs and activities free from discrimination based on race, color, national origin, age, sex, religion, marital status, pregnancy, parenthood, or disability. The department administers all programs and activities in compliance with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act (ADA) of 1990, the Age Discrimination Act of 1975, and Title IX of the Education Amendments of 1972.

**If you believe you have been discriminated against in any program, activity, or facility please write:**

ADF&G ADA Coordinator, P.O. Box 115526, Juneau AK 99811-5526  
U.S. Fish and Wildlife Service, 4040 N. Fairfax Drive, Suite 300 Webb, Arlington VA 22203  
Office of Equal Opportunity, U.S. Department of the Interior, Washington DC 20240

**The department’s ADA Coordinator can be reached via phone at the following numbers:**

(VOICE) 907-465-6077, (Statewide Telecommunication Device for the Deaf) 1-800-478-3648, (Juneau TDD) 907-465-3646, or (FAX) 907-465-6078

**For information on alternative formats and questions on this publication, please contact:**

ADF&G, Division of Subsistence, Website:  
<http://www.adfg.alaska.gov/index.cfm?adfg=contacts.anchorage>



# United States Department of Interior

NATIONAL PARK SERVICE  
Yukon-Charley Rivers National Preserve  
4175 Geist Road  
Fairbanks, Alaska 99709



## Yukon-Charley Rivers National Preserve EIRAC Update for February 20 and 21, 2013

- **New Chief of Integrated Resources:** Tom Liebscher retired in November 2012 and our new Chief of Integrated Resources is Jeff Rasic. The Chief of Integrated Resources manages the Natural Resources Division, Cultural Resources Division, the Subsistence Program, and the Fire Management Program.
- **Climate and Snow Monitoring:** The Central Alaska network continued monitoring climate and snow in Yukon-Charley Rivers for the 7<sup>th</sup> year since the stations were installed in 2005. Aerial snow surveys were conducted approximately the first day of each month in December, February, March, April, and May. Network investigators completed annual site maintenance at two climate stations in September. Upper Charley (near Three Fingers air strip) and Coal Creek stations were visited to calibrate and replace sensors and download data. The stations record air temperature, relative humidity, wind speed and direction, solar radiation, snow depth, rainfall, and soil temperature. The sites are fully automated and are powered through a battery and solar panel system. Real-time and archived data are publicly available through the Western Regional Climate Center at: <http://www.wrcc.dri.edu/>
- **Furbearers:** In late February 2012, NPS conducted the fourth year of the furbearer monitoring program in Yukon –Charley Rivers. The method involves travel by snowmachine while counting furbearer tracks in the snow in major drainages of the Preserve. Conditions were excellent on the Charley and Kandik rivers with good soft snow, but were wind-blown on most of the Yukon. Results are still preliminary, but lynx, marten, otter, and wolverine appeared common once again. No fox or coyote tracks were seen, although a few mink tracks were seen on the Kandik. Many Forty-mile caribou were present in the mid-Charley again this year. The hope is for this survey to continue annually and perhaps expand in the future to include other major drainages in the Preserve, particularly the Nation River.
- **Wolves:** The winter of 2011-2012 was mild for Yukon-Charley wolves. Even though all the wolf packs that utilize Preserve lands routinely travel outside the Preserve boundary, there was very little travel of collared wolves, and based on the GPS data, there were no large forays by any collared packs beyond their typical home ranges. Staying within their home range all winter is somewhat unprecedented, being only the second time we have seen this (the other time being the winter of 2010-2011). For the past two winters, a large percentage of the Forty-mile caribou herd wintered in the Charley River drainage, giving Preserve wolves plenty to eat and no reason to go on long distance forays to find enough food.

