

NORTHWEST ARCTIC Subsistence Regional Advisory Council



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Meeting Materials

March 5–6, 2013

Kotzebue

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NORTHWEST ARCTIC ALASKA SUBSISTENCE REGIONAL ADVISORY COUNCIL

Kotzebue, Alaska: Northwest Arctic Borough Chambers
 March 5–6, 8:30 a.m.–5:00 p.m. Daily

AGENDA

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

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

*Asterisk identifies action item.

- 1. **Roll Call and Establish Quorum** (*Secretary or Council Coordinator*)
- 2. **Call to Order** (*Chair*)
- 3. **Invocation**
- 4. **Welcome and Introductions** (*Chair*)
- 5. **Review and Adopt Agenda*** (*Chair*) 1
- 6. **Election of Officers** *(*Helen Armstrong, DFO*)
 - 1. Chair
 - 2. Vice-Chair
 - 3. Secretary
- 7. **Review and Approve Previous Meeting Minutes*** (*Chair*)..... 4
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 - A. Council member reports
 - B. Chair’s report
 - C. 805(c) Report/Summary of FSB Action on Fisheries Proposals
- 9. **Public and Tribal Comment on Non-Agenda Items**
- 10. **Old Business** (*Chair*)
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 - 2. WCR12-19 20
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A. Confirm date and location of fall 2013 meeting* August 21–22 in Kiana	
B. Select date and location of winter 2014 meeting*	
14. Closing Comments	
15. Adjourn (<i>Chair</i>)	

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

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

If you have any questions regarding this agenda or need additional information, please contact Melinda Hernandez, Council Coordinator at 907-786-3885 or contact the Office of Subsistence Management at 1-800-478-1456 for general inquiries.

MINUTES
Northwest Arctic Subsistence Regional Advisory Council
August 22, 2012
Northwest Arctic Borough Chambers in Kotzebue, Alaska

Call to Order

Meeting called to order by Chair Enoch Shiedt

Roll Call and Establish Quorum

Council Coordinator Melinda Hernandez called the roll at 9:04 AM. All 10 Northwest Arctic Regional Advisory Council members were present.

Welcome and Introductions

Chair Shiedt welcomed guests and staff members.

Government Agency Employees

Lee Anne Ayers	U.S. FWS Selawik Refuge
Kathy O'Reilly-Doyle	U.S. FWS OSM
Terry Doyle	U.S. FWS
Susan Georgette	U.S. FWS Selawik Refuge
Melinda Hernandez	U.S. FWS OSM
Karn Hyer	U.S. FWS OSM (via Teleconference)
David Jenkins	U.S. FWS OSM
Jack Lorrigan	U.S. FWS OSM (via Teleconference)
Brandon Saito	U.S. FWS Selawik Refuge
Brittany Sweeney	U.S. FWS Selawik Refuge
Glen Chenn	BIA Anchorage
John Erlich, Sr.	BLM-CYFO
Jennifer McMillan	BLM-CYFO
Daniel Sharp	BLM Anchorage
Ken Adkisson	National Park Service
Joel Hard	National Park Service
Frank Hayes	National Park Service
Marci Johnson	National Park Service
Marcy Okada	National Park Service (via teleconference)
Sandy Rabinowitch	National Park Service
Dan Stevenson	National Park Service
Charles Brower	Federal Subsistence Board Member

Caribou are in low numbers. Appreciated Red Dog Mine shutting down for a short period of time to allow for caribou in the area to cross. Heard that a few crossed in Kiana; hope the same for Noatak. The bear issue is a hot one; it has always been and will be for a long time to come. Each village should take care of problem encounters and worry about Fish and Game later-I had a recent scary encounter recently with my son. The transporter issue is a hard one and we are trying to work on it. Concerns about closing Noatak/Kiana because the issue might be pushed elsewhere. We need to work with transporters and outfitters to open certain areas after the Natives get their harvest.

Council Member Reports

Verne Cleavland-(Noorvik): Saw many young dead moose earlier in the year; suspected starvation due to the heavy snow. Caribou looked healthy this year; good year on the Buckland side. We have to be cautious on the Kobuk river due to the high waters which makes navigation difficult and dangerous.

Leslie Burns-(Noatak): High water all over Noatak; hoping for a good caribou harvest. Bear concerns in the village, especially for elders and youth who are berry picking. Residents hesitant to shoot due to the Fish and Game DLP requirements to turn in the..... What do we get?

Percy Ballot-(Buckland): There are bears and wolves around Buckland. Sees a decline in beluga, fish, and waterfowl; lots of gas burned looking for resources. The community is concerned about the muskox hunt. They were hoping to get more this year since caribou have not been as plentiful.

Austin Swan-(Kivalina): Subsistence activity in Kivalina is at a standstill except for those with boats who can go up to the high country. Berry picking and caribou hunting is nil. Like in Noatak, we have an issue with bears. The sandbars along both rivers are underwater and bears like to hunt along those sandbars. Right now they are hitting the beach where children like to play and one came within 50 feet of the clinic recently.

Walter Sampson-(Kotzebue): Transporter issues are on the screen again as they have been for the last 10 years. Recognized Frank?? and Dan (protection officer) for the work they do within the region. The NPS is working on putting together a plan. Concerned about what will happen on the Selawik Refuge if the plan only addresses the Squirrel River of the Noatak. Tyhanks to Lee Anne for her close work with the residents of the Selawik region and the relationships that have been built. Close attention has to be paid to the regulations to avoid confusion and creating situations where residents are wasting expensive fuel and coming home with nothing.

Hannah Loon-(Selawik): The Selawik elder's council has been working with the IRA staff to plan a culture camp in September. Additionally, community meetings are held where health issues are being brought forward emphasizing the importance of Native foods for youth and elders. Thanks to Susan Georgette and Brittany Sweeney for coming to Selawik to take the children and elders berry picking who have no access to boats. We had a very good berry season this summer.

Michael Kramer-(Kotzebue): No news from the guides and transporters. Everything has been behind schedule in Kotzebue: breakup-salmon run-crabbing, etc. Requested a moment of silence for Senator Al Adams who recently passed away and did so much for our community and region. Echoed bear concerns mentioned by the other Council members. A friend noticed 40-50 bears on the beach during a boat trip

from Shishmaref to Lane River. The bears are hungry; there have not been any dead animals on the beach and bear encounters and damage have been experienced.

Raymond Stoney-(Kiana): Thanks to Charlie Brower (FSB Member) for attending this meeting. Expressed concern for the community of Kiana being overlooked as a future meeting location as the Council had requested.

