

NORTH SLOPE Subsistence Regional Advisory Council



Sunset behind bowhead whale bones and umiaq frames in Barrow.

Carl Johnson

Meeting Materials
February 26–27, 2013
Barrow

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NORTH SLOPE SUBSISTENCE REGIONAL ADVISORY COUNCIL

Inupiat Heritage Center, Barrow
 February 26 and 27, 9:00 a.m. – 5:30 p.m.

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.

(DRAFT) AGENDA

*Asterisk identifies action item.

1. Roll Call and Establish Quorum (<i>Secretary or Council Coordinator</i>).....	4
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C. Secretary	
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B. Select date and location of winter 2014 meeting*	
14. Closing Comments	
15. Adjourn (Chair)	

To teleconference into the meeting, call the toll free number: 1-866-560-5984, then when prompted enter the passcode: 12960066

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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.

REGION 10 - NORTH SLOPE

Seat	Yr Apptd Term Expires	Member Name & Address
1	2011 2014	Gordon R. Brower , Barrow, Alaska
2	2011 2013	Robert V. Shears Wainwright, Alaska
3	2010 2013	Roy Maloney Nageak Sr. Barrow, Alaska
4	2013 2013	Vacant
5	1993 2014	Harry K. Brower Jr. Barrow, Alaska Chair
6	2014	VACANT
7	2008 2014	James M. Nageak Anaktuvuk Pass, Alaska
8	2012 2015	Theodore A. Frankson, Jr. Point Hope, Alaska
9	2006 2015	Lee Kayotuk Kaktovik, Alaska Secretary
10	2009 2015	Rosemary Ahtuanguaruak Barrow, Alaska Vice-Chair

NORTH SLOPE FEDERAL SUBSISTENCE REGIONAL ADVISORY COUNCIL Meeting
Minutes
August 14, 2012

DRAFT

North Slope Borough Assembly Chambers
Barrow, Alaska

Call to order: The meeting was called to order by Chair Harry Brower at 9:00 a.m. Invocation was led by James Nageak.

Roll Call: The following council members were present and quorum established: Harry Brower, Chair, Rosemary Ahtuanguaruk, Gordon Brower, Lloyd Leavitt, James Nageak, Roy Nageak, and Robert Shears. Lee Kayotuk was an excused absence.

Welcome and Introductions: The following persons were present at the meeting:

Government Agency Employees

Eva Patton, OSM Regional Council Coordinator

Carl Johnson, OSM Council Coordination Division Chief

Charles Brower, Federal Subsistence Board public member:

Interagency Staff Committee members: Sandy Rabinowitch – National Park Service and Pat Petrivelli
Bureau of Indian Affairs, Anchorage

Marcy Okada, National Park Service, Fairbanks

Vince Matthews, USFWS, Fairbanks

Dave Yokel, Bureau of Land Management, Fairbanks

Ernest Nageak, USFWS Barrow

Geoff Carroll, ADFG Wildlife, Barrow

Brittany Retherford, ADFG Subsistence Division, Fairbanks

Government Agency Employees via teleconference

Karen Hyer, OSM Fisheries

Tom Evans, OSM Wildlife

Dan Sharp, BLM

Patricia Reynolds, USFWS

Tribal Organizations, Native Corporations, and Public

Qinugan Roddy, Inupiat Community of the North Slope – Natural Resources

Thomas Olemaun, Native Village of Barrow

Joe Sage, Native Village of Barrow – Wildlife

Billy Adams, North Slope Borough – Division of Wildlife

Ralph Burke, North Slope Borough - Planning

John H. Jr., AIN

R. Morrow, Utqiagvik P.C.

Review and Adoption of Agenda: The council unanimously approved the agenda with modifications to adjust timing as necessary for staff reports to accommodate travel schedules and deferred some agenda items as noted to the winter meeting.

Agenda updates:

- 1) The Council had requested more information on the Foothills West Transportation Access project proposed by the State of Alaska otherwise known as “Road to Umiat” enquiries and invitations were made to both DOT and Army Corps of Engineers lead contacts for this EIS. Melissa Riordan of the Corps assisted in providing information updates and specifics for the council on comment opportunities for the EIS process. Ms. Riordan offered to present in person at the winter meeting but was unable to attend the August 14th meeting. The Council discussed the formal comment options available to them for this “Road to Umiat” EIS and will continue to seek information and follow up at the next meeting.
- 2) The Council had requested information on how to coordinate a broad range of subsistence concerns and the work of diverse committees and agencies to better assist community participation and lessen “burn out” on local people having to watch over many issues potentially impacting subsistence resources or access to them. The North Slope Science Initiative director was invited to present their efforts to coordinate federal agency research and development in the region. However another Arctic meeting was scheduled in Anchorage at the same time as this RAC meeting and it was determined that there was not enough time in the agenda to cover this topic so it was deferred to the winter RAC meeting.

Review and Approval of Minutes: The Council approved the previous form the February 16, 2012 meeting with one spelling correction noted for council member name. *Ms. Ahtuanguaruak.*

Council Member Reports:

Chairman Brower

- Notes he has been involved with Alaska Eskimo Whaling Commission convention and bi-lateral agreement meetings so was not able to be present at the last NSRAC meeting
- Requests the opportunity to meet for more time as a Council such as a pre-meeting to get fuller updates and discussion on important issues that the council would be better notified.
- Expressed concern about strengthening the Regional Advisory Councils and interaction with the Federal Subsistence Board. Notes he has been busy with many other commitments but has served the RAC for 10 or 13 years and would like to know if the influence and actions of the RAC has increased a bit more.
- Recognizes challenge of the RAC to address important environmental issue or minimizing development impacts to subsistence because the Charge of the RAC is limited to regulatory aspects of subsistence but also involves addressing subsistence needs of the communities. Expresses there must be other avenues the Council can generate comments or other ways to address environmental impacts to subsistence.

Lloyd Leavitt

- Concern for nuclear fallout from Japan sunami because a lot of seals, bearded seals, and walrus have been found sick in the Barrow area.
- Encourages the Council to push for fish and invertebrate studies to be done in the marine environment for contaminants and impacts on seals.
- Requests further assistance from the Federal government in monitoring and protecting subsistence fish and wildlife (NPR-A and Park Service and Refuge lands)
- Requests tribal governments and ICAS (Inupiat Community of the Arctic Slope) work with villages to help them bring forward subsistence concerns to the RAC so can be discussed with multiple agencies present.
- Announced he will be retiring from the NSRAC after this meeting to spend time with family and take care of grandchildren. The Council honored him for his RAC service.

Gordon Brower

- Notes that he was working attending to an emergency situation with the Repsol drilling operation blowout and thus was not able to be present at the last NSRAC meeting.
- Concerned about the NPR-A EIS and the Secretary Salazar preferred alternative for pipeline location. Notes radio telemetry data of caribou stopping along pipeline and would prefer a pipeline to run along close to coast so the Caribou would not be prevented from accessing important coastal area along the shoreline.
- Concerned about the representation of all villages in the region on the RAC – wants to see more villages represented in the make-up of the RAC
- Encourages participation in the RAC process as an opportunity for communities to have voices heard by agencies present USFWS, ANWR, Gates of Arctic NP, ADFG, BLM.
- Very concerned that subsistence management issue now related mostly to increased development impacts but still need to track allocation and hunting pressure issues.
- Concerned about federal activities on the North Slope and complaints from communities that they are not informed on research or development actions and in some cases important local trap lines or safety markers on the landscape have been removed.
- Notes that the North Slope Borough has been involved in wildlife disease sampling programs with local hunters – great cooperative subsistence monitoring efforts
- Notes caribou hunting was good this year but they will follow the prevailing winds and go by Wainwrights or Point Lay or other coastal areas for good insect relief.
- Very concerned about fishing – not like it used to be. Ice formation and river currents prevent setting nets well and the migration timing has changed, now a very short window.
- Recognizes challenges to many RAC members being very busy and wearing many hats but notes the RAC meeting are very important opportunity meet with all agency staff all at once and for the communities to be heard and have questions answered.

James Nageak

- Gave an update on the work of the Gates of the Arctic National Park Subsistence Resource Commission members and their work.
- Discussed some of the hunting issues the SRC (National Park Service Subsistence Resource Commission) was working on with the Park
- Replies to question on Dall sheep that the community of Anaktuvuk Pass is very concerned about the loss of subsistence sheep meet to outside guided hunters.
- Discussed the concerns of the community of Anaktuvuk Pass on the proposed State “Road to Umiat” and potential impacts to the Central and Teshepuk Caribou herds

Rosemary Ahtuanguak

- Also expressed concerns that the “Road to Umiat” could also have very serious impacts to North Slope villages by impacting the migration of the caribou herd and notes that Nuiqsut has already experienced impacts due to development.
- Reports on good spring duck, geese hunting and initial good caribou hunt that has become more difficult near Barrow possibly due to helicopter disturbance and noise.
- Reports on good whaling season in Barrow and a lot of celebrating the whale hunt.
- Communities have been sharing in the joy of ice near the coast and good walrus hunting.
- Expresses concern about change in ice cover moving out, that is has been many years since an ice shelf was near shore like this year. Loss of ice changes availability of subsistence foods.
- Recognizes Council members expressed concern for development and environmental impacts to subsistence and note the complexity of management and limited charge of the RAC but notes it is

all connected to subsistence and the council represents communities with generations of knowledge to bring to discussion.

- Expresses specific concern for contamination from Repsol blowout near Nuiqsut.
- Expresses concern on many reports of sick and diseased animals such as caribou and seals and would like to see better research reporting back to the RAC and communities.
- Requests communities, tribes, and RAC be a part of fish and wildlife research and monitoring efforts so that subsistence concerns be included.
- Expresses concern for cumulative impacts of climate change and development in North Slope and increasing challenge to communities being involved in complicated, multi-layered, multi-agency, and multiple land/water/resource jurisdiction processes – feels fragmentation of management makes it very difficult to effectively address critical subsistence issues.
- Expresses concern that changes in the environment, land and water are impacting subsistence families, communities, culture and traditions and challenging management process is further weakening subsistence. Concerned for healthy grandchildren to be able to still eat special subsistence foods.
- Very happy to see Native Village of Barrow and ICAS represented at this RAC meeting to support traditional and cultural activities through these local processes – engaging communities in these proceedings very important to strengthen effective efforts.