- **Fire Management:** With only four fires this year, Yukon-Charley Rivers National Preserve experienced a below normal fire year. Three of the four fires were ignited by lightning on June 7<sup>th</sup>. The largest, the Marie Creek fire, grew to 9,899 acres. The Bonanza Creek fire grew to 15 acres and the Edwards Creek fire grew to 1.5 acres. The fourth fire in the Preserve was the Charley River fire, which was discovered September 15<sup>th</sup>. The cause of the fire was never determined, and it burned only a quarter of an acre. All four fires were located within limited fire management zones and no suppression action was taken. They were placed in monitor status by Alaska Eastern Area Fire Management NPS and Alaska Fire Service BLM. All fires were extinguished by natural causes.

The Yukon-Charley Rivers hazard fuels reduction program in 2012 consisted of a one-acre prescribed pile burn at Gelvin's Cabin on the Charley River. Also, the Eastern Area Fire Management crew thinned woody debris and brush around three historical cabins, making the cabins less susceptible to wild fires.

#### **Meeting with YUCH Communities:**

- A public meeting was held in Eagle on December 18, 2012 to discuss the Board of Game wildlife regulations that would affect Preserve lands. The provisions discussed were brown bear baiting and extending coyote and wolf hunting seasons and were based on recent changes to State of Alaska hunting regulations. These changes included allowing the killing of brown bears over bait stations in three game management units, which included portions of three National Preserves. The proposed prohibition reflects the NPS concerns about the dangers of food conditioned bears as well as the potential impact to the natural abundance, behavior, distribution, and ecological integrity of brown bear populations. The State has also extended the hunting seasons for wolves and coyotes into the summer in several areas, including nine National Preserves. The NPS is proposing to prohibit the take between May 1 and August 9 because it is the period when wolves and coyotes are denning and raising offspring and their pelts have little trophy or economic value. This meeting was the first step leading to a potential implementation of restrictions in the annual Superintendent's compendium, an annual compilation of temporary closures and similar restrictions.

\*\*More preserve information is also available in the Yukon-Charley Fall 2012 Weather Summary\*\*

For more information about this summary report contact Marcy Okada, Program Manager for Subsistence and Ethnography (907) 455-0639. For more information about NPS and Yukon-Charley Rivers National Preserve please call (907) 457-5752 in Fairbanks or (907) 547-2233 in Eagle.

## **SERVICE SEEKS COMMENTS ON PROPOSED WOOD BISON INTRODUCTION PROJECT**

### **USFWS Office of External Affairs News Release 01/17/2013**

The U.S. Fish and Wildlife Service (Service) announced today that it will propose to release wood bison (*Bison bison athabascaae*) in Alaska, in support of an Alaska Department of Fish and Game (ADF&G) plan, in an effort to establish a wild population of this native wildlife species to the State. Potential introduction sites include Minto Flats, the lower Innoko/Yukon River area, and Yukon Flats.

In May 2012, wood bison were reclassified from endangered to threatened, to reflect successful efforts in Canada to reestablish free-ranging wood bison herds. The reclassification represents the significant progress that has been made towards recovery and is part of an overall recovery strategy that should eventually lead to delisting the species altogether. Introduction of wood bison in Alaska would support one of the goals of the Canadian recovery plan to foster the restoration of the species in other areas to help ensure its long-term survival.

In support of the ADF&G release effort, the Service is proposing to designate a nonessential experimental population of wood bison in Alaska under section 10(j) of the Endangered Species Act of 1973 (ESA) and an associated proposed special rule that would provide a wide range of management options, including assurances that the establishment of the wild herd(s) won't have any unintended consequences for the State, private landowners, industry, or Alaska Natives. If the proposed rule is adopted, the ADF&G would have primary management responsibility for leading and implementing the wood bison restoration effort.

Geoffrey Haskett, the U.S. Fish and Wildlife Service's Alaska Regional Director, said, "We support the ADF&G's efforts to release wood bison in Alaska. Establishing wild populations of this magnificent animal in Alaska would be a significant step toward its eventual recovery and delisting. We will assist the ADF&G as they work with landowners, industry and the Alaska Native community to address their concerns."

Doug Vincent Lang, Alaska Department of Fish and Game's Acting Director of the Division of Wildlife Conservation, said, "The Department looks forward to the establishment of a final rule incorporating the 10(j) nonessential experimental population provision and the special rule delegating primary management of this nonessential population to the State. I believe the proposed rule represents a necessary step towards the potential reintroduction of wood bison to the Alaskan landscape."