Working Group Reports

The Council expressed concern about the lack of information that comes from the Western Arctic Caribou Herd Working group; the coordinator resides in Juneau-someone based in our region should represent the working group and disseminate the information. The group would like a history review and update on current activities. The ones being affected by management decisions need to be at that table.

Mr. Verne Cleveland reminded the group that he sits on the working group and would bring up the issue at the next meeting, to be held December 2012 in Anchorage. Mr. Cleveland also mentioned that Peter Bente in Nome is another regional individual who can be contacted regarding the happenings of the working group.

Review of the draft MOU between the FSB and the State of Alaska

Mr. Sandy Rabinowitch, NPS, provided the presentation on the updates and changes that have occurred in the draft document. The FSB and the State of Alaska entered into a Memorandum of Understanding in 2000. In 2008, updates were made to that document that was not shared with the Regional Advisory Councils. As a result of the feedback received and the subsequent review of the Federal Subsistence Program, the document was circulated to the Councils for feedback. A working group was also formed with both Federal and State staff members who worked on the document from late 2011 through 2012 in an effort to incorporate changes and recommendations from the Councils. The working group's changes are shown in the current draft, based on Council comments and recommendations. Some key items and changes to note are:

1. An attempt was made to make the document more concise and clear.
2. Slight change in the layout of the document to focus more on the Federal program.
3. Though the Councils suggested a glossary at the end, the group tried to focus on the first comment of plain language.
4. A number of Councils suggested an increased emphasis on Traditional Ecological Knowledge. The group inserted the term "customary and traditional use" which comes directly from ANILCA.
5. Some Councils commented that they would like to see the Federal program take on the topic of predator control. Since the Federal program was established, predator control was, and still is, the responsibility of the individual agencies. Therefore, we do not address predator control in this MOU.
6. A number of Councils feel as though there is too much emphasis on State management plans (i.e. The Western Arctic Caribou). As a result, the MOU aims to be more broad (to use Federal, State, and cooperative management plans) and reduce the emphasis on State plans.

7. The Councils wanted to have regular evaluation of the document. The working group came up with a suggestion of putting the completed document on the Council agendas once a year as a discussion item. Feedback will then be carried to the FSB on a regular basis.
8. The Councils asked about existing protocols (Yukon River Salmon, Information sharing between the State and Federal Programs). These supplemental protocols will be reviewed as the Councils have suggested.

The Council provided feedback:

- It would be beneficial to have clarification on which language comes from the Federal and State sides
- The feedback at the village and community level has not been requested or incorporated. The Council requested that the communities and villages be informed of the changes in this document.
- Why were there no Regional Advisory Council members as part of the working group?

Fisheries Resource Monitoring Program Priority Information Needs

Karen Hyer (via Teleconference) summarized a working draft of the document providing guidance to the investigators applying for funding under this program. All proposals are entertained addressing Federal subsistence fisheries, OSM targets the request for proposals toward what has been identified in the priority information needs. Often, principal investigators will use this document as a launching pad for developing proposals for submittal. Karen outlined activities and issues that fall outside the scope of the monitoring program: habitat protection, migration and restoration, enhancement (hatchery propagation), restoration, enhancement, supplementation, and contaminate assessment/evaluation/monitoring. Karen asked for other important issues for research from the Northwest Arctic Region.

The Council provided the following feedback:

- Whitefish, pike, sheefish, grayling, and burbot should be added because they are taken, used, and relied on by many subsistence users in this region.
- Beavers impact spawning areas for all species of fish and continue to increase in numbers; they should be added to the list.
- Herring and smelt populations are important and can affect the health and population of marine mammals.
- Dolly varden and arctic char studies should be considered for the Buckland area.

Agency Reports:

Office of Subsistence Management: Kathy O'Reilly-Doyle (DARD) provided staffing and budget updates, outlining new employees and possible further reductions to the budget in FY2013. As a result, it is necessary for Councils to meet in communities that provide the greatest cost efficiencies and limit travel outside of scheduled Council meetings.

David Jenkins provided an update on the rural determination process which is currently under review. We have to figure out if the rural review process is working in determining which communities are designated

as rural or urban and if the categories and definitions are appropriate. The review process is beginning with public comment to commence in January 2013.

David Jenkins also spoke to the review being conducted on the Federal regulatory cycle. Many of the Councils have asked for a later shift of their fall meeting window to November as well as moving the January FSB meeting to later in the Spring. The Councils feel these shifts will better align with subsistence activities, avoid overlap with other State meetings in January, and avoid travel in the coldest months. The Council provided the following feedback:

- It would be beneficial for crucial fall subsistence activities such as hunting if the fall Council cycle were moved to November.
- The Council expressed the desire for meetings to be scheduled for at least 2 days in the future.

USFWS: Lee Anne Ayers, Brittany Sweeney, and Brandon Saito reviewed sheefish and whitefish projects that have been completed with funding received through OSM and identified as priority species. They are important to the communities and can be important indicators of what is happening in the region. Projects include topics such as: TEK, winter harvest, spawning on the Kobuk and Selawik Rivers, habitat, and genetics. An example of information targeted by these studies is the effect of permafrost thaw on spawning sheefish. The staff thanked the Native Village of Selawik and their council for allowing some office space for project work in their building. Also Mr. Percy Ballot and the Buckland council for assisting in the collection of eggs and for snow monitoring work.

- The Council expressed thanks to the Selawik area residents, refuge staff, and the Office of Subsistence Management fisheries program in successfully linking the local communities with research activities through local hire and outreach. They also encourage local people to review proposals and make ensure involvement in the projects.

National Park Service: Ken Adkisson and Frank Hayes covered the Gates of the Arctic Hunting Plan Recommendation 10-01. These recommendations go from the SRC's directly to the Secretary of Interior and the governor.

The letter dated June 19, 2012 to the Secretary of Interior addresses a number of issues raised by the State of Alaska and its comments with respect to the recommendation. The recommendations by the SRC were developed back in 2010 to address concerns largely focused on State management aspects such as abundance and predator control. Also noted was the influx of Outside hunters and the effects on wildlife populations. Hunting Plan Recommendation 10-01 requested that the Gates of the Arctic National Park take a number of actions to ensure that wildlife populations are managed to a healthy standard and that Title VIII subsistence priorities were being implemented to meet the needs of subsistence users. In the Fall 2011 joint meeting of the North Slope and Northwest Arctic Subsistence RACs, a vote was taken to support Recommendation 10-01 and was then submitted. The State responded with comments, and felt that the Recommendation did not provide for consultation with the State and that scientifically undefined population threshold objectives did not have any merit. Further, they feel that the Recommendation circumvents the Federal program and that ANILCA did not mandate the Park Service to manage for healthy wildlife populations. This June 19 letter is the SRC's response to the comments from the State. The Secretary has not yet responded, and this is an information item for now until a response is received.