Roy Nageak

- Expressed concern that on a trip to Atqasuk he saw pipeline development planning already happening on the ground and felt the routes were pre-determined without consultation with communities or full Federal evaluation of the impacts to subsistence fish and wildlife of the impacts to the people's subsistence way of life.
- Expressed concern about impacts of frequent helicopter flights on subsistence wildlife and not sure why the caribou are not near Barrow like usual in the summer, wonders if it is wind, bugs or impacts of helicopter disturbance.
- Requests more community and tribal consultation and reporting back to communities from all agencies for development, wildlife research, and monitoring activities.
- Expressed concern about the haul road hunting access and potential impacts to the Central Arctic Caribou herd.
- Expressed concern about enforcement of hunting flights into the Anaktuvuk area foothills to Chandler Lake during summer months that would disturb caribou and that education needs to be enforce for outside hunter to understand local customs of letting the first group of caribou pass as they are migrating so the rest of the herd will follow – don't disturb the lead caribou.
- Requests assistance monitoring disease in subsistence wildlife and asks for subsistence hunters to be part of the equation by documenting and taking samples of diseased wildlife.
- Calls for the tribe and community to take part in educating young generation on how to hunt like an elder-youth hunter program so that the caribou can get some rest and peace.
- Discussed USFWS fox trapping program to protect eiders, questions timing and requests local bounty program
- Speaking on community health issue expresses joy that they are being blessed by the ice being close to shore for the first time in 10-15 years and so the oogruk and walrus are fat and the subsistence hunters have been able to take oogruk and walrus which is very good.

Robert Shears

- Expressed concern about the federal government not properly consulting with community of Wainwright on activities in region and feels coordination has been better with industry.
- Concerned about the increased level of helicopter over-flights and disturbance to caribou

- Very happy about abnormal but wonderful weather that has kept westerly and southerly winds gently blowing ice close to shore and kept bug population down
- Expresses Wainwright has been blessed by good subsistence and invites other communities to join take part in the abundance.
- Reports good smelt fishing and strong wolverine trapping season. Strong wolf population but few wolves taken this year.
- Reports on a strong population of caribou around Wainwright that stayed all winter, expresses need to re-evaluate Western Arctic Caribou Herd count methodologies due to this one group not migrating with the rest and fewer large breeding bulls observed.
- Good whaling season, good beluga harvest, and good ice for hunting seals and walrus.
- Good return of white-fronted geese but difficult to hunt ducks and eiders because of winds shifting flyway away from land-based hunting area but able to hunt from boats.
- Dry winter conditions and little summer precipitation. Few berries inland but very good salmonberries in the coastal zones and harvested caribou have good fat content.
- Wainwright constructed two new subsistence hunting cabins in regions where there's extensive subsistence activity and very little shelter or safety and rescue capabilities.
- Notes interest in ADFG fish tagging study some in community caught tagged grayling and are very interested to see fish migratory patterns prior to freeze-up.
- Expresses concern that although this has been a very good subsistence season overall and generally people are satisfied with federal subsistence management that communities have to be vigilant in being aware of and protecting subsistence from development impacts such as increased helicopter disturbance or other impacts to environment.

Public and Tribal Comments:

Thomas Olemaun, executive director, tribal council president Native Village of Barrow

- Notes that it is nice to attend the RAC meeting, has reviewed the meeting packet and Charter and pleased to see the Council taking up the many issues on the land and waters.
- Expresses need to communicate and all work together with tribal governments and villages and the RAC working as appointees of the Secretary of Interior to address issues together on Federal lands.
- Notes the challenges faced by North Slope tribes and communities with all the impacts happening to marine mammals, terrestrial animals, waterfowl, fisheries, and different management and issues and increasing development and review guidelines over 40 years.
- Requests researchers do better consultation with communities and report back. Most importantly local and traditional knowledge of the people should be considered - already have knowledge passed down by generations and through subsistence way of life.
- Requests greater communications and tribal involvement in Federal subsistence to come together to work as one with RAC/ FSB on subsistence issues across the North Slope.
- Notes that any federal agency meeting in Barrow on any issue dealing with federal laws should consult with the tribal government.

Qinugan Roddy, Inupiat Community of the Arctic Slope – Natural Resources

- Currently ICAS is working on a resolution to start a hunting and gathering association, something similar to the AWBC (Alaska Beluga Whale Committee?). Our mission that we will be able to voice the tribal concerns similar to those expressed here and hoping to start something after approval from our board next month.

Chairman Brower responds to public comments: Thank you for being here with us, you to hear the concerns of the Council from different observations and information that they generate of their hunting

activities in association with the communities. And I thank you all for being here and hearing our concerns as well. We're wanting to develop that relationship along. We have all the same common concerns that we continue to voice but from the stance of our Federally-recognized tribes that carries a lot of weight. We can provide a unified position which we need to take on the management of our resources.

Gordon Brower responds to public comments: Encouraged ICAS and Native Villages to look at policies on issues related to customary and traditional determination of subsistence resources because it (C&T) is defined by the Federal government in regards to harvest rights. Expressed “you're embarking on something very positive...”

Rosemary Ahtuanguaruak responds to public comments: Affirms the efforts and comments by ICAS and Native Village of Barrow. Says it is really important to look at the various ways that we can be most effective in this subsistence management process being the strongest by the Council working with the tribes and region tribal organizations.

James Nageak responds to public comments: Encourages the tribe and RAC and SRC's to work together through these processes to help learn from and educate each other and engage the communities. Confirms tribes' powers of communicating directly with the Federal government and to work together to help communities with subsistence concerns.

USFWS Native Affairs Barrow Office Report:

Ernest Nageak gave a report on his new position with the USFWS Barrow office as an Alaska Native Affairs Specialist working with local community and subsistence hunters. As a local liaison people feel comfortable coming to him with questions and concerns and highlights the past successes of local co-management councils to resolve concerns around regulations such as with the hunting of king and common eiders and encourage community engagement and support. He also noted the USFWS Barrow office now have youth education and information outreach programs too.

Gordon Brower encourages Federal agencies to all follow proper consultation and permitting processes with each community on the North Slope. He has heard reports from Atqasuk, Wainwright, Point Lay, and Nuiqsut about concerns of research, monitoring or scoping that impacts subsistence but activities have not been communicated to the local people. Requests that antlers not be removed because they mark traplines or not remove mastodon tusks because they are a local resource for making ulus.

Ernest Nageak follows up by requesting federal agencies to let communities know as a courtesy when they are conducting operations in the area or any proposed research and monitoring activities. He encouraged open house community events to share science or management information too and highlighted some of the youth-elder education initiatives of his office that were a big success locally getting youth involved in science to monitor own animals.

Rosemary Ahtuanguaruak reaffirms that Ernest Nageak work and role with FWS in the community has been very helpful in improving communications on challenging management issues because hunters are comfortable in bringing questions and concerns to him. Encourages more programs that support elders and youth together to share knowledge on the land and build local leadership.

Review of Annual Report Reply:

Very brief discussion on the reply letter provided at meeting on bear conflicts safety concern for the rural communities in the North Slope region. The Council requested the Board to develop a dialogue with the Alaska State Board of Game to develop new DLP regulations.

Chair Report:

Covered by Rosemary Ahtuanguaruak acting for Chairman Brower in his absence at the Federal Subsistence Board meeting. Rosemary highlighted some of the main topics of concern brought up at the last FSB meeting such as tribal consultation customary trade and barter, wildlife handicraft regulations, and great concern for subsistence regulations that impact traditional cultural and ceremonial activities.

Gordon Brower replies to Chair Report that he knows oil and gas issues are not the direct subsistence management issue the Federal Subsistence Board can address but they are by far very impacting fish and wildlife resources at times. He requests the Chair to also bring these critical subsistence concerns before the FSB.

Chairman Brower: Affirms that there are many impacts to subsistence on the North Slope and that he has shared some of these concerns with the Board in the past but still hear these same concerns from many people that subsistence resources are affected by development in the region.

Agenda Item No. 9 regulatory proposals. 9A, discuss extensions of moose season in Unit 26B remainder and 26C.

- Lee Kayotuk from Kaktovik who wasn't able to be at the meeting to discuss this request from his community - action was tabled until the winter meeting.
- Tom Evans of OSM provided background information on the biology, population and range of this moose herd and was able to answer regulatory history questions.
- RAC members shared their knowledge of this moose herd movements and migration
- RAC was concerned about the State BOG proposal to open harvest of this population to non-Federally qualified users and want to be part of Federal Closure review.

Agenda Item No. 10, old business. 10A review the draft memorandum of understanding with the Federal Subsistence Board and State of Alaska and develop comments and recommendations.

Sandy Rabinowitch, National Park Service introduced himself and explains he sits on the InterAgency Staff Committee to the Federal Board, and also has been on the Working Group that has been working on this memorandum of understanding. The Draft MOU was approved by the FSB for release after the July 18th meeting and was received by OSM in time to be included in the NSRAC meeting book mailed to Council members.

Sandy Rabinowitch and Steve Kessler of the Interagency Staff committee also provided a “red-line” version that included the edits in track-changes with the comment boxes as they expressed this would assist the Councils in following how the FSB had adopted previous recommendations into the text. This version became available right before the meeting and print copies of this “red-line” version were handed out in the morning of the August 14th NSRAC meeting to the Council members.

Back in 2011, the 2008 document was circulated out to all the Regional Councils and the 10 Councils documented comments and concerns. All the transcripts were reviewed and the changes made in the “red line” document presented at this meeting. The edits incorporate the 10 RAC’s previous edits and recommendations.

Mr. Rabinowich then outlined in detail 8 key changes the combined requests the RAC review had provided for the MOU document:

- 1) Use plain language. 2) Reformat to list Federal first then State to emphasize the MOU is referring to Federal management on Federal lands. 3) A request by the RACs for a glossary was avoided in an effort to simplify the document by using plain language and avoiding complicated terms. 4)

The request for inclusion of TEK was addressed by instead using the term used in ANILCA “customary and traditional uses” so as get at the RACs interest but more closely align with ANILCA. 5) Some RAC’s predator management request was addressed by referring to the 2005 Federal predator management program policy which refers back to each land management agency and not the responsibility of the Federal Board itself. 6) Increased discussion of management plans in the MOU to not only State but Federal and cooperative management plans to encompass the different plans in place throughout Alaska. 7) The request for evaluating the MOU was addressed by proposing to have each RAC review the MOU each year to assess whether it was achieving its purpose or not. 8) Review of the 3 supporting protocols to the MOU (mostly affecting salmon fisheries management in other regions) back from the year 2002, there was a subsistence management information sharing protocol, there was a Yukon River Subsistence Fisheries management protocol, and there was a review and development of scientifically based salmon escapement goals protocol.