The ESA prohibits "take" of listed animal species – which includes killing, harming, or harassing the species or destroying its habitat – without authorization from the Service. However, the special rule we are proposing here, issued under Section 4(d) of the ESA, would define conditions under which "take" of this species may occur without violating the law. The Service generally issues such rules to facilitate the overall conservation of the species or to preserve traditional land use activities, where such activities will not significantly affect ongoing and future conservation and recovery efforts.

Management plans for the introduced populations would be developed by ADF&G with involvement of landowners and other stakeholders. The rule also would allow for regulated hunting based on sustained yield principles. Hunting of wood bison has been used successfully as a conservation tool in Canada, and the ADF&G and the Service support its use in Alaska.

In association with these proposed rules, the Service has published a notice of availability of a draft Environmental Assessment (EA), as required by the National Environmental Policy Act. The draft EA analyzes the potential environmental impacts associated with the proposed introduction of wood bison in Alaska.

We are opening a 60-day comment period on the proposed rule and draft EA. We are especially interested in comments that are supported by data or peer-reviewed studies and those that include

citations to, and analyses of, applicable laws and regulations. Please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you reference or provide. We particularly seek comments concerning: (1) Any information on the biological or ecological requirements of wood bison; (2) Current or planned activities in the proposed introduction area; and (3) Any information concerning the boundaries of the proposed introduction area. Submit comments and information on either the proposed rules or the draft EA as follows:

1. *Federal eRulemaking Portal*: <http://www.regulations.gov>. Search for docket *FWS-R7-ES-22012-0033* and then follow the instructions for submitting comments.
2. *U.S. mail or hand-delivery*: Public Comments Processing, Attn: FWS-R7-ES-2012-0033; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203. Comments submitted to <http://www.regulations.gov> must be received before midnight (Eastern Time) on the date specified in the **DATES** section. We will post all comments on <http://www.regulations.gov>.

For further information contact Sonja Jahrsdoerfer at the address at the top of this document, or by telephone 907-786-3323. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 800-877-8339.

After the 60-day comment period, all comments and additional information received will be analyzed to determine whether to issue a final rule to implement this proposed action and to prepare a finding of no significant impact or an environmental impact statement. Comments we receive may lead to a final rule that differs from this proposal.

The Endangered Species Act provides a critical safety net for America's native fish, wildlife and plants. This landmark conservation law has prevented the extinction of hundreds of imperiled species across the nation and promoted the recovery of many others.

The wood bison is the largest native extant terrestrial mammal in North America. Average weight of mature bulls is about one ton (2,000 pounds). They have a large triangular head, a thin beard and rudimentary throat mane, their horns usually extend above the hair on their head, and the highest point of their hump is forward of their front legs. These physical characteristics distinguish them from the plains bison which is the subspecies that roamed the vast prairies of the continental United States.

An important partner in the wood bison restoration effort is the Alaska Wildlife Conservation Center (AWCC) near Portage, Alaska. This non-profit organization has been caring for wood bison since 2003, when 13 animals were first transferred to the facility. In 2008, an additional 53 disease-free wood bison were imported from Canada. The AWCC has the expertise and facilities to maintain and expand the captive herd, which now numbers over 130 animals, as they await release to the wild.

More information on wood bison, including details on the recent reclassification, can be found at: [http://alaska.fws.gov/fisheries/endangered/species/wood\\_bison.htm](http://alaska.fws.gov/fisheries/endangered/species/wood_bison.htm). More information about wood bison in Alaska can be found at: <http://www.adfg.alaska.gov/index.cfm?adfg=woodbison.main>.