Frank Hayes also spoke to the Commercial Use Authorization (CUA) for commercial transporter visitor services for the Noatak National Preserve. There was concern from tribal councils in the area about the impacts of transported hunters on caribou migration routes. After communication with the transporters, a different approach will be used for 2012 and 2013. The NPS, villages, and transporters will track migration of caribou and delay entry into the area until as late as mid-September, depending on the migration that particular year. In summary, non-Federally qualified hunter access would be shifted to as late as September 15 in delayed migration years to allow for subsistence opportunities. This does not impact moose or sheep hunters, but is focused on caribou. It will be helpful to receive input from the villages, councils, RACs, transporters, and SRCs as to how this is working for good documentation and to adjust approaches when necessary. Also, a proposal for funding to document local knowledge and TEK has been written.

National Park Service brown bear protocol development was also discussed.

- Biological data is being collected on brown bears in the Region.
- Work with villages and SRCs to implement a bear/human interaction information management system will assist in addressing encounters on Parklands.
- A grant was obtained by Marci Johnson, NPS Wildlife Biologist, to provide bear resistant food storage containers for use at subsistence camps on Parklands for free of charge.

BLM: Merben Cebrian provided an update for the Central Yukon area.

- Work continues on the planned amendment specifically addressing the Squirrel River Special Recreation Management Area. Public meetings are occurring as well as tribal consultation. A public draft should be available within a month or two. Four alternatives will be provided in the document, and will allow for a 30-day review process. BLM will work to ensure wide distribution in electronic and hard copy formats.
- Culture camps in Kotzebue and Buckland continue to be supported.
- Fisheries work on the Kivalina and Squirrel Rivers continues. A summary report is being prepared to document the data and work is also planned for 2013. Archaeologists continue survey and site testing north of Kotzebue.

Dan Sharp briefed the Council on the statewide BLM Hunting Guide Capacity Study. In this region, there are significant issues with transporters, but this EA only deals with guides. This 60-day scoping window determines the range of the analysis and how the agency should approach guide use concessions on BLM managed lands. The Council provided the following feedback:

- One Councilmember suggested putting the area uses up for bid yearly and preferring guides to transporters because the guide stays with the hunter and wanton waste is less likely to happen.
- The Council wishes to receive recent guide numbers.

ADF&G: Jim Dau gave an update on the Western Arctic Caribou Herd, which has gone down about 17,000 from the last minimum count. We are 8-9 ears into a decline with this herd. We need to be thinking about actions to take if the numbers keep declining. Health research shows that the caribou are in good overall physical shape and the bull/cow ratio is also in good shape.

2012 Annual Report Topics:

1. Request to meet in Kiana for a future meeting
2. 1-day meeting concerns and issues
3. Express support for the Gates of the Arctic Hunting Plan Recommendation 10-01

Other Misc. Updates

- Jack Lorrigan, new OSM Native Liason, introduced himself via teleconference and provided an update on the draft tribal consultation policy. The document was approved at the May 9, 2012 meeting of the Federal Subsistence Board. Implementation guidelines are being written for the five agencies represented on the FSB and once the draft is approved it will be sent out to the Regional Advisory Councils for review at the Winter meetings.
- Louis Komak (Ambler) expressed concern as a Gates of the Arctic National Park Subsistence Resource Commission (GOA SRC) that the November 2012 meeting had been cancelled, and as a result no dialogue will occur between the SRC and the Governor in regard to Recommendation 10-01. Marcy Okada from the National Park Service provided details about a problematic database which prevented GOA SRC members from receiving per diem in advance. As a result, members would have had to provide funds for their own lodging and per diem. Discussion with the chair and vice chair resulted in the meeting being rescheduled until next spring.
- Mr. Michael Kramer sought clarification from the NPS regarding ATV use in parklands, specifically navigable waterways. He feels it is important for subsistence harvest of fish and wildlife be allowed with Parklands and navigable waterways. Mr. Ken Adkisson stated that ATV use within the National Park boundaries is prohibited, including for subsistence use, regardless of the navigable water and jurisdictional issues.
- The Council held a discussion of the open Council Application/Nomination period which was broadcasted on KOTZ. A few of the Council members spoke about the importance of the RAC member role.
- Mr. Steve Noble, Project Manager and engineer with DOWL HKM, provided an update on the work taking place in the Ambler area. The purpose of the project is to identify a transportation corridor into the Ambler mining district (road or rail) to gain access to the State lands near the Upper Kobuk Valley. Since 2010, field work, public outreach, mapping, and identification of cultural resources/subsistence issues have taken place. For example, salmon/sheefish and caribou habitat and potential impacts are being explored.

So far, 8 corridors that would potentially provide access to the area have been identified. 20 public meetings have been held in villages throughout the NANA region to provide information and to learn from the residents about the areas. Cost estimates range from \$450 million for a road option to \$2 billion for longer rail alternatives. The process is still in early stages and more studies, documentation, and analysis will continue for the next several years, with the earliest construction projected to take place in 2016 or later.

Future Meeting Dates:

- Winter 2013: March 5-6
**The Council was willing to move their date to Feb. 14&15 at the meeting to avoid a scheduling conflict with the Council Coordinator. The calendar printed in the book was incorrect and those dates were adjusted back to the original ones set due to 2 Councils already meeting the week of Feb. 12th, 2013
- Fall 2013: August 21-22 in Kiana

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

Melinda Hernandez, Designated Federal Officer
USFWS Office of Subsistence Management