The summary of the Councils comments to this presentation of the MOU is as follows:

- Have quite a few concerns on the document - not going to oppose it or support it at the time of the Aug. 14 NSRAC meeting having just received the full comment version of the MOU that morning . Want time for the Council to be able to review it carefully.
- Expressed not enough time to review the document and not able to make specific recommendations or edits at this time.
- Expressed concern about the State not recognizing subsistence. Point out under No. 6, (of the MOU) that the State fish and wildlife management plans will be used to initiate basis for management actions but note that it does not indicate *subsistence uses*.
- Concerned that the North Slope region is 90% subsistence users but have not been consulted in an appropriate manner on the MOU on subsistence management.
- Overall thinks it is a good document but would suggest making some change in places (not specified). Recommends facilitating the tribal government’s participation and sitting down at the local level to get input on the MOU.
- Request clear indication as to how State managers will use the MOU document for subsistence management.
- Requests assistance to the Council on reviewing this plan by producing a graphic that would show the decision making process or a map of how migratory resources would be managed.
- Concerned about the State of Alaska effort to undermine subsistence and specifically have concerns with the line that states (as read from the MOU): “to recognize Federal and State historical and current harvest and population data and local knowledge and customary and traditional uses are important components of successful implementation of Federal resources Federal responsibilities under ANILCA, Title VIII.”
- Concerned about State management and declining resources, complicated layers of management processes and decline of subsistence. Requests more discussion and research on the document and hopes to get more public participation to understand the concerns for subsistence management.

- Sees the need to attempt to align the State and Federal management efforts to effectively manage the same resource, especially as noted where migrations overlap jurisdictions and allocation and notes units 26C and 26B as an example.
- Overall, see the MOU bringing State, Federal, and tribal efforts together under subsistence and doesn't diminish anybody's rights under Federal law but rather brings the State to the table on working on subsistence priority issues.
- Recognizes differences of opinion but see the MOU as positive to work cooperatively. Recommend some "word smithing" to the document but didn't specify edits to the text.
- Overall see the MOU as elevating the Federal priority – recognizing that rural residents have a priority for subsistence use over any other use, sport or commercial uses of the fish and game resources. Comments that the State of Alaska never did recognize subsistence as having any priority and feels the MOU elevates rural needs for subsistence uses.
- Expressed concern for tribal and community engagement in the Federal-State MOU since it involves subsistence management.
- Would like to see more public engagement and tribal consultation on the MOU.

John Hopson, Jr. (public participant):

Expresses concern that the Council Charter say they will work with the region but the meeting is only occurring in Barrow. Request the Council and all agencies come to each community to discuss important issues such as the MOU so that subsistence people get a "fair shot" at comments before any big agreements.

CHAIRMAN BROWER: concurs village involvement is important - will look into pursuing it.

Reappointment of the Gates of the Arctic Subsistence Resource Commission member.

- Marcy Okada, Gates of the Arctic National Park and Preserve provide background on the Subsistence Resource Commission appointment letter included in the meeting book and RACs role in appointing these members
- James Nageak from Anaktuvuk Pass represents this Council to the NPS Subsistence Resource Commission because of his location being right at the Gates of the Arctic and knowledge of subsistence in the area.
- *The Council unanimously re-appointed James Nageak to the above NPS SRC.
- *Motion on to generate a letter to Nuiqsut and Anaktuvuk from the Council to request Alternates the Gates of the Arctic Subsistence Resource Commission was also passed unanimously.

OSM Fisheries Resource Monitoring Program – Priority Information Needs

- Karen Hyer with the Office of Subsistence Management introduced the priority information needs document in the meeting book and background of process.
- Council discusses concerns about commercial fishery impacts to subsistence and contaminants from specific North Slope development blowouts as well as broader marine impacts to fisheries but Ms. Hyer notes these cannot be funded under this particular grant

- Council discusses many different observations on climate change impacts to subsistence fisheries in lakes and rivers, ice changes, lake blowouts, migration timing changes, other.
- Council confirms previously identified priority species: Arctic Char, Dolly Varden, whitefish, lake trout and Arctic grayling fisheries as important for the region
- Requests investigation in to new species moving into region or increasing and interactions with diseases and competition such as pike and salmon.
- Identified other species not listed before: smelts, burbot, whitefish in the Colville River and Chandler Lake region, and the decline of tom cods in the Barrow area.
- Ask about whether studies were done on whitefish in the Meade River and Delta region?
- Asks about whether Arctic Grayling studies identified last time were done?

***Council discusses and approved work session over dinner and evening meeting to complete agenda and hear remaining agency reports:**

- Council Coordinator ordered meals to be delivered for RAC members and the meeting continued through the evening with agency reports presented while the RAC had dinner.
- Council discussed challenges of only 1-day meeting never enough to cover full agenda.
- Chairman Brower expresses concern now and says has voiced several times in the past to previous coordinator that the push by OSM to hold 1-day meetings does not allow careful consideration of very important information presented to the RAC, many issues tabled.
- Council expresses they are overwhelmed by time constraints and does not have time to have meaningful input on very important subsistence issues.
- Chairman Brower notes that the subsistence way of life is at risk, frustrated by so many meetings to attend to subsistence impacts and need time to make meaningful decisions.

BLM Draft EIS land use plan update for NPR-A

- Dave Yokel, Bureau of Land Management's Arctic Field Office in Fairbanks introduces background BLM the draft plan completed last spring for entire NPR-A lands, had a long comment period, received over 400,000 comments from the public to include in analysis.
- Secretary of the Interior made preferred alternative public yesterday (August 13, 2012) and Mr. Yokel present the basics of it – emphasizing it is not record of decision yet.
- Presented map of preferred alternative on BLM NPR-A lands and oil and gas lease areas.
- Robert Shears comments that overall it appeared that scoping comments from some communities were included in amending the preferred Alternative B presented but very concerned that comments from Point Lay and Wainwright were ignored or marginalized.
- Robert Shears Wainwright residents attended scoping meetings to impress the importance of the Kuk River connecting 5 rivers in the watershed to the community, with 90% of subsistence activities occurring in the Kuk drainage – very concerned Alt. B would impact it.
- Dave Yokel responds there will be time in EIS process to further discuss these concerns.
- Rosemary Ahtuanguak expresses concern that many communities have already suffered from impacts to subsistence due to development, especially Nuiqsut and the Repsol blowout people have participated for long time at NPR-A meetings but feel industry development impact to land and waters has weakened subsistence.
- Rosemary Ahtuanguak says need these meeting filled with subsistence users talking about the importance of their traditional and cultural activities because development is impacting health of our people without being able to eat our traditional foods.

- Rosemary Ahtuanguaruak mentioned that we must continue coming to these meetings because impacts and changes to our lands and waters are only increasing but community participation really vacant – people overwhelmed, discouraged, confused by complicated management process – overall community, family health and mental health effected.
- Chairman Brower asks Dr. Yokel what other process would we have to incorporate these comments into the EIS document and process?
- Dr. Yokel responds: One is the NEPA process, National Environmental Policy Act and it requires us to write an environmental impact statement. The comments on the draft are used to develop the final EIS.

The Council asks about the timing of the comment period and time frame for next steps.

Dave Yokel: Responds that the public comment period for the draft EIS is over. The final EIS will be developed and then a release of the record of decision after some time – notes the intent is to publish it sometime in November and sign the record of decision sometime in December. Website notes anticipated Final EIS in January.

CHAIRMAN BROWER: Notes the challenge for the RAC to have input in timely manner when only meet twice a year. Expresses have to work together to have a unified voice to be heard and participate in a meaningful way. Work together in a unified front, with each of our communities specifically identifying what we wish to see and provide meaningful comments on an environmental impact statement, that's the approach we'll have to take.

The Council recognizes Dave Yokel efforts to bring information on NPR-A to the communities and in a difficult spot with differing concerns and interests and appreciates his efforts to listen to the Inupiat people.

Dave Yokel: Says that the reason he brings this information to the RAC is so that you can use it in your determinations on how to advise Federal subsistence hunting and trapping and fishing regulations, which is what the Secretary appointed RACs to advise him on. For the Council to make direct input to this EIS process, “I will say that what you've said this evening is on a record, it's not our record, but I will go back and let management in the BLM Alaska know that this record exists and they can get it from the U.S. Fish and Wildlife Service and see your comments.”

***The Council unanimously approves a motion to develop a NSRAC working group authorized by the RAC to form comments or recommendations on the NPR-A Draft EIS.**

- Council unanimously accepts the nominations of Bob Shears, Gordon Brower, Rosemary Ahtuanguaruak and James Nageak to form the NPR-A working group.

ADFG Subsistence Division Fisheries Research Report

- Brittany Retherford, ADFG Subsistence Resource Specialist, gave an update on “Arctic Salmon Project”. Project was initiated in 2008 to estimate subsistence harvest levels of fish, including salmon in two Chukchi Sea communities, Wainwright and Point Lay.
- Project combines documenting TEK about subsistence fisheries in the two communities and compare with biological studies on salmon, and monitoring of salmon rivers.
- Expanded project with FRMP funds to address other fish species of interest to RAC.

ADFG Wildlife Division – Barrow Field office report on Caribou and Muskox

- Geoff Carroll, ADFG wildlife biologist, presented power point presentation on Caribou herd population updates as requested by the RAC.

- Population trends, calving success, and migratory movements discussed for Teshepuk, Western Arctic, Central Arctic Caribou and porcupine caribou herds.
- Updates on Caribou harvest by region presented.
- Muskox population update presented for eastern North Slope region /ANWR management.
- RAC discussed subsistence use of muskox and caribou/muskox interactions.
- Brief discussion on Moose population in Colville region
- Council expressed appreciation for Mr. Carroll's work and reports to the RAC

USFWS Arctic National Wildlife Refuge update

- Vince Matthews Vince Mathews, Refuge Subsistence Specialist for Arctic, Kanuti, and Yukon Flats National Wildlife Refuges gave a brief report for Arctic National Wildlife Refuge and specific subsistence management updates.
- RAC discussion and feedback on Refuge management was solicited.

USFWS Office of Subsistence Management Briefings and Updates

- Chairman Brower asked for a status update on the 10 year NOAA Commercial Fisheries moratorium for the Beaufort and Chukchi Seas
- Chairman Brower expresses concern on subsistence fish studies being used to justify opening commercial fisheries in the Arctic
- Gordon Brower expresses concern about subsistence fishing restrictions on the Kuskokwim and asks to have future discussion on regulatory closures to subsistence
- Brief update provided on OSM written materials, staffing update, and budgets
- Pat Petrivelli reported on Tribal Consultation Policy guidelines for Alaska USFWS/OSM
- Carl Johnson presents RAC recruitment efforts and encourages applications/nominations
- Carl Johnson reviews NSRAC Charter and Council authorities with FACA and ANILCA
- RAC discussed role reviewing proposals to the Federal Subsistence Board and much discussion on 4A and 4B of Charter to comment on EIS or State proposals effecting subsistence and providing public forum for people to express concerns or interests on any issue related to fish and wildlife subsistence uses in the region.