*The mission of the U.S. Fish and Wildlife Service is working with others to conserve, protect, and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people. We are both a leader and trusted partner in fish and wildlife conservation, known for our scientific excellence, stewardship of lands and natural resources, dedicated professionals, and commitment to public service. For more information on our work and the people who make it happen, visit [www.fws.gov](http://www.fws.gov). Connect with our Facebook page at [www.facebook.com/usfws](http://www.facebook.com/usfws), follow our tweets at [www.twitter.com/usfwshq](http://www.twitter.com/usfwshq), watch our YouTube Channel at <http://www.youtube.com/usfws> and download photos from our Flickr page at <http://www.flickr.com/photos/usfwshq>.*



# Salmon Bycatch Update

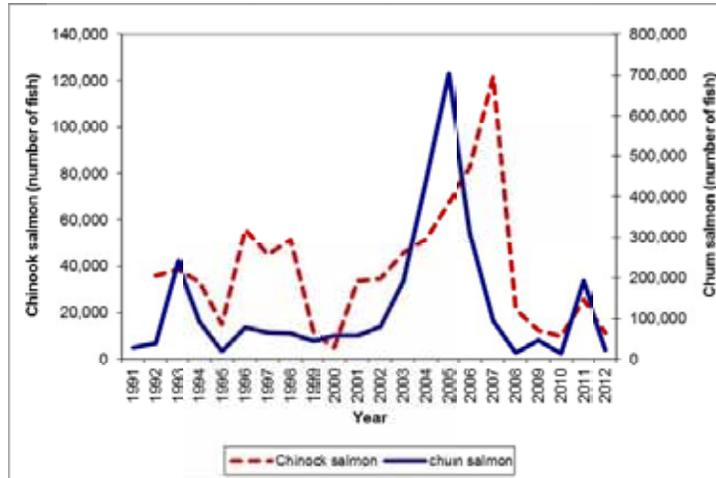
## January 2013

### BACKGROUND & NUMBERS

Every year, the Bering Sea/Aleutian Islands (BSAI) pollock fishery intercepts Chinook and chum salmon bound for Western and Interior Alaska. **In 2012, 11,350 Chinook salmon and 22,214 chum salmon were caught as bycatch in the pollock fishery.** In 2011, bycatch numbers were 25,500 Chinook salmon and 191,446 chum salmon. After being counted and sampled by observers, this bycatch is either thrown back into the water—dead after hours in the nets—or saved for donation to food banks.

Salmon bycatch in the BSAI pollock fishery increased dramatically in the mid-2000s and has since declined to below historical levels. Chinook salmon bycatch hit a record high in 2007 of over 120,000 Chinook salmon. Chum salmon bycatch peaked in 2005 at more than 700,000 chum salmon. Recent genetic studies of bycatch samples show that on average about 50% of the Chinook salmon bycatch is of Western Alaskan origin. Scale pattern analysis of bycatch samples from the late 1990s show that of the Western Alaska Chinook salmon, approximately 40% are Yukon River stocks. These numbers vary year to year—in 2010 stock composition was 42% Coastal Western Alaska (includes the lower Yukon); 20% Upper Yukon River and 11% Middle Yukon River. Available information indicates that about 15% of the chum salmon bycatch is of Western Alaska origin (including the lower Yukon), and as much as 7% of the total bycatch is chum salmon of middle and upper Yukon origin in recent years.

**Chinook and chum salmon bycatch in the Bering Sea pollock fishery 1991-2012**



### CHINOOK SALMON BYCATCH MANAGEMENT: AMENDMENT 91

The pollock fishery—and salmon bycatch—is managed by the North Pacific Fishery Management Council (the Council) and the National Marine Fisheries Service (NMFS). A new system for reducing Chinook salmon bycatch in the Bering Sea pollock fishery was adopted by the Council in April 2009 and went into effect January 1, 2011. The new program, called Amendment 91, includes an overall cap of 60,000 Chinook salmon if the pollock fishery is participating in approved incentive plans, or an overall hard cap of 47,591 if the industry is not participating in approved incentive plans. If they are

## Salmon Bycatch Update

January 2013

participating in approved incentive plans, they may exceed the performance standard of 47,591 in two out of any seven years (but only up to 60,000 Chinook salmon). If they exceed the performance standard in a third year out of any seven the cap drops to 47,591 permanently. The cap is divided between seasons and sectors (Offshore catcher processors, motherships, inshore catcher vessels and CDQ). When a sector reaches its portion of the cap they must stop fishing for the remainder of the season. Amendment 91 also requires that all participants in the pollock fishery must have at least 100% observer coverage: those vessels which were previously required to have 200% observer coverage are still required to do so.