Enoch Shiedt, Chair
Northwest Arctic Subsistence Regional Advisory Council

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

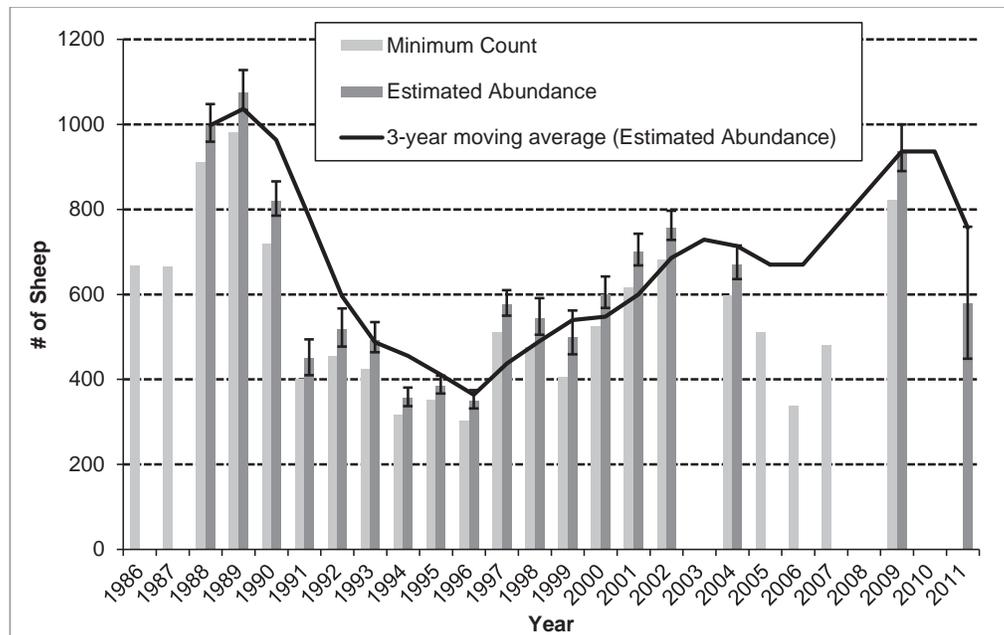


Figure 1. Aerial Dall's sheep survey results, western Baird Mountains (1,842 km²), Noatak National Preserve, Alaska, 1986-2011. Sightability-adjusted abundance estimates (Udevitz et al. 2006) were calculated from the 1986-2009 minimum count data. Error bars are 95% confidence intervals. Partial surveys 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
WCR12-19**

Closure Location: Unit 23SW

Current Federal Regulation:

Unit 23 – Muskox

South of Kotzebue Sound and west of and including the Buckland River drainage – 1 bull by Federal or State permit *Aug. 1 – Mar. 15*

Or

1 muskox by Federal or State permit *Jan. 1 – Mar. 15*

Federal public lands are closed to the harvest of muskox except by Federally qualified subsistence users. Annual harvest quotas and any needed closures for Unit 23 will be announced by the Superintendent of the Western Arctic National Parklands, in consultation with ADF&G and BLM.

Closure Dates: Aug. 1 – Mar. 15

Current State Regulations:

<i>Muskox</i>	<i>Permit/Ticket Required</i>	<i>Open Season</i>
<i>Unit 23: Seward Peninsula west of and including the Buckland River drainage</i>		
<i>Residents: One bull by permit</i>	<i>TX106</i>	<i>Aug. 1- Mar. 15</i>

Regulatory Year Initiated: 1996

Regulatory History

Proposal 44 (1995) — submitted by the Seward Peninsula Subsistence Regional Advisory Council, requested a Federal registration permit hunt for muskox in Units 22D and 22E. Federal public lands in each subunit were closed to non-subsistence hunting of muskox. The proposal was adopted with modification to include that portion of Unit 23 including and west of the Buckland River drainage with a season from Sept. 1 – Jan. 31 by the Federal Subsistence Board at its April 1995 meeting.

Proposal 67 (1997) — submitted by the Northwest Subsistence Regional Advisory Council, requested a positive customary and traditional use determination for muskox in Unit 23 east and north of the Buckland River drainage. The proposal was adopted by the Federal Subsistence Board at its April 1997 meeting.

Proposal 99-46 — submitted by the Seward Peninsula Subsistence Regional Advisory Council, requested that the Federal muskox season in Unit 23SW be Aug. 1 – Mar. 15 with a harvest limit of one bull by Federal registration or State Tier II permit. The proposal was adopted by the Federal Subsistence Board at its May 1999 meeting.

Proposal WP01-35 — submitted by the Seward Peninsula Muskox Cooperators Group, requested a change in the harvest limit and the harvest quotas for Unit 23SW. The requested harvest limit change was from one bull to one muskox by Federal registration permit or State Tier II permit, however cows would only be taken during the period Jan. 1 – Mar. 15. The requested harvest quota was no more than 8 cows would be taken, and the total combined harvest would not exceed 13 animals. The proposal was adopted by the Federal Subsistence Board at its May 2001 meeting.

Proposal WP02-37 — submitted by the Seward Peninsula Subsistence Regional Advisory Council, requested that the Federal subsistence muskox harvest in Unit 23SW be revised such that annual harvest quotas and any needed closures could be announced by the Superintendent of the Western Arctic National Parklands, in consultation with the Alaska Department of Fish and Game and BLM. The proposal was adopted by the Federal Subsistence Board at its May 2002 meeting.

Proposal WP05-19 — submitted by the Cape Krusenstern Subsistence Resource Commission and the National Park Service, requested the establishment of a season and harvest limit for muskoxen in Cape Krusenstern National Monument, with an annual harvest limit of one bull by Federal Permit within the monument and a harvest quota of two bulls. The proposal also requested that the permits be available to only those resident zone community members with permanent subsistence camps within the Monument and the adjacent Napaktuktuk Mountain area. The proposal was adopted with modification by the Federal Subsistence Board at its May 2005 meeting to allow permits only to those with permanent residence within the Monument or adjacent Napaktuktuk Mountain area.

Proposal WP06-55 — submitted by Seward Peninsula Muskoxen Cooperators Group, requested the use of a designated hunter permit for muskoxen in Unit 23SW. The proposal was adopted by the Federal Subsistence Board at its January 2006 meeting.

Proposal WP10-84 — submitted by the Northwest Arctic Regional Advisory Council, requested that the regulation allowing for the harvest of one muskox by Federal permit or State Tier II permit be revised to change the State Tier II permit to a State Tier I subsistence registration permit and to change the harvest during the Aug. 1 – Dec. 31 season to bulls only and allow the harvest of any muskox during the Jan. 1 – Mar. 31 season. The Federal Subsistence Board adopted the proposal with modification at its January 2010 meeting to clarify the regulatory language for the Aug. 1 – Dec. 31 season.

In 2011 the Alaska Board of Game adopted Proposal RC34 (A) making the muskox hunting regulation in Unit 23SW part of a threshold-based hunt regime conditioned on the harvestable portion available in Units 22B, 22C, 22D, and 23SW of the Seward Peninsula population. The regulatory thresholds for this portion of the population define conditions for Tier II hunts (harvestable portion below the Amounts Necessary for Subsistence (ANS)), Tier I registration hunts (harvestable portion within the ANS range) and registration/drawing hunts (harvestable portion above ANS). This change was in response to significant population declines, low bull:cow ratios, and high harvest of mature bulls documented by the department. Based on further population declines revealed in March 2012 population surveys, State Tier II hunts were required in Unit 23 SW for 2012-2013 regulatory year because the harvestable portion was below ANS.