Subsistence Regulatory Cycle Review

- Council discussed Regulatory Cycle Review noting overlap challenges with subsistence The Council discussed the need to avoid overlapping meetings of the Federal Subsistence Board and BOF/BOG. The NSRAC also requested that alignment of the meetings be arranged so that there was ample time to submit proposals (mainly around wildlife cycle).
- The Council appreciated the previous fall meeting window extension already addressed their need to hold the NSRAC meeting in mid-August in order to not overlap with whaling and caribou hunting seasons. They supported other RACs having an expanded window into November if needed.
- The NSRAC expressed one-day meetings were not sufficient to take care of all the required RAC business. The Council stressed they wanted all RAC meetings to be conducted for two days to allow time for careful consideration of important information and deliberation before making recommendations on critical subsistence issues for the region.
- Chairman Brower asks for opportunity to have more meetings or multi-day meetings to be able to meaningfully address the many subsistence issues brought before the RAC.

Annual Report Topics

- Council discussed the Annual Report process would like to consider more and get back with Council Coordinator on specific issue to include.

- Roy Nageak and Rosemary Ahtuanguaruak request funds/development of subsistence safety cabins in risky or hard to access areas.
- Council requests to comment on concerns about “Road to Umiat” impacts to caribou
- Gordon Brower and Roy Nageak request haul road hunting access review and monitoring impacts to caribou be included in the Annual Report.

Other Business

- *The Council requests a “Thank You” letter be drafted from the RAC to recognize the service of recent North Slope RAC Council Coordinator, Donald Mike.

Future Meeting Dates

- The Council confirmed February 26 - 27, 2013 in Barrow for the winter North Slope RAC meeting.
- The Council selected August 19 – 20, 2013 in Barrow for the fall North Slope RAC meeting and emphasized that the meeting needs to be by schedule for a full two days and one day is very stressful and not sufficient time to conduct required business.

Council discussed closing comments and were happy to finally adjourn at 10:00 p.m.

I certify to the best of my knowledge the forgoing minutes are accurate and complete.

Eva Patton, Designated Federal Officer
USFWS Office of Subsistence Management

Harry K. Brower, Chair
North Slope Subsistence Regional Advisory Council

These minutes will be formally considered by the North Slope Subsistence Regional Advisory Council at its Winter 2013 public meeting. Any corrections or notations will be incorporated at that meeting.

NORTH SLOPE FEDERAL SUBSISTENCE REGIONAL ADVISORY COUNCIL

PUBLIC MEETING (TELEPHONIC)

December 7, 2012 9:00 a.m.

DRAFT

Meeting Minutes

Call to order: The meeting was called to order by Chair Harry Brower at 9:00 a.m.

Roll Call: The following council members were present and quorum established: Harry Brower, Chair, Rosemary Ahtuanguaruak, Gordon Brower, and Robert Shears. Roy Nageak was an excused absence and James Nageak had flight delays that prevented him from attending.

Welcome and Introductions: The following persons were present at the meeting:

COUNCIL MEMBERS:

Harry Brower, Chair
Rosemary Ahtuanguaruak
Gordon Brower
Lee Kayotuk
Robert Shears

OSM Staff:

Regional Council Coordinator, Eva Patton
Carl Johnson, Council Coordination Division Supervisor
Helen Armstrong, Anthropology Division Supervisor
Kathy O'Reilly-Doyle, Deputy ARD
Chuck Ardizzone, Wildlife Div. Supervisor (on call to answer wildlife proposal questions)
Tom Evans, Wildlife biologist (on call to answer wildlife proposal questions)

ISC Staff:

Steve Kessler, U.S. Forest Service
Jennifer Yuhas, ADF&G
Glenn Chen, BIA

Other USFWS Staff attending:

Vince Mathews, Arctic National Wildlife Refuge
Joanne Bryant, Arctic National Wildlife Refuge

Public attendees:

John Boyle, North Slope Borough

Review and Adoption of Agenda: The council unanimously approved the agenda to complete a follow up review of the draft Memorandum of Understanding between Federal Subsistence Board and the State of Alaska. (initial review was conducted at the August 14, 2012 North Slope RAC meeting but there was not sufficient time to review the draft document to comment fully at that time). The council added a

modification under item 6 (old business) to address Kaktovik Council member Lee Kayotuk to request for information on submitting a subsistence wildlife proposal for Moose in Unit 26C.

Agenda updates: After the MOU discussion was complete the Council asked questions of OSM staff Chuck Ardizzone and Helen Armstrong on submitting a request for extension to the subsistence harvest season for moose in 26C.

Review of the draft Memorandum of Understanding between Federal Subsistence Board and the State of Alaska and Council Discussion:

Steve Kessler introduced himself as Interagency Staff Committee and represent the U.S. Forest Service and one of the State/Federal Working Group members doing Staff work for the Federal Subsistence Board and State signatories to revise this MOU. He also introduced Jennifer Yuhas as one of the other working group members.

Mr. Kessler provided the Council with a full briefing on the background of the Federal – State MOU, working through the document history and edits from previous RAC comments that had been incorporated into the document as indicated by the red track changes. Other RAC comments made on the MOU in this recent review was also provided to the Council.

Jennifer Yuhas, ADF&G State-Federal liaison, noted that the timeline for the Federal Subsistence Board and signatories finalizing this draft MOU had changed to provide time for the State Advisory Committees to comment on the MOU also, since many don't begin their meeting cycle until January.

Ms. Yuhas also noted that they are following up with the language in the MOU and working with the Federal signatories and Board to evaluate how the MOU would be actually enacted or followed.

Chairman Harry Brower: Points out the North Slope Borough Department of Wildlife Management has a new agreement to hold the Fish and Game Management Committee meetings and appoint members to this committee and they will just be meeting for the first time with new members later in January.

Ms. Yuhas: Confirms this new joint group reference by Mr. Harry Brower as the local voice for the North Slope region State regulatory process.

Rosemary Ahtuanguaruak: I really appreciate that we're having a chance to review this. I really am highly concerned with the changes that are happening to our lands and waters and changes that are happening that affect our subsistence. The outreach process has to be very effective to reduce the amount of conflicts that are already occurring. I just want this agreement to be able to reach out as appropriate to make sure that we're not just creating rules and laws to create arguments against our people living our traditional way of life.

We're looking to protect our traditional and cultural resources. We want to keep our families strong and healthy into the future and there's areas where there can be manipulation of information or conflict of interest with the State that can affect us.

Robert Shears: When we asked to review this more in depth at a later date when we received it at the RAC meeting, we had just at that time received the redline review and it's quite a lengthy document, which resulted in a rescheduling to this day to go over it thoroughly and it allowed us all some time to

really take a good look at it. So thank you, Eva, and everybody else that helped put this together for us to allow us to look at it.

I had only one specific comment and that's how the - it's probably one of the primary premises of the agreement, one of the important points of what it's trying to achieve, is to allow data sharing between Federal and State officials. Most specifically this allows the Federal managers to use State data to conduct -- so they can coordinate and conduct the Federal management program.

Specifically, I'd like to lead you to the point in Section IV, paragraph 12. In this This MOU the Federal Subsistence Board and the State of Alaska mutually agree to use the State's harvest reporting and assessment systems supplemented by information from other sources to monitor subsistence uses of fish and wildlife resources on Federal public lands. In some cases, Federal subsistence seasons, harvest limits, or data needs may necessitate separate Federal subsistence permits and harvest reports.

The main point is the State and Federal regulations they're two different documents that contradict each other. The more onerous one in the North Slope the Federal regulation allows the harvesting of up to 15 caribou per day. The State regulation allows the harvesting of up to five caribou per day. By establishing this MOU we're forcing our people to follow the State regulation more carefully because the State is the reporting and assessment system for the Feds.

Mr. Kessler: Replies that in no way would this change the number of caribou in the Federal regulation to match the number of caribou in the State regulation and vice versa. If you look at the item that you have identified, Roman numeral IV, number 12, - It says that we will use where possible the State's harvest reporting and assessment systems - that the best way to keep track of the harvest whenever possible is in one system.

Helen Armstrong: notes that there are other harvest assessments conducted through the Federal subsistence system and also contracting such as having the North Slope Borough or independent researchers conduct the surveys.

Jennifer Yuhás: Also follows up with clarification that the opening paragraphs were intended to say that each agency operates under its own rules but that they promise to work together – *Not* one agency deferring to another. Ms. Yuhás also clarified that the MOU workgroup did not ignore the RACS requests on predator control but that they can only refer back to the Federal Subsistence board policy on the issue.

Gordon Brower: Suggests delete the second sentence that begins consider State fish... and stressed that there is no need to incorporate State rules unnecessarily into the Federal program. If there is need to adopt a management plan or policy, it should be considered rule-making and be subject to our regular public process.

Mr. Kessler: Replies that special action authority are short-lived and require for anything more than 90 days to have a public meeting to consult with State of Alaska, Chair of the local Regional Advisory Committee. But I think that generally those significant regulatory recommendations in those management plans still are subject to administrative procedures.

Ms. Armstrong: Follows up to stress that management plans are not regulations and that the management plan is when the biologists work out what needs to be established for certain species to support a healthy population but then the Federal government, may end up modifying regulations because of what the management plan says.

What this MOU says is that that everybody has the ability to have input into that management plan, but those aren't regulations. The regulations are implemented through the Federal Subsistence Management Program. However, there are times when regulations are changed because of what a new management plan may say.

Ms. Yuhas: Points out that for example the Forty Mile (caribou herd) Plan that came before the Board last winter would be an example of this. A whole working group had to participate, everybody had to see it, but it didn't become a rule until the Board voted.

Mr. Kessler: If the Council is very concerned about this issue, the Council could make a recommendation to the working group and to the Board that this language be added like this for example “regulatory changes must follow appropriate administrative procedures or something like that. Maybe that would alleviate that concern by just adding a phrase like that.

Chairman Harry Brower: Thinks there are procedures already in place that just need to be referenced at appropriate times in the MOU or when specific species management plans are being sought or generated to manage a resource in a given area. Notes that management of Muskox has worked well working with the North Slope and State and Federal managers.

Gordon Brower: Expresses concern about local knowledge and concern about populations and migratory movements of animals being taking into account – and that due to the transience population counts may be different on State and Federal lands or different game management units. Different population counts lead to different harvestable determination for each area could be due to transient populations. It's a good idea to be able to communicate better and let the management plans be able to speak to each other. At the same time, had some reservations about rural subsistence priority issues and things like that that the State has struggled with for many years to recognize a rural or even a subsistence preference on the management of fish and wildlife. Those have been my concerns and making sure we didn't hurt the residents that depend on these resources especially when it comes to putting food on the table.