### CHUM SALMON BYCATCH MANAGEMENT

The Council is currently considering revisions to chum salmon bycatch reduction measures as well. The alternatives, or options, under consideration include a range of hard caps which would close the fishery when reached, and hard caps applied to June and July only when Western Alaska salmon are caught in higher proportions in the bycatch. The range of hard caps being considered is 50,000 to 353,000 chum salmon.

The alternatives also include an option for the fleet to participate in an updated rolling hot spot program, similar to the current system, with the additional option of a backstop large closure area which would apply in addition to the hot spot system. At the December 2012 meeting, the Council asked the pollock industry to develop a program that will work with the Chinook salmon avoidance measures to decrease chum salmon bycatch while not inadvertently increasing Chinook salmon bycatch, and to present their ideas at the October 2013 meeting. In the meantime, the fleet has adopted a variety of voluntary measures to further reduce chum salmon bycatch.

### WHAT YOU CAN DO TO REDUCE SALMON BYCATCH

- ❖ **Ask the Council and the Governor to lower the Chinook salmon cap:** As Chinook salmon numbers have declined dramatically in-river and subsistence users have been restricted, the bycatch cap should be lowered to 30,000 at most.
- ❖ **Attend a Council Meeting:** The Council is scheduled to review Chinook salmon bycatch measures at the Council **meeting in Anchorage, April 1-9, 2013** and chum salmon bycatch at the October 2013 meeting. Meeting agendas are posted on the Council's website: <http://www.fakr.noaa.gov/npfmc/>. Public comment is accepted at every meeting.
- ❖ **Write a Letter to the Council:** In your letter, be sure to talk about the importance of Chinook and chum salmon to you, your family and community, and the impact low runs have had. Also provide your own traditional knowledge about the state of the salmon stocks. Letters for the April Council meeting are **due March 26**. Send letter to:  
North Pacific Fishery Management Council      Fax: (907) 271-2817  
605 West 4<sup>th</sup> Avenue, Suite 306      E-mail: [npfmc.comments@noaa.gov](mailto:npfmc.comments@noaa.gov)  
Anchorage, AK 99501-2252
- ❖ **Sign up for YR DFA's E-news** to learn more and receive updates about opportunities to send in comments: E-mail [info@yukonsalmon.org](mailto:info@yukonsalmon.org).

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WWW.YUKONSALMON.ORG



# Fall 2013 Regional Advisory Council Meeting Calendar

August–October 2013 current as of 10/15/12

Meeting dates and locations are subject to change.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Aug. 18	Aug. 19 WINDOW OPENS	Aug. 20	Aug. 21	Aug. 22	Aug. 23	Aug. 24
	NS—Barrow		NWA—Kiana			
Aug. 25	Aug. 26	Aug. 27	Aug. 28	Aug. 29	Aug. 30	Aug. 31
Sept. 1	Sept. 2 HOLIDAY	Sept. 3	Sept. 4	Sept. 5	Sept. 6	Sept. 7
Sept. 8	Sept. 9	Sept. 10	Sept. 11	Sept. 12	Sept. 13	Sept. 14
Sept. 15	Sept. 16	Sept. 17	Sept. 18	Sept. 19	Sept. 20	Sept. 21
Sept. 22	Sept. 23	Sept. 24	Sept. 25 YKD—St. Mary's	Sept. 26	Sept. 27	Sept. 28
		SE—Petersburg				
		KA—King Cove/ Cold Bay				
Sept. 29	Sept. 30 END OF FY2013	Oct. 1	Oct. 2	Oct. 3	Oct. 4	Oct. 5
		SC—Copper River				
Oct. 6	Oct. 7	Oct. 8 WF—Fairbanks	Oct. 9	Oct. 10	Oct. 11 WINDOW CLOSES	Oct. 12
		SP—Nome				
Oct. 13	Oct. 14	Oct. 15	Oct. 16	Oct. 17	Oct. 18	Oct. 19
		EI—Fairbanks				
Oct. 20	Oct. 21	Oct. 22	Oct. 23	Oct. 24	Oct. 25	Oct. 26
Oct. 27	Oct. 28	Oct. 29	Oct. 30	Oct. 31	Nov. 1	Nov. 2
		BB—Dillingham				