Closure last reviewed: 2008 — WCR08-19

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's intent was to provide a subsistence priority for rural Alaskan residents with a positive C&T determination for muskox. The closure was established when the initial C&T and hunt were established within the Federal program.

Council Recommendation for the Original Closure

The council opposed the original proposal as it pertains to the C&T decision in Unit 23, because it excluded residents of Buckland and Deering in Unit 23. The Council stated, "let the State season and the system work for a year to see if it meets the needs of the local people. If it does not, the Regional Council could always initiate a proposal to deal with the situation." However, the Chair did support an amendment that included the closure at the Board meeting.

State Recommendation for the Original Closure

Proposal 44—Neutral — Although the department agreed with the intent of cooperative muskox management planning effort, it felt it was advisable to postpone a decision on this proposal until the Alaska Board of Game had decided on State Regulations for a muskox hunt in Units 22 and 23. When the amendment containing the closure language was proposed, the State had some concerns regarding permitting and wanted to be kept informed; however, no comments were directly made about the closure.

Biological Background

There are a number of management objectives for muskox; however, there is no specific population goal, except for continued growth and expansion of the herd. Muskox management on the Seward Peninsula is guided by recommendations from the Seward Peninsula Muskox Cooperators Group. The group is composed of staff from ADF&G, NPS, BLM, USFWS, Bering Straits Native Corporation, Kawerak Inc., Reindeer Herders Association, Northwest Alaska Native Association, residents of Seward Peninsula communities, and representatives from other interested groups or organizations. The following management goals form the basis of the cooperative interagency management plan for Seward Peninsula muskoxen developed from 1992 through 1994 (Nelson 1994) and follow the guidelines of the ADF&G Muskox Management Policies (ADF&G 1980):

- Manage population to allow for continued growth and range expansion of the Seward Peninsula Muskox
- Provide for a limited harvest in a manner consistent with the existing State and Federal laws by following the goals/objectives endorsed by the Seward Peninsula Muskox Cooperators Group and the Seward Peninsula Cooperative Muskox Management Plan

- Manage muskoxen along the Nome road systems of Unit 22B and 22C for viewing, education, and other nonconsumptive uses
- Work with local reindeer herding interests to minimize conflicts between reindeer and muskoxen
- Protect and maintain the habitats and other components of the ecosystem upon which muskoxen depend
- Encourage cooperation and sharing of information among agencies and users of the resource in developing and executing management and research programs

A muskox population estimate conducted in 2010 for Unit 23 SW resulted in a count of 175 animals, which was 12% lower than the minimum count in 2007, but within the confidence intervals for the distance sampling estimate (Westing 2011). Muskox numbers in Unit 23 SW have varied between 1995 and 2011 (**Figure 1**). The population is believed to be stable and the variability in population counts may be a result of movement of animals between Units 22D, 22E and 23 SW. Population composition counts from March 2010 showed 19 mature bulls per 100 cows and 18 yearlings per 100 cows (Westing 2011). However, low bull:cow ratios, coupled with high cow mortality in recent years is a concern (Adkisson 2012, pers. comm.) and recently completed population estimates show a decline of almost 25% for the species on the Seward Peninsula as a whole between 2010 and 2012 (Gorn 2012).

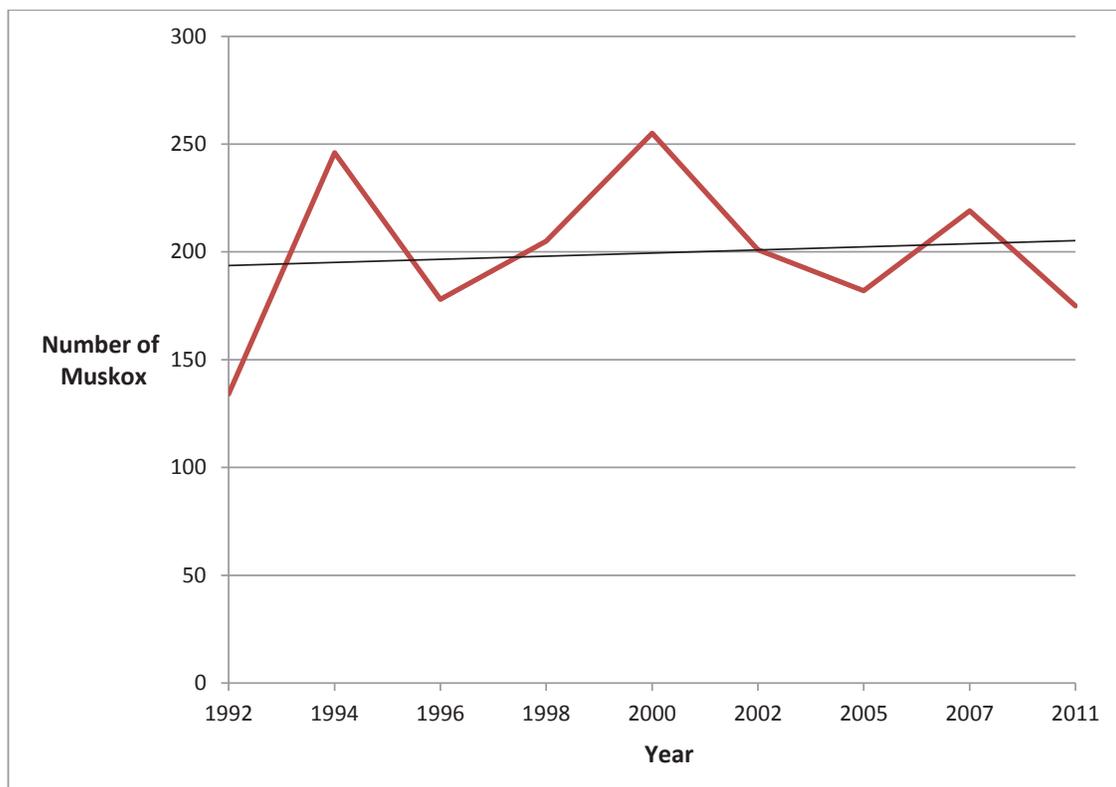


Figure 1. Muskox population estimates for Unit 23SW, 1992-2011 (Gorn 2011).

Harvest History

Harvest in Unit 23 SW until 1998 was strictly from Federally qualified users. In 1998, harvest under State Tier II permits was allowed. Harvest increased between 1995-2009, but has declined in recent years along with the number of permits issued and the harvest quota. There was a marked increase in harvest during from 2007-2009 due to the implantation of a State Tier I permit system without a limit on the number of permits (**Table 1**). An emergency order for closure of the muskox hunt in Unit 23SW has been issued several times since 2008 (Adkisson 2012, pers. com.). During the 2011-2012 regulatory year, the muskox hunt was closed on January 12th, about two months prior to the season closing date of March 15. In April of 2012 it was announced that State Seward Peninsula muskox hunts would be available by State Tier II permits only. This change was initiated due to significant population declines since 2010 and because of low bull and yearling numbers, which resulted in the harvestable surplus being below the Amounts Necessary for Subsistence (Gorn 2012).