Summary of NSRAC main concerns and comments on the Fed-State MOU:

The North Slope Regional Advisory Council's main concerns and comments on the Federal-State MOU are as follows:

- The Council inquires whether this MOU may also provide future guidance for cooperative work with the North Slope Borough wildlife department? While the Council recognizes that the Borough has no regulatory authority over wildlife, they are a State sub-division involved in local research and monitoring efforts that provide information on the health and population status of many important subsistence species. The Council would like to see increased local collaboration on subsistence wildlife monitoring efforts with both ADF&G and USFWS. Alaska Eskimo Whaling Commission and Walrus Commission were brought up by the Council as good examples of local-Federal collaboration effectively combining research and monitoring efforts for subsistence management.
- Requests traditional knowledge be included and considered in collaborative management plans and ensure that local subsistence knowledge and concerns are elevated in the fish, wildlife, lands, and waters management.

- Recognizes the efforts of the MOU to provide guidance for Federal and State agencies to work together on subsistence management. The Council emphasizes that this collaborative work requires ongoing effort and engagement with the RACs as well. Because the interaction of State and Federal laws affecting subsistence are often complex, the Council requests to have ample time at the RAC meetings (more than one day) to deliberate on these important matters.
- Is very concerned about protecting traditional and cultural resources and maintain healthy strong subsistence families into the future. The Council is concerned about State development initiatives that may affect subsistence and have some concerns about conflict of interest with State managed fish and wildlife and subsistence research and monitoring that inform State industrial development reviews.
- Recognizes the need to coordinate Federal and State wildlife management where it overlaps but stresses the document should have some language added to make it very clear that collaboration between State and Federal biologists and managers does not change Federal law or rule making for subsistence management. (suggests edits to paragraph 11 on page 4).
- The Council unanimously passed a motion in support of having all of their concerns and comments expressed (both at this meeting on December 7th as well as the August 14th, 2012 meeting) be fully recognized and considered in the review of the Federal - State Memorandum of Understanding.

Kaktovik request for information on submitting a subsistence wildlife proposal for extension of the subsistence moose harvest season in Unit 26C.

Lee Kayotuk: Lee Kayotuk, Council member from Kaktovik, noted that the current subsistence harvest season for moose in Unit 26C by Kaktovik residents is July 1st to March 31st and in 26C. the community is interested in extending the harvest season from March 31st to April 7th of each season because during that time they try to do a hunt, but it's typically a very strong blizzard season during the end of March and we could not harvest a moose during that time. They would like to pursue a wildlife proposal extension of the moose season in 26C to later in the spring by a week or more.

Gordon Brower: I'm always concerned about our communities putting food on the table and our managers, whether it's State or Federal, being able to think out of the box. Some of the area biologists have agreed with traditional knowledge in that these resources in those areas, especially moose, are a transient population.

Mr. Ardizzone: States there probably would not be any biological concerns because there is already a quota in place already have a quota and it would only be an extra week. However, there are regulations that would have to be followed. Currently the season is pretty long. It's July 1 through March 31st. This year's weather can't be determined in advance. So to submit a special action this early would be premature until we know how the season goes. If the season goes poorly into March and a moose still hasn't been harvested, the best course of action would be to submit a special action, an emergency special action and request to the extension. Then a thorough analysis would need to be conducted prior to any decision.

Chairman Harry Brower and Gordon Brower: Concur that the best course of action for the community with the support of the Council would be to put in a proposal to make a permanent change through the regular regulatory cycle to and then in March put in a special action request to extend the season for a little bit if the weather does not fare well and a moose is not able to be harvested during the currently established harvest season.

The council concurs on this approach and OSM wildlife staff and Council Coordinator will work with Council member Lee Kayotuk to support the community in submitting the requested federal subsistence wildlife proposals which need to be submitted to OSM in the wildlife cycle between January and March 2013. It was recommended to the community to submit an emergency action request two weeks prior to the close of the current season if indeed the weather was too bad to conduct a hunt at that time.

Council discussed closing comments and adjourned at noon.

I certify to the best of my knowledge the forgoing minutes are accurate and complete.

Eva Patton, Designated Federal Officer
USFWS Office of Subsistence Management

Harry K. Brower, Chair
North Slope Subsistence Regional Advisory Council

These minutes will be formally considered by the North Slope Subsistence Regional Advisory Council at its Winter 2013 public meeting. Any corrections or notations will be incorporated at that meeting.

FEDERAL WILDLIFE CLOSURE REVIEW WCR12-18

Closure Location: Unit 23 Baird Mountains

Current Federal Regulations

Unit 23—Sheep

Unit 23—south of Rabbit Creek, Kiyak Creek and the Noatak River, and west of the Cutler and Redstone Rivers (Baird Mountains)—1 sheep by Federal registration permit (FS2301). The total allowable harvest of sheep is 21, of which 15 may be rams and 6 may be ewes.

Aug. 10–April 30

Federal public lands are closed to the taking of sheep except by Federally qualified subsistence users hunting under these regulations.

If the allowable harvest levels are reached before the regular season closing date, the Superintendent of the Western Arctic National Parklands will announce an early closure.

Closure Dates: Aug. 10 – Apr. 30

Current State Regulations

Unit 23—south of Rabbit Creek, Kiyak Creek and Noatak River, and west of Cutler and Redstone Rivers (“Baird Mountains”)

No open season

Regulatory Year Initiated: 1999

Regulatory History

Federal harvest regulations for sheep in Unit 23 were established in 1991 by adopting the existing State regulations, which consisted of one ram with 7/8 curl in the fall and one sheep with a harvest quota of 30 animals in the winter season. However, low sheep numbers in the Baird Mountains prompted closures by State emergency order in 1991, which continued by annual emergency orders through 1997. In 1991 and 1992, special actions adopted by the Federal Subsistence Board (Board) closed the sheep harvest south and east of the Noatak River (Baird Mountains), which was also repeated by annual emergency special actions through 1997/1998.

In 1997 the Alaska Board of Game revised the area description and assessed the amounts needed for subsistence. The Alaska Board of Game divided the sheep hunt area in a portion of Unit 23 into the Baird, DeLong, and Schwatka Mountain ranges. Subsistence needs were then assessed by the State for each mountain range and determined to be 1–9 sheep for the DeLong Mountains and 18–47 sheep for the Baird Mountains. Surveys in 1997 showed the first increase in sheep numbers in several years (**Figure 1**), so the Alaska Board of Game preliminarily decided not to close the 1998/1999 State season by emergency order. The Alaska Board of Game proceeded with a Tier I harvest of 20 sheep in the Baird Mountains and a combination hunt (9 Tier I and 11 drawing permits) in the DeLong Mountains, with the

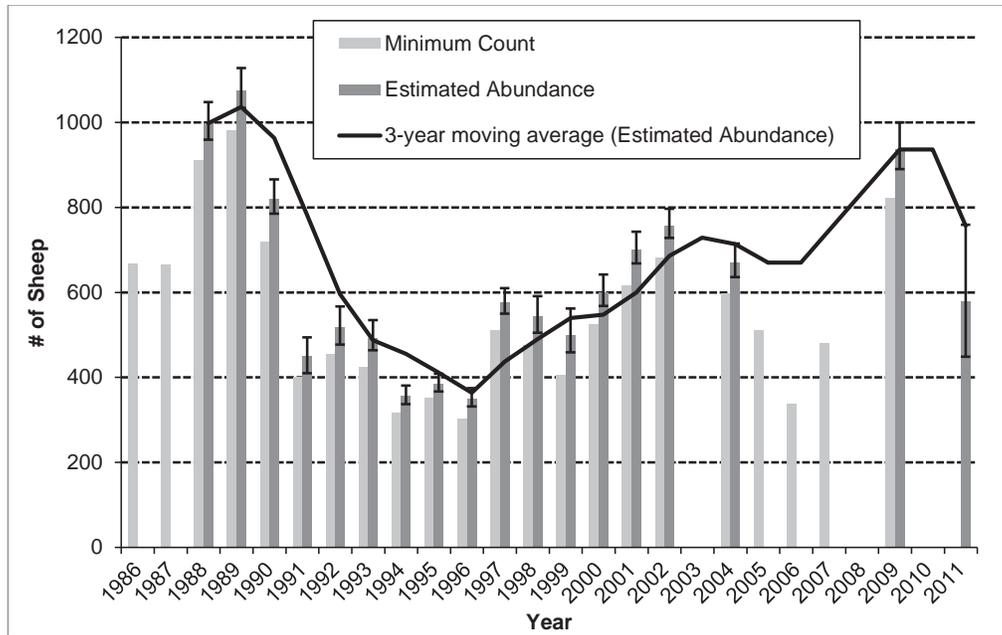


Figure 1. Aerial Dall's sheep survey results, western Baird Mountains (1,842 km²), Noatak National Preserve, Alaska, 1986-2011. Sightability-adjusted abundance estimates (Udevitz et al. 2006) were calculated from the 1986-2009 minimum count data. Error bars are 95% confidence intervals. Partial surveys were conducted in 1986, 1987, 2005 (86% of survey area), 2006 (50% of survey area), 2004 (94% of survey area), and 2007 (51% of survey area); and sightability-adjusted estimates were not generated for those years. There were no surveys conducted in 2003, 2008, and 2010 (Rattenbury 2012, pers. comm.). There is no minimum estimate for 2011 as the estimate was generated from distance sampling survey and Bayesian analytical methods (Schmidt et al. 2012).

final decision based on the results of the 1998 sheep surveys. Both State seasons were scheduled to run from August 10 to April 30.

In July 1998, the Board approved Special Action 98-04 to temporarily adopt the State's sheep harvest zones in Unit 23 (Baird, DeLong, and Schwatka Mountains), close Federal lands to non-Federally qualified sheep hunters in the Baird and DeLong Mountains, and establish an August through April season for one full-curl ram for Federally qualified subsistence users (maximum of 20 sheep for each mountain range). Also in 1998, the Board approved Special Action 98-17 to authorize the use of designated hunters for the Unit 23 sheep hunt. In May 1999, the Board adopted Proposal P99-48, which made the temporary changes from Special Action 98-04 and Special Action 98-17 into regulation. In addition, the Superintendent of the Western Arctic National Parklands was given delegated authority to annually announce the harvest quota and to divide the harvest season into two seasons (fall and winter). While Federal public lands in the Baird Mountains remained closed to the harvest of sheep, except for Federally qualified subsistence users, the temporary closure of Federal public land in the DeLong Mountains of Unit 23 was not continued with the adoption of Proposal P99-48 and the harvest quota was divided among Federal and State hunts.