## Winter 2014 Regional Advisory Council Meeting Calendar

*February–March 2014 current as of 01/18/13*

Meeting dates and locations are subject to change.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
<i>Feb. 9</i>	<i>Feb. 10</i> <i>Window Opens</i>	<i>Feb. 11</i>	<i>Feb. 12</i>	<i>Feb. 13</i>	<i>Feb. 14</i>	<i>Feb. 15</i>
<i>Feb. 16</i>	<i>Feb. 17</i> <b>HOLIDAY</b>	<i>Feb. 18</i>	<i>Feb. 19</i>	<i>Feb. 20</i>	<i>Feb. 21</i>	<i>Feb. 22</i>
<i>Feb. 23</i>	<i>Feb. 24</i>	<i>Feb. 25</i>	<i>Feb. 26</i>	<i>Feb. 27</i>	<i>Feb. 28</i>	<i>Mar. 1</i>
<i>Mar. 2</i>	<i>Mar. 3</i>	<i>Mar. 4</i>	<i>Mar. 5</i>	<i>Mar. 6</i>	<i>Mar. 7</i>	<i>Mar. 8</i>
<i>Mar. 9</i>	<i>Mar. 10</i>	<i>Mar. 11</i>	<i>Mar. 12</i>	<i>Mar. 13</i>	<i>Mar. 14</i>	<i>Mar. 15</i>
<i>Mar. 16</i>	<i>Mar. 17</i>	<i>Mar. 18</i>	<i>Mar. 19</i>	<i>Mar. 20</i>	<i>Mar. 21</i> <i>Window Closes</i>	<i>Mar. 22</i>

**Department of the Interior  
U. S. Fish and Wildlife Service**

**Eastern Interior Alaska Subsistence Regional Advisory Council**

**Charter**

1. **Committee's Official Designation.** The Council's official designation is the Eastern Interior Alaska Subsistence Regional Advisory Council (Council).
2. **Authority.** The Council is reestablished by virtue of the authority set out in the Alaska National Interest Lands Conservation Act (16 U.S.C. 3115 (1988)) Title VIII, and under the authority of the Secretary of the Interior, in furtherance of 16 U.S.C. 410hh-2. The Council is established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., Appendix 2.
3. **Objectives and Scope of Activities.** The objective of the Council is to provide a forum for the residents of the region with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal lands and waters in the region.
4. **Description of Duties.** The Council possesses the authority to perform the following duties:
  - a. Recommend the initiation of, review, and evaluate proposals for regulations, policies, management plans, and other matters relating to subsistence uses of fish and wildlife on public lands within the region.
  - b. Provide a forum for the expression of opinions and recommendations by persons interested in any matter related to the subsistence uses of fish and wildlife on public lands within the region.
  - c. Encourage local and regional participation in the decision making process affecting the taking of fish and wildlife on the public lands within the region for subsistence uses.
  - d. Prepare an annual report to the Secretary containing the following:
    - (1) An identification of current and anticipated subsistence uses of fish and wildlife populations within the region.
    - (2) An evaluation of current and anticipated subsistence needs for fish and wildlife populations within the region.
    - (3) A recommended strategy for the management of fish and wildlife

populations within the region to accommodate such subsistence uses and needs.