OSM Preliminary Recommendation.

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

Justification

The muskox population within the Seward Peninsula has declined significantly over the last two years. While the population within Unit 23SW appears to be stable, there appears to be movement of animals between several Units in the area. The muskox hunt in Unit 23SW has been closed early by emergency order for the last 5 years after harvest quotas were reached early. In addition, the State has now changed from a Tier I to Tier II permitting system in Unit 23 SW, among others, in response to significant declines in the population across the Seward Peninsula. Federal public lands should remain closed to non-Federally qualified users for the conservation of a healthy population and to allow the continuation of subsistence uses of muskox (Section 815(3)).

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Table 1. Muskox harvest history for Unit 23 SW, 1995-2011 (Westing 2012, pers. comm.)

Year	DX106 Harvest	DX106 Permits Issued	FX 116 Harvest	Federal Permits Issued	RX106 Harvest	RX106 Permits Issued	TX106 Harvest	Tier II Permits Issued	Total Harvest	Total Permits Issued	Quota
1995			6	7					6	7	7
1996			3	9					3	9	9
1997			1	6					1	6	6
1998			2	8			1	2	3	10	8
1999			0	8			1	2	1	10	10
2000			1	4			5	8	6	12	12
2001			3	6			6	11	9	17	13
2002			0	3			9	9	9	12	10
2003			2	6			1	10	3	16	10
2004			1	5			6	12	7	17	10
2005			1	2			3	8	4	10	9
2006			1	3			3	13	4	16	15
2007			1	6			10	26	11	32	18
2008	0	2	0	5	16	49			16	56	18
2009	1	2			17	52			18	54	18
2010					7	25			7	25	8
2011					7	13			7	25	7

Westing, C. 2012. Wildlife Biologist. Personal communication: email. Alaska Department of Fish and Game. Kotzebue, AK.

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.

Northwest Arctic 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 or 1-800-478-1456, Fax: 907-786-3898

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

Dear Mr. Towarak:

The Northwest Arctic Alaska Subsistence Regional Advisory Council (Council) appreciates the opportunity to submit this annual report to the Federal Subsistence Board (Board) under the provisions of Section 805(a)(3)(D) and Section 805(c) of the Alaska National Interest Lands Conservation Act (ANILCA). At its public meeting in Kotzebue, Alaska in August 2012, the Council identified concerns and recommendations for its 2011 report, then finalized and approved the report at its February 2013 meeting in Kotzebue.

1. Requested meeting in Kiana

In recent meetings, the Council has expressed strong interest in holding a future meeting in Kiana, a non-hub community. The Council has never been informed of a cost analysis conducted or of any follow up discussion with OSM leadership regarding this request. The Council feels it has an obligation to make this process as available to the public as possible, despite the budget and travel constraints that currently exist, which strongly encourage all Council meetings to take place in hub communities within the given regions.

Kiana is located in a central and high traffic area for much of the caribou hunting which takes place in the region. Decisions made regarding the resource heavily impact the community. The residents of Kiana need to be given an opportunity to voice their concerns to the Council regarding these important subsistence issues. Raymond Stoney, Council member from Kiana, has relayed strong interest and eagerness on the part of his community to host a Council meeting in the near future. Mr. Stoney is willing to work with the Council Coordinator in advance for whatever information is needed in researching lodging and venue options for a cost analysis to be submitted to OSM leadership.

2. One day Council meetings

The Council is concerned about the one-day meeting trend for our region. Our most recent agenda did not contain any federal or state regulatory proposals to review and appeared fairly thin. We were informed that a one-day meeting would be held in place of our originally

scheduled two-day meeting due to the agenda size and also to cut down on costs overall. Despite a “light” agenda, the meeting still felt rushed through several presentations and pressure was felt to keep things moving along. One day is simply an insufficient amount of time for this Council to conduct its business.

Further, federal and state staff members are often rushing to catch flights before the conclusion of the meetings and this gathering was no exception. It is important to the Council for all of the interested and affected parties to be present for the important dialogue and exchange of information taking place right up until adjournment. These critical issues being discussed are vital to the way of life of the people of this region and state. The Council is made up of volunteers who often sacrifice heavily to be present at these meetings, often missing out on key subsistence activities. With budget and travel being so extremely limited for all entities, we need to ensure that the scheduled meetings are fully taken advantage of and so communication can flow smooth as possible in these rare instances when we are all in the same room.

Thank you for the opportunity for this Council to assist the Federal Subsistence Program to meet its charge of protecting subsistence resources and uses of these resources on Federal Public lands and waters. We look forward to continuing discussions about the issues and concerns of subsistence users of the Northwest Arctic Region. If you have questions about this report, please contact me via Melinda Hernandez, Regional Council Coordinator, with the Office of Subsistence Management at 1-800-478-1456 or (907) 786-3885.

Sincerely,

Enoch Attamuk Shiedt, Chair
Northwest Arctic Regional Advisory Council

cc: Federal Subsistence Board
Interagency Staff Committee
Northwest Arctic Alaska Subsistence RAC



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

Federal Subsistence Board

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U.S. FOREST SERVICE

AUG 20 2012

FWS/OSM 12053.CJ

Enoch A. Shiedt Sr., Chair
Northwest Arctic Subsistence
Regional Advisory Council
P.O. Box 234
Kotzebue, Alaska 99752

Dear Mr. Shiedt:

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

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

Issue 1: Brown Bear Management

The Council wishes to again express its ongoing and increasing concern about the escalating brown bear population in the region. Council members and local residents have stated at Council meetings that the brown bear population in Unit 23 is continuing to rise. This results in human-bear conflict issues i.e. cache and camp disturbance. Bears are harassing residents, and the situation places residents in harm's way. However, current laws criminalize conduct short of a defense of life and property (DLP) taking that would allow a rural resident to take more proactive measures to protect him or herself from an aggressive bear.

The Council 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 would enable individuals to better protect themselves from brown bears.

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 North Slope 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 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.

Issue 2: Statewide Meeting with the Federal Subsistence Board

The Council formally requests an annual statewide public meeting with all members of the 10 Regional Advisory Councils in Anchorage with the Board. This annual event will bring to the table issues before the Board that each region faces and provide an opportunity for the Councils to share subsistence management issues. This interactive process would not replace the annual reports, but would be far more productive in engaging in dialogues and reaching mutual understanding. The Council also requests that the event be broadcast via radio or webcast for rural residents to listen and provide opportunities for them to testify regarding their concerns on subsistence management related issues.