In May 2002, the Board adopted WP02-39 with modification to establish a trophy destruction requirement for harvested sheep horns in the Baird and DeLong Mountains and to extend the delegated authority of the Superintendent of the Western Arctic National Parklands to set season quotas and winter season dates (FWS 2002). Four proposals were subsequently submitted in 2004 to reevaluate the trophy destruction requirement and change the harvest season and limits. The Board adopted WP04-72 and WP04-73 with modification to remove the trophy destruction requirement, change the harvest limit from full-curl rams

to one sheep, adjust the season dates, and limited designated hunter regulations to only harvest for one additional hunter in the Baird and DeLong Mountains. The Board rejected Proposals WP04-74 and WP04-75, which also requested the removal of the trophy destruction requirement, because of action on WP04-72 and WP04-73.

Closure Last Reviewed: 2008 — WCR08-18

Justification for the 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;

The Board adopted the closure to allow for continued subsistence uses of a sheep population that was recovering from a severe decline associated with severe winters. The population was increasing, but was associated with a weak cohort of 4- to 8-year old sheep and a surplus of older rams (at least 9 years old and generally full-curl). It was determined that a small surplus of older rams was available in the Baird Mountains for a limited subsistence hunt (FSB 1999, FWS 1999).

Council Recommendation for the Original Closure

The Northwest Arctic Subsistence Regional Advisory Council supported the proposal with modification to include a designated hunter system, and to change the language from “up to 20 permits” to “up to 20 full-curl rams” as well as changing the phrase “Northwest Areas Parks Superintendent” to “Superintendent of Western Arctic National Parklands.”

The North Slope Subsistence Regional Advisory Council supported the proposal with modification to change the language to 20 “permits” to up to “20 full curl rams” and to change the phrase “Northwest Area Park Superintendent” to “Superintendent of Western Arctic National Parklands.”

State Recommendation for the Original Closure

The State did not support the portion of the proposal pertaining to the DeLong Mountains, stating it was premature to make the temporary regulations permanent. The Alaska Department of Fish and Game recommended the Board reevaluate the regulations after one or two years to determine if the subsistence harvest would justify the retention of the closure to Federal public land in the DeLong Mountains.

Biological Background

The National Park Service identified three preliminary objectives in 2009 for sheep in the Arctic Ecological Inventory and Monitoring Network, which includes the western Baird Mountains, as: (1) follow long-term trends in sheep abundance and distribution, (2) collect data on sex and age composition in the Itkillik Preserve in Gates of the Arctic and the western Baird Mountains, and (3) determine the status and trends in sheep diet and forage quality in the Itkillik Preserve and western Baird Mountains (Rattenbury 2010).

Table 1. Population composition data for the sheep population in the western Baird Mountains of the Noatak National Preserve, Alaska, 1998-2011 (Rattenbury 2012, pers. comm.). Data were gathered during minimum count surveys, except for 2011 when a distance sampling survey (Schmidt et al. 2012) was implemented.

Year	Observed Sheep				Composition ratio (per 100 ewe-like)	
	Ewe-like ^a	Lambs	Rams (>1/2 curl)	Unknown	Lambs	Rams
1989	574	170	162	75	30	28
1990	466	133	105	14	29	23
1991	239	17	108	36	7	45
1992	267	59	130	0	22	49
1993	256	47	123	0	18	48
1994	204	20	93	0	10	46
1995	166	95	90	0	57	54
1996	169	58	75	0	34	44
1997	314	83	114	0	26	36
1998	289	72	116	0	25	40
1999	243	77	86	0	32	35
2000	317	101	107	0	32	34
2001	389	73	145	9	19	37
2002	381	118	157	26	31	41
2003	-	-	-	-	-	-
2004 ^b	343	91	123	41	27	36
2005 ^b	307	55	149	0	18	49
2006 ^b	223	55	60	0	25	27
2007 ^b	306	110	64	0	36	21
2008	-	-	-	-	-	-
2009	481	157	171	10	33	36
2010	-	-	-	-	-	-
2011	403	90	85	0	22	21
(95% CI) ^c	(310-531)	(58-138)	(46-147)	0	(15-33)	(13-34)

^a Ewe-like sheep include ewes, yearlings of both sexes, and rams with <1/2 curl.

^b Surveys did not encompass the total survey area (51% to 94% coverage).

^c Estimates (95% confidence intervals) were calculated from distance sampling surveys, which differ from previous minimum count surveys.

Aerial surveys for sheep in the western Baird Mountains have been conducted during July, following the formation of post-lambing aggregations, nearly every year since 1986, except between 2003 and 2008 when only a few incomplete surveys were conducted (**Table 1**) (Shults 2004; Rattenbury 2012, pers. comm.). The survey area encompasses habitat that has the highest density of sheep in the Baird Mountains. However, it should be noted that the population is not closed and sheep are distributed, albeit at lower densities, throughout the Baird and Schwatka Mountains to the east (FWS 2004). During surveys, sheep are counted and classified as ewes, lambs, and rams (by horn size). The “ewe” class includes small rams that are indistinguishable from ewes during aerial surveys. A new survey methodology, using distance sampling (Schmidt et al. 2012) to estimate total abundance and sex and age composition, was implemented in the Western Baird Mountains in 2011. Consequently, the estimate from 2011 is not directly comparable to earlier minimum population counts and herd composition data (Rattenbury 2012, pers. comm.).

Sheep in Units 23 and 26A are at the northwestern margin of their range in Alaska, and may be more prone to fluctuations in population size because of adverse weather than populations that inhabit areas with better and more stable range conditions (Westing 2008). The population peaked in 1989 at an estimated 1,074 sheep, but declined after severe winters in 1988-89 and 1990-91, and reached a low of 350 sheep in 1996 (Shults 2004) (**Figure 1**). Following the severe winters, counts of ewe-like sheep declined and survival and recruitment of lambs was low from 1991 to 1994 (**Table 1**). The years with low lamb production and recruitment resulted in a weak cohort that skewed the population composition toward a higher proportion of older animals. Between 1998 and 1999, large rams (>7/8 curl) decreased 54%, which resulted in a closure to Federal harvest in 1999/2000 (FWS 2004). The decline in large rams was potentially due to high over-winter mortality of older age classes that had survived the earlier harsh winters and the limited subsistence harvest (Shults 2003, pers. comm.).

Since the declines of the 1990s, the sheep population in the western Baird Mountains rebounded. The most recent estimate of 578 sheep in 2011 was lower than the 2009 minimum count (**Figure 1**), but was similar to the long-term (1988-2009) average population estimate of 631 sheep. The population composition has also improved and is less skewed toward the older age classes, which was the case in the years subsequent to the decline (FWS 2004). However, the full-curl component of rams has declined in recent years, with an estimated 7%-15% of all rams being full-curl in 2011. Between 2002 and 2009, the percentage of rams in the full-curl category ranged from 19% to 32%, although minimum-count surveys conducted from 2004 to 2007 only covered a portion (51% to 94%) of the survey area (Rattenbury 2012, pers. comm.).

Harvest History

Low sheep abundance resulted in closures for both the State and Federal hunting seasons in the Baird Mountains from 1991–1994. The Federal subsistence hunt was opened in the 1998/1999 regulatory year and harvest has occurred each year except 1999/2000 and 2000/2001, when low numbers of full-curl rams were observed during surveys and the hunt was closed. In the Baird Mountains, only Federally qualified subsistence users have been able to harvest sheep since the hunt reopened in 1998; whereas, harvest quotas in the DeLong Mountains are divided between State and Federal permits. Only full-curl rams were allowed to be harvested until 2004/05, when harvest was open to any sheep and quotas were set at 15 rams and 6 ewes. Harvest reports show that the sheep harvest in the Baird Mountains portion of Unit has remained under the quota each year that a hunt occurred since 1998, except for 2005/2006 when the harvest went over quota by one ram (**Table 2**).

Table 2. Federal sheep harvest quotas and reported harvest for the Baird Mountains (Federal registration permit FS2301) of Unit 23, 1998-2012. Harvest data was retrieved from the Federal Subsistence Permit System, accessed on September 26, 2012, and Shults (2012, pers. comm.).

Regulatory year	Federal harvest quota		Reported harvest	
	Rams	Ewes	Rams	Ewes
1998/1999 ^a	20	0	16	0
1999/2000	-	-	-	-
2000/2001	-	-	-	-
2001/2002	20	0	8	0
2002/2003	16	0	5	0
2003/2004	15	0	9	0
2004/2005 ^b	15	6	14	3
2005/2006	15	6	16	4
2006/2007	15	6	9	0
2007/2008	15	6	10	0
2008/2009	15	6	5	2
2009/2010	15	6	11	4
2010/2011	15	6	15	2
2011/2012	15	6	13	3

^a Harvest limited to full-curl or larger rams from 1998 to 2003

^b Harvest limit changed to any sheep with quotas set for rams and ewes from 2004/2005 to present.

OSM Preliminary Recommendation

maintain status quo

initiate proposal to modify or eliminate the closure

other recommendation

Justification

The number of sheep counted in the Baird Mountains has rebounded from the population decline that occurred during the 1990s. However, the harvestable surplus remains low. As the total allowable harvest is limited by a quota, lifting the closure would decrease opportunity for Federally qualified subsistence

users because the harvest quota would be shared between Federal and non-Federal hunters. Maintaining the closure is consistent with sound management principles to conserve a healthy sheep population. The status quo is also necessary to continue subsistence uses under Section 804 of ANILCA and does not violate the prohibition of ANILCA Section 815(3).

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FEDERAL WILDLIFE CLOSURE REVIEW WCR12-25

Closure Location: Unit 26C—Muskox

Current Federal Regulation

Unit 26C – Muskox

1 bull by Federal registration permit only. The number of permits that may be issued only to the residents of the village of Kaktovik will not exceed three percent (3%) of the number of musk oxen counted in Unit 26C during a pre-calving census. Public lands are closed to the taking of musk ox, except by rural Alaska residents of the village of Kaktovik hunting under these regulations.

July 15 – Mar. 31

Closure Dates: Year-round

Current State Regulation

Unit 26C

No open season

Regulatory Year Initiated: 1992

Regulatory History

From 1982-1983 until 1990-1991, the State of Alaska managed the muskox hunt in Unit 26C, increasing the number of permits from 5 to 10 bulls by 1988-1989. In 1991-1992, the Federal Government assumed management of muskoxen in Unit 26C (Arctic National Wildlife Refuge). In 1992 the Federal Subsistence Board (Board) adopted Proposal 92 with modification, which closed Federal subsistence hunting of muskoxen in those portions of Unit 26B in the Arctic Refuge, restricted the number of permits issued to 10 bulls for Unit 26C, and closed Federal public lands to the harvest of muskoxen except by rural residents of the village of Kaktovik. Harvest in Unit 26B was eliminated from the Federal subsistence hunt since very few muskoxen occupied Federal lands in the unit at that time. Three other proposals in 1992 dealt with muskox in Units 26B and 26C. They were all rejected by the Board. The concerns expressed in these other proposals were addressed in the Board's action on Proposal 92.