- (4) Recommendations concerning policies, standards, guidelines and regulations to implement the strategy.
  - e. Appoint one member to the Wrangell-St. Elias National Park Subsistence Resource Commission and one member to the Denali National Park Subsistence Resource Commission in accordance with Section 808 of the Alaska National Interest Lands Conservation Act (ANILCA).
  - f. Make recommendations on determinations of customary and traditional use of subsistence resources.
  - g. Make recommendations on determinations of rural status.
  - h. Provide recommendations on the establishment and membership of Federal local advisory committees.
5. **Agency or Official to Whom the Council Reports.** The Council reports to the Federal Subsistence Board Chair, who is appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture.
6. **Support.** The U.S. Fish and Wildlife Service will provide administrative support for the activities of the Council through the Office of Subsistence Management.
7. **Estimated Annual Operating Costs and Staff Years.** The annual operating costs associated with supporting the Council's functions are estimated to be \$140,000, including all direct and indirect expenses and .75 staff years.
8. **Designated Federal Officer.** The DFO is the Subsistence Council Coordinator for the region or such other Federal employee as may be designated by the Assistant Regional Director – Subsistence, Region 7, U.S. Fish and Wildlife Service. The DFO is a full-time Federal employee appointed in accordance with Agency procedures. The DFO will:
  - Approve or call all of the advisory committee's and subcommittees' meetings,
  - Prepare and approve all meeting agendas,
  - Attend all committee and subcommittee meetings,
  - Adjourn any meeting when the DFO determines adjournment to be in the public interest, and
  - Chair meetings when directed to do so by the official to whom the advisory committee reports.

- 9. Estimated Number and Frequency of Meetings.** The Council will meet 1-2 times per year, and at such times as designated by the Federal Subsistence Board Chair or the DFO.
- 10. Duration.** Continuing.
- 11. Termination.** The Council will terminate 2 years from the date the Charter is filed, unless, prior to that date, it is renewed in accordance with the provisions of Section 14 of the FACA. The Council will not meet or take any action without a valid current charter.
- 12. Membership and Designation.** The Council's membership is composed of representative members as follows:

Ten members who are knowledgeable and experienced in matters relating to subsistence uses of fish and wildlife and who are residents of the region represented by the Council. To ensure that each Council represents a diversity of interests, the Federal Subsistence Board in their nomination recommendations to the Secretary will strive to ensure that seven of the members (70 percent) represent subsistence interests within the region and three of the members (30 percent) represent commercial and sport interests within the region. The portion of membership representing commercial and sport interests must include, where possible, at least one representative from the sport community and one representative from the commercial community.

The Secretary of the Interior will appoint members based on the recommendations from the Federal Subsistence Board and with the concurrence of the Secretary of Agriculture.

Members will be appointed for 3-year terms. A vacancy on the Council will be filled in the same manner in which the original appointment was made. Members serve at the discretion of the Secretary.

Council members will elect a Chair, a Vice-Chair, and a Secretary for a 1-year term.

Members of the Council will serve without compensation. However, while away from their homes or regular places of business, Council and subcommittee members engaged in Council, or subcommittee business, approved by the DFO, may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service under Section 5703 of Title 5 of the United States Code.

- 13. Ethics Responsibilities of Members.** No Council or subcommittee member may participate in any specific party matter in which the member has a direct financial interest in a lease, license, permit, contract, claim, agreement, or related litigation with the Department.

14. **Subcommittees.** Subject to the DFO's approval, subcommittees may be formed for the purposes of compiling information or conducting research. However, such subcommittees must act only under the direction of the DFO and must report their recommendations to the full Council for consideration. Subcommittees must not provide advice or work products directly to the Agency. The Council Chair, with the approval of the DFO, will appoint subcommittee members. Subcommittees will meet as necessary to accomplish their assignments, subject to the approval of the DFO and the availability of resources.
15. **Recordkeeping.** Records of the Council, and formally and informally established subcommittees or other subgroups of the Council, must be handled in accordance with General Records Schedule 26, Item 2, or other approved Agency records disposition schedule. These records shall be available for public inspection and copying, subject to the Freedom of Information Act, 5 U.S.C. 552.



Secretary of the Interior

DEC - 2 2011

Date Signed

DEC 03 2011

Date Filed