Mr. Enoch A. Shiedt Sr.

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Response:

The Board appreciates and understands the Council's desire for enhanced communication through an annual all-Councils/Board meeting. Unfortunately, the continued Federal travel budget restrictions do not make such a meeting possible at the present time. As the reductions in the U.S. Fish and Wildlife Service and U.S. Forest Service budget continue, travel outside of normal Council meetings in the future will be very limited. Specifically, the Office of Subsistence Management (OSM) has experienced a declining budget since 2001 due to the economy and a variety of other factors beyond its control. The OSM budget, including travel budget, is likely to continue to reduce in the future. These types of reductions will make it necessary for Regional Advisory Councils to continue to meet in communities that provide the greatest cost efficiencies. We will continue to provide the Regional Advisory Councils with budget briefings to help develop a better understanding of what cuts are being made and how these cuts will affect the Federal Subsistence Management Program.

Given these budget restrictions, all effort must be made to give priority to Council and Board meeting activities, such as Council members travel to regular Council meetings, travel for Council chairs to Board meetings, transportation of staff to Council meetings, and transportation of Council members to various other organizational meetings that address fish and wildlife resources in their region. These activities remain at the heart of the Federal Subsistence Management Program in fulfilling its mandate under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA).

The annual report process remains a crucial component of communication between the Councils and the Board on matters of concern. The Board also wishes to remind the Council of the opportunity for it to communicate directly with the Board, agencies, and land managers in accordance with the Board's correspondence policy. Additionally, the budget constraints on travel stress the importance of the role of Council Coordinators in being a conduit for communication between the Councils and OSM staff and the Board. The Board encourages the Councils to take advantage of these options in order to ensure strong communication between the Councils and the Board.

Issue 3: Broadcast Regional Advisory Council Meetings

The Council requests that the public meetings of the Regional Advisory Councils be aired on local radio stations. This media broadcast would provide an opportunity for the local youth to get involved in subsistence resource management issues and imbue them with a sense of civic responsibility. It also would allow the general public to be more informed about the various issues that come before the Council.

Response:

The Subsistence Outreach Coordinator with the Office of Subsistence Management contacted KOTZ to ask if they would broadcast the Council meeting. KOTZ's Johnson Greene stated that

Mr. Enoch A. Shiedt Sr.

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the radio station would broadcast portions of a meeting that are of public interest as long as the meeting is held at the Borough Assembly Room and fits within the station's broadcast schedule. Based on that communication, the fall 2012 meeting for the Council was arranged to take place at the Borough Assembly Room, with a tentative broadcast time set for 1-3 p.m.

The Board appreciates the Council bringing forward its ideas to improve access to information and build the public's understanding of the program. Public participation is the cornerstone of the Federal Subsistence Management Program.

One step the Office of Subsistence Management has taken to improve public access to the meeting is to routinely provide a teleconference line. The teleconference line allows those unable to attend in person to participate in the Council meeting. The teleconference number and passcode will be included in public announcements of the meeting. Our teleconferencing service provides a list of participants, which will help us evaluate the effectiveness of our outreach efforts.

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 Northwest Arctic region are well represented through your work.

Sincerely,

/S/

Tim Towarak, Chair
Federal Subsistence Board

cc: Northwest Arctic 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
Melinda Hernandez, Council Coordinator, OSM
Administrative Record

U.S. Fish and Wildlife Service Selawik National Wildlife Refuge

Special Use Permit Activity Report 1993-2012

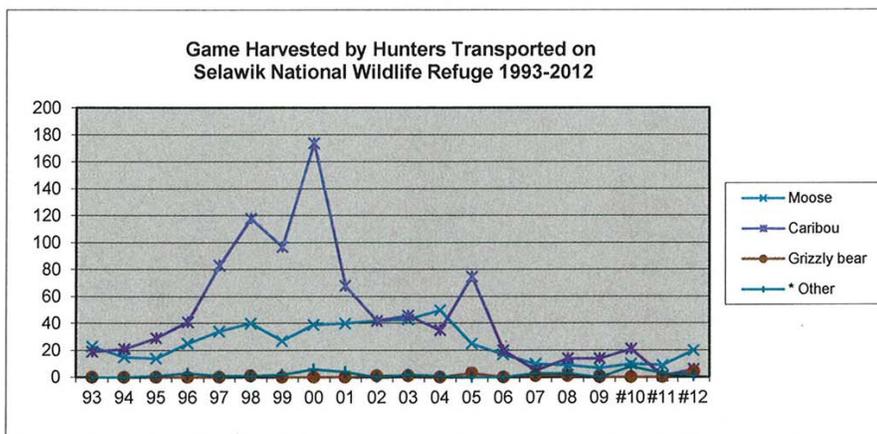
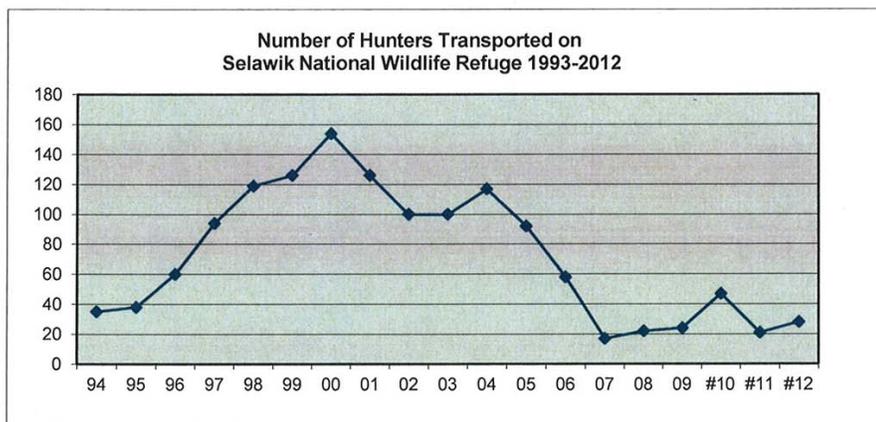
Year	93	94	95	96	97	98	99	00	01	02	03	04	05	06	07	08	09	#10	#11	#12
Hunters transported	48	35	38	60	94	119	126	154	126	100	100	117	92	58	17	22	24	47	21	28
Transporters	3	3	3	3	4	4	4	7	6	5	4	4	5	6	6	3	3	5	3	3
Moose	23	15	14	25	34	40	27	39	40	42	43	50	25	17	10	9	7	10	9	20
Caribou	19	21	29	41	83	118	97	174	68	42	46	35	75	20	5	14	14	21	1	6
Grizzly bear	0	0	0	0	0	1	0	0	0	1	1	0	3	0	1	1	0	0	0	4
* Other	0	0	1	3	1	1	2	6	4	0	2	1	0	0	3	3	0	8	3	1