The Board increased the number of permits to 15 bulls in 1996-1997, and permitted the harvest of cows in Regulatory Year (RY) 1998-1999 (2 cows, 13 bulls) to RY 2001-2002 (3 cows, 12 bulls) (**Table 1**). Over time, the Board increased the season in Unit 26C from two months (October and March) to 8.5 months July 15 to March 31.

Special Action WSA02-10 requested to reduce the harvest to 2 bulls for the Sept. 15, 2002 – Mar. 31, 2003 season primarily because of the low population. This special action was approved by the Board.

Proposal WP03-53 established a bull only harvest by Federal registration permit, with the number of permits based on three percent of the number of muskoxen counted during spring pre-calving muskox surveys in Unit 26C. The proposal was adopted by the Board.

Closure last reviewed: 2008 – WCR08-25

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

The muskox population was below management objectives and additional harvest would be incompatible with the conservation of a healthy population in Unit 26C. This is consistent with Section 815(3) of ANILCA, which states:

“Nothing in this title shall be construed as- (3) authorizing a restriction on the taking of fish and wildlife for nonsubsistence uses on 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 section 816, to continue subsistence uses of such populations, or pursuant to other applicable law....”

Council Recommendation for Original Closure:

The North Slope Subsistence Regional Advisory Council (Council) supported Proposal 92 as modified by the Board.

State Recommendation for Original Closure:

The State had no recommendation on the original closure. The proposed community harvest limit of 10 bulls provided harvest opportunities in excess of the State’s customary and traditional use findings. State biologists recognized this as an allocation, not a biological issue, since the difference between the harvest of seven and ten animals would not significantly impact the health of the population. However, the State had no position on the closure to muskox hunting in Unit 26C as stated in modified Proposal 92 (FSB 1992).

Biological Background

Muskoxen were reintroduced to the Arctic Refuge coastal plain in 1969 and 1970, and the population grew rapidly, expanding its range east into Yukon, Canada and west into Unit 26B after 1986. Numbers of muskoxen in Unit 26C remained relatively stable (average = 331) between 1987 and 1998, but declined sharply during the early 2000s (**Figure 1**). On the Arctic Refuge in Unit 26C, about 30 were seen in 2003 and 2004, 9 in 2005, 1 in 2006 and 5 in 2007 (Figure 1) (Reynolds 2011). In April 2008, 44 muskoxen were counted in the precalving census . Most of these animals came from Canada the previous summer, but returned to the Yukon in late October (Reynolds 2008).

West of the Arctic Refuge, in Unit 26B, numbers of muskoxen increased between 1987 and 1995, were relatively stable (average = 271), but declined by >100 animals between 2002 and 2003 (Lenart 2007, Reynolds 2011). Censuses of muskoxen in 2006 and 2011 over the total range of the population from west of the Colville in northern Alaska to the Babbage River in northern Yukon showed that the muskox population is currently about 300, with about 200 muskoxen in Unit 26B, west of the Arctic Refuge, and 100 muskoxen in Yukon, Canada east of the Arctic Refuge (Reynolds 2011). Few of these 300 animals currently occupy Unit 26C, Arctic Refuge.

The State of Alaska closed muskox hunts in Unit 26B west of the Arctic Refuge in 2005–2006 (Lenart 2011). Management objectives revised in 2006 were to maintain a stable population of greater than or equal to 200 muskoxen in Unit 26B and eastern 26A, west of the Arctic Refuge (Lenart 2011). More recent management objectives for eastern Unit 26A, Unit 26B, and Unit 26C are to increase the number of

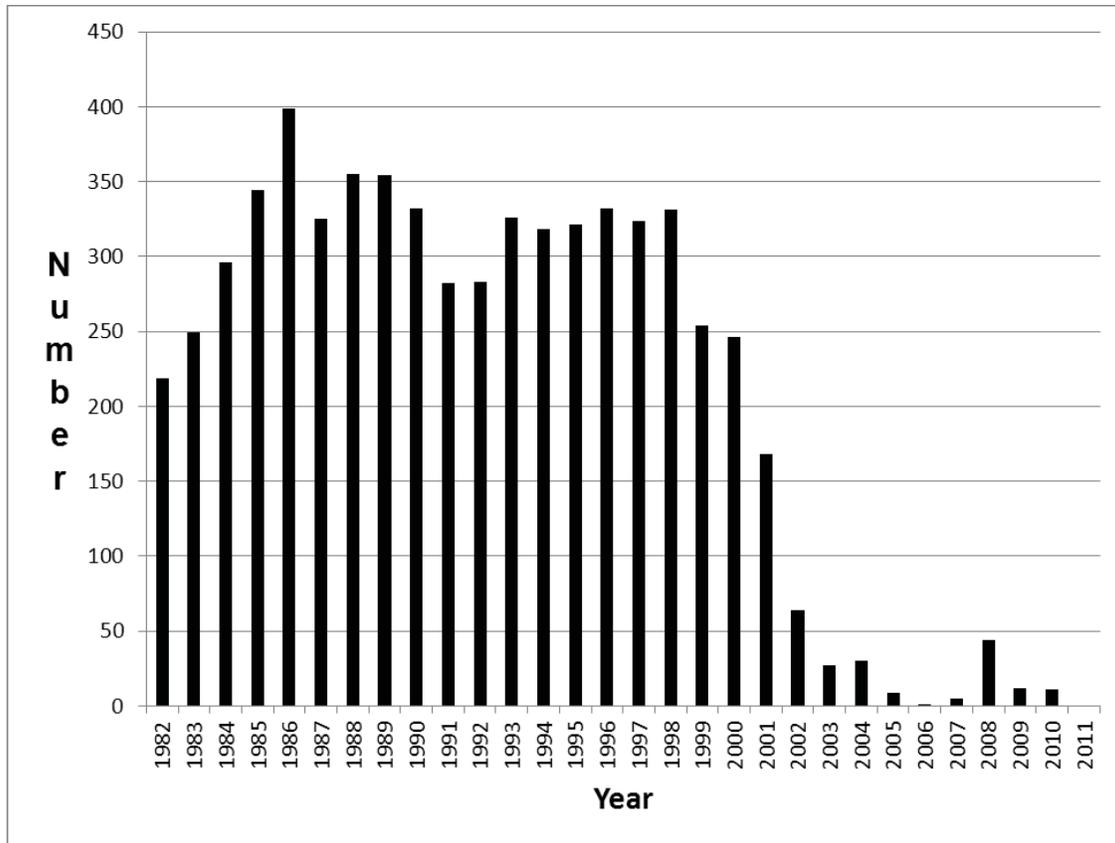


Figure 1. Number of muskoxen in Arctic National Wildlife Refuge, Unit 26C, observed during annual pre-calving censuses, 1982 – 2011 (Reynolds 2011).

muskoxen to 300 animals by reducing brown bear predation on muskoxen in Unit 26B. The Alaska Board of Game approved a predator control program to reduce brown bear numbers in Unit 26B at its January 2012 meeting. Once the population objective for muskoxen is achieved and the population is considered to be growing, the objective will be to maintain a harvest rate of 1-3% per year of the spring population in eastern Unit 26A and Unit 26B while the population in eastern Unit 26A, Unit 26B and Unit 26C is less than 650 animals (Lenart 2011).

The decline of muskoxen was likely caused by low calf survival in some years, increased adult mortality, and changes in distribution of the population. Weather, predation and quality and quantity of winter forage, as well as exposure to parasites and disease are all factors affecting calf recruitment, animal survival and population distribution (Reynolds 2011).

Harvest History

Legal hunting of muskox began in 1982. The average number of muskoxen harvested in Unit 26C, Arctic Refuge, increased until 1997, but then declined between 1997 and 2001 from a high of 15 in 1996/97 to a low of 2 in 2001/02 (**Table 1**) (FWS 2012, Reynolds 2011).

Federal subsistence regulations state that the number of permits issued to residents of Kaktovik for muskox will not exceed 3% of the numbers of animals observed in pre-calving surveys of Unit 26C. At least 36 animals need to be seen during precalving surveys to have 1 permit issued. In Unit 26C, no

Table 1. History of muskox harvest in Unit 26C by agency (FWS 2012).

Regulatory Year	Managing Agency	Permits Issued	# Bulls Harvested	# Cows Harvested	Total Harvested
1982/83	ADF&G	5	4		4
1983/84	ADF&G	5	5		5
1984/85	ADF&G	5	4		4
1985/86	ADF&G	5	3	1	4
1986/87	ADF&G	5	5	0	5
1987/88	ADF&G	5	5	1	6
1988/89	ADF&G	10	6	3	9
1989/90	ADF&G	10	10		10
1990/91	ADF&G	11	8		8
1991/92	ADF&G	11	5		5
1992/93	USFWS	10	10		10
1993/94	USFWS	10	8		8
1994/95	USFWS	10	8		8
1995/96	USFWS	10	8	1	9
1996/97	USFWS	15	12	3	15
1997/98	USFWS	15	9	1	10
1998/99	USFWS	13B/2C	8	0	8
1999/2000	USFWS	12B/3C	8	0	8
2000/01	USFWS	12B/3C	5	1	6
2001/02	USFWS	12B/3C	2	0	2
2002/03	USFWS	2	0	0	0
2003/04	USFWS	0			
2004/05	USFWS	0			
2005/06	USFWS	0			
2006/07	USFWS	0			
2007/08	USFWS	0			
2008/09	USFWS	1	0	0	0
2009/10	USFWS	0			
2010/11	USFWS	0			
2011/12	USFWS	0			

permits to hunt muskoxen were issued by the Arctic Refuge between 2002 through 2007 and in 2009-2011. As a result of the April 2008 census count of 44 animals, and in consultation with the Muskox Working Group, the Arctic National Wildlife Refuge issued a Federal permit for one bull muskox to be taken in Unit 26C for the 2008-09 season (July 15 2008 – Mar. 31 2009), but no harvest occurred (Reynolds 2008). No muskoxen were counted within Unit 26C during a pre-calving census in April 2011 and no permits were issued to Kaktovik residents for the 2011-2012 season (Reynolds 2011).

OSM PRELIMINARY RECOMMENDATION:

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

Justification

Numbers of muskoxen in Unit 26C were below the 3% threshold level required to issue permits from 2002 to 2007 and only one permit was issued in 2008. Due to conservation concerns, no permits have been issued since this time. Federal public lands should remain closed, except for permit hunting by

Federally qualified subsistence users in Kaktovik per current Federal regulations, until the population increases to a more sustainable level. The status quo is necessary to continue subsistence uses under Section 804 of ANILCA and does not violate the prohibition of ANILCA Section 815(3). Maintaining the status quo is consistent with sound management principles and the conservation of healthy wildlife populations.

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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.

North Slope 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

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

Dear Tim Towarak:

The North Slope 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 on August 14, 2012 in Barrow, Alaska, 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) Potential impacts to caribou and fish from proposed “Road to Umiat”.

The Council would like to see a full subsistence impacts investigation on the Foothills West Transportation Access Project (locally referred to as the “Road to Umiat”) While the council recognizes that this is a project proposed by the State of Alaska (Alaska Department of Transportation and Public Facilities) primarily on State lands, the Council emphasizes that caribou and fish essential for subsistence have migratory pathways that cross the area where the road is slated to be constructed. The proposed road will cross the foothills north of the Brooks Range for approximately 110 miles in a northwest direct, from approximately Milepost 278 of the Dalton Highway to Umiat, Alaska. The purpose of the road proposed by the State of Alaska is to promote oil and gas exploration and development within the Western Foothills Province including the National Petroleum Reserve –Alaska (NPR-A), and will cross state, federal and Arctic Slope Regional Corporation (ASRC) land with extensive wetland areas, and four major rivers; the Itkillik, Anaktuvuk, Chandler, and Colville Rivers.

The Council views the engagement of Federal subsistence management and the Federal Subsistence Board as essential in this review since the Western Arctic, Teshepuk, and Central Arctic Caribou herds use some portion of the proposed road development region. The Council is concerned the road will bisect caribou migratory routes and also cross major rivers important to subsistence fisheries. The Council would also like the Board to consider the impacts of the potential for increased sport hunting pressures on subsistence harvests if the road opens up vehicle access to the region.

2) Review of haul road (Dalton Highway) hunting access impacts to Caribou.

The Council would like to see an evaluation of the Dalton Highway road access and increased hunting pressures on the caribou herds. The council is concerned that migratory caribou important to subsistence that originate on Federal lands are impacted by increasing disturbance and hunting pressures along the Dalton Highway. The Council expressly feels that hunter education should be conducted to limit harassment and harm from bow hunters, citing observations of caribou wounded but not killed by arrows. The Council would also like to see education of all hunters on the local etiquette of “letting the leaders pass” referring to their own indigenous knowledge that the lead caribou at the head of the migration play a critical role in guiding the herd to good feeding, calving, and wintering grounds.

3) Establishment of safety cabins for subsistence activities in remote access areas

The Council would like to see consideration for the building of “safety cabins” for remote access areas of federal lands typically utilized for subsistence hunting and fishing activities. The council emphasizes that changing weather conditions in recent years have brought about increasingly frequent and severe storms as well as changing land and water/ice conditions that make travel more hazardous during times when subsistence harvests are normally conducted. The Council feels strategic placement of such public use safety cabins could assist local hunters in conducting normal seasonal subsistence activities with some opportunity for safety during increasingly unpredictable and inclement weather. Suggestions for possible sources of funding to build such cabins are also sought.

Sincerely,

Harry K. Brower, Chair

cc: North Slope 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

DRAFT



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



U.S. FOREST SERVICE

AUG 13 2012

FWS/OSM 12052.CJ

Mr. Harry Brower, Jr., Chair
North Slope Subsistence
Regional Advisory Council
P.O. Box 69
Barrow, Alaska 99723

Dear Mr. Brower:

This letter responds to the North Slope Subsistence Regional Advisory Council's (Council) 2011 Annual Report as approved at its February 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: North Slope Brown Bear

The current population of brown bear in the region has increased the incidents of human-bear conflicts, creating a safety concern for North Slope communities. The Council requests the Board to develop a dialogue with the Alaska Board of Game to develop new defense of life and property (DLP) regulations. Current laws criminalize conduct short of a defense of life and property (DLP) that would allow a rural resident to take more proactive measures to protect him or herself from an aggressive bear. The Council specifically suggests that the Board submit to the Alaska Board of Game regulatory language refining the definition of "harassment" so that individuals in rural communities are not penalized for taking necessary measures, short of DLP, to ensure their safety with regard to brown bear encounters. This new regulatory definition will enable individuals to better protect themselves from brown bears. The Council also requests that the Board work with the State to streamline reporting of taking of brown bear for DLP.

To further address this issue, the Council also requests the Board work with the State to incorporate alternatives into a Memorandum of Understanding, either in the current MOU regarding the Federal Subsistence Management Program or a new MOU. Either way, the MOU should specifically address the issue of enforcement of wildlife harassment laws against

Mr. Harry Brower, Jr.

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Federally qualified subsistence users who are protecting themselves and others from brown bears while engaged in subsistence activities. The Federal and State agencies involved with subsistence and law enforcement could, in the absence of relaxed statewide regulations, agree to enforce "harassment" differently for Federally qualified subsistence users.

Response

The Board acknowledges the Council's safety concerns regarding human-bear interactions. Bears are often drawn to villages and camps, which can increase the likelihood of an interaction. Testimony and comments before this Council and the Northwest Arctic Subsistence Regional Advisory Council have included discussions on conflicts and safety concerns regarding bear encounters.

In situations where a bear poses an immediate risk to a person or their property, that animal can be taken in defense of life or property (DLP); however, there are limitations to what constitutes a DLP situation. Federal regulations state that wildlife taken in DLP is not a subsistence use, and that DLP takings are subject to state regulations ((36 CFR 242.26(c) and 50 CFR 100.26(c)). State regulation 5AAC 92.410 states that game species can be taken in defense of life or property if "(1) the necessity for the taking is not brought about by harassment or provocation of the animal, or by an unreasonable invasion of the animal's habitat; (2) the necessity for the taking is not brought about by the improper disposal of garbage or similar attractive nuisance; and (3) all other practicable means to protect life and property are exhausted before the game is taken." Federal regulations do not contain a definition of "harassment." Federal users must therefore comply with State regulations regarding "harassment." "Harass" is defined by the State of Alaska under 5 AAC 92.990 (70) to mean when someone repeatedly approaches an animal in such a way as to cause it to alter its behavior.

If the Council wishes to have a more streamlined process for reporting the taking of brown bears for defense of life and property, or wishes a clearer definition of "harass," the Board suggests that the Council submit a proposal to the Alaska Board of Game to change the State definition. The Council could also submit a proposal to the Federal Subsistence Board requesting that "harass" be added to the definitions in the Federal subsistence regulations, with suggested language for the definition in that proposal. If the Council would like to submit any such proposals, Office of Subsistence Management staff will work with the Council to ensure a proposal is submitted during the appropriate call for proposals. The Board does not typically submit proposals but rather prefers a "bottom-up" approach with proposals coming from the users themselves such as the Council.

The Memorandum of Understanding (MOU), between the Federal Subsistence Board and the State of Alaska is to provide a foundation and direction for coordinated interagency fish and wildlife management for subsistence uses on Federal public lands. The MOU sets guidelines and does not address specific issues such as human-wildlife interactions; these are addressed through the appropriate State and Federal regulatory processes.

Mr. Harry Brower, Jr.

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

Sincerely,



Tim Towarak, Chair
Federal Subsistence Board

cc: North Slope 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 Record



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

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 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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Federal Subsistence Board News Release



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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 with your questions.

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

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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

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

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.

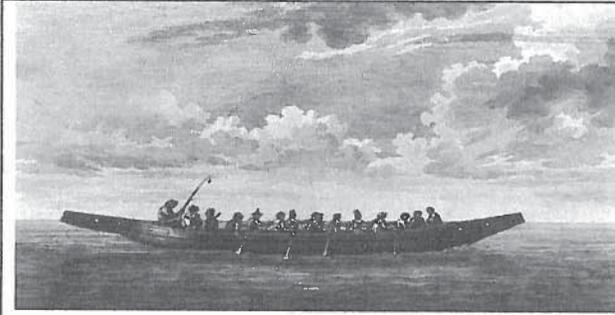
Action:

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

**Mr. Harry K. Brower, Jr., Chair
North Slope Alaska Subsistence
Regional Advisory Council
P.O. Box 712
Barrow, Alaska 99723**

Dear Mr. Brower:

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.

Mr. Harry K. Brower, Jr.

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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

Mr. Harry K. Brower, Jr.

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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 ¹ 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.

¹ 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



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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

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.¹ A

¹ The draft Policy does not directly address 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

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
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, 96th Cong., 1st 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

SARAH PALIN, GOVERNOR

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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

Dear Mr. ^{Mike}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.

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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- 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

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.

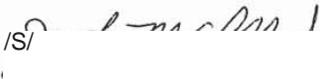
The policy also states that determinations "must be based on a community's long term consistent pattern of use" and that "in all instances, the Board makes a decision based upon the best available information." However, without accountability in the decision making process, it is unclear how the "best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

**National Park Service Updates
North Slope Regional Advisory Council Meeting
February 26 and 27, 2013**

Compiled by Marcy Okada, Program Manager for Subsistence and Ethnography, Gates of the Arctic National Park and Preserve, (907) 455-0639

- The Gates of the Arctic National Park Subsistence Resource Commission (SRC) did not have a meeting in fall 2012 due to a budget system conversion. The SRC plans to meet this spring to discuss topics such as the Ambler Mining District access route, Foothills West Transportation Access (Road to Umiat), and other items of concern and interest.
- **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.
- **Gates of the Arctic National Park and Preserve Compendium:** A public meeting was held via teleconference in Bettles/Evansville on December 20, 2012 to discuss the Board of Game wildlife regulations that would affect Preserve lands. The provisions discussed were extending coyote and wolf hunting seasons and were based on recent changes to State of Alaska hunting regulations. The State has 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.
- **Western Arctic Caribou Herd Information - Summer 2012:** Collared caribou were primarily north of park units during calving and northwest during insect relief periods; a time when mosquitoes, nasal bots and warble flies all plague caribou. In July 2012, approximately 300,000 caribou from the herd came together near Cape Krusenstern National Monument and Noatak National Preserve.

More park information is also available in the ARCEN newsletter and the Gates of the Arctic Fall 2012 Weather Summary

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	YKD—St. Mary's		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	WI—Fairbanks		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> HOLIDAY	<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**

North Slope Subsistence Regional Advisory Council

Charter

- 1. Committee's Official Designation.** The Council's official designation is the North Slope Subsistence Regional Advisory (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 Gates of the Arctic 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 \$100,000, 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.

//Signed//

Secretary of the Interior

DEC - 2 2011

Date Signed

DEC 03 2011

Date Filed