* = wolves/black bears

= 2010 Not including 17 hunters transported under guide permit harvesting 8 caribou, 3 moose, and 1 wolf

= 2011 Not including 17 hunters transported under guide permit harvesting 4 caribou, 4 moose, and 1 black bear

= 2012 Not including 38 hunters transported under guide permit harvesting 29 caribou, 10 moose, and 1 wolf





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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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

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. —

Development of Tribal Consultation Policy for the Federal Subsistence Board

Members of the Federal Subsistence board include:

Three at-large members appointed by Secretaries of the Interior & Agriculture

Regional Directors of:

Department of the Interior –

Bureau of Indian Affairs

Bureau of Land Management

Fish & Wildlife Service

National Park Service

Department of Agriculture –

Forest Service

Background:

The Alaska National Interest Lands Conservation Act (ANILCA) tasked the Board with the regulating, on behalf of the Secretaries, subsistence uses of fish and wildlife on Federal public lands in Alaska. ANILCA recognized the significance of subsistence in the lives of Alaska Natives and non-Natives (Sec. 801), established conservation system units and the priority for subsistence use over other uses on Federal public lands in Alaska (Sec. 802 and Sec. 804), and requires all Federal agencies to consider the impacts of authorized land use on subsistence users (Sec. 810). In January 2011, the Secretary of Interior directed the Federal Subsistence Board (Board) to consult with federally recognized Tribes in Alaska on actions that have a significant direct impact on tribal interests. As a result, the Board commenced the development of a Tribal Consultation Policy.

Summary of Board & Consultation Workgroup Actions:

- A workgroup formed, consisting of seven Federal and seven Tribal representatives, with one Federal and one Tribal co-chair. Members include:
 - Della Trumble, first Tribal Co-Chair Agdaagux Tribe of King Cove, King Cove Village Corporation
 - Crystal Leonetti, Co-Chair, US Fish & Wildlife Service
 - Rosemary Ahtuanguaruk, Current Tribal Co-Chair, Barrow/Nuiqsut
 - John W. Andrew, Organized Village of Kwethluk
 - Lillian Petershoare, US Forest Service
 - Jean Gamache, National Park Service
 - Nancy Swanton, National Park Service
 - Shawna Larson, Native Village of Chickaloon
 - Richard Peterson, Organized Village of Kasaan
 - Pete Probasco/Andrea Medeiros, Fish & Wildlife Service, Office of Subsistence Management
 - Brenda Takeshorse, Bureau of Land Management
 - George Carlson Yaska, Jr., Huslia/Fairbanks
 - Bobby Andrew, Native Village of Ekwok
 - Glenn Chen/Pat Petrivelli, Bureau of Indian Affairs

- New members added to the workgroup as a result of solicitation for nominations from all Tribes and ANCSA Corporations (June, 2012) and OSM hiring a Native Liaison (August, 2012)
 - Charles Ekak, Olgoonik Corporation of Wainwright
 - Cliff Adams, Beaver Kwit'chin Corporation
 - Gloria Stickwan, Ahtna, Inc.
 - Roy Ashenfelter, Bering Straits Native Corporation, Kawerak, Inc.
 - Gary Harrison, Chickaloon Native Village
 - Edward Rexford, Native Village of Kaktovik
 - Michael Stickman, Nulato Tribal Council
 - Jack Lorrigan, Office of Subsistence Management

- Over the period of 18 months:
 - the Board and workgroup conducted 16 consultation meetings with over 200 Tribes and more than 15 ANCSA corporations (there are 229 Tribes and about 200 ANCSA corporations in Alaska);
 - the workgroup met in person twice for two to three days each time and once by teleconference, and met twice with the Interagency Staff Committee (a committee made up of employees from each of the five federal agencies and from the Office of Subsistence Management); and
 - five letters were sent to all Tribes and ANCSA corporations from the Federal Subsistence Board Chairman, Tim Towarak, inviting comments on the policy. Nineteen written comments were received from Tribes and ANCSA corporations during policy development.

- The Board adopted the Tribal Consultation Policy on May 9, 2012. They directed the workgroup to commence writing “implementation guidelines” and an ANCSA corporation consultation policy for their consideration. The Workgroup is currently in development of those two documents and will use a similarly inclusive process.

Chronology:

May 2011 – The Board directed Crystal Leonetti to lead a federal-tribal workgroup in drafting a Policy on consultation.

Late May 2011 – A team of seven federal and seven tribal representatives formed, called the “Consultation Workgroup”.

June 2011 – The consultation workgroup met for three days. Tribal representatives elected a tribal co-chair, Della Trumble. Under the leadership of the co-chairs, the workgroup drafted a preamble for the policy as well as a consultation protocol to use for the federal subsistence wildlife regulations proposals for the fall cycle of Regional Advisory Council meetings and for the January 2012 Federal Subsistence Board meeting. The workgroup also developed a plan for consulting with Tribes at the BIA Tribal Service

Providers Conference in December 2011, and for consulting with ANCSA corporations at the at the annual Alaska Federation of Natives conference in October 2011.

July 2011 – Board Chair Tim Towerak sent a letter to all 229 federally recognized tribes and all regional and village ANCSA corporations inviting them to participate in the upcoming teleconference consultations on the federal subsistence wildlife regulations proposals. The letter also invited them to participate in the upcoming in-person consultation regarding drafting of the new Tribal consultation policy and ANCSA corporation consultation policy.

August-September 2011 – A series of 12 teleconference consultations were held, one for the tribes in each RAC region, and two for ANCSA corporations which were available to corporations statewide. These teleconferences were focused on the federal subsistence wildlife regulation proposals as well as the new consultation policies.

October 2011 – In-person consultation on the draft policy with (did we also have teleconference?) Tribes and ANCSA corporations during the Alaska Federation of Natives conference.

December 2011 – In-person consultation on the draft policy with Tribes during the Bureau of Indian Affairs Tribal Service Providers conference in Anchorage. At least 300 people representing over half of the 229 Tribes were present. Additionally, Board members from F&WS, NPS, Forest Service, BIA, BLM and at-large member Tim Towarek were present

December 2011 – The Workgroup met for two days to develop the tribal consultation policy based on the comments received during consultations and on written recommendations from Tribes and ANCSA corporations. The Workgroup met for a third day with the Regional and State directors of the five federal agencies to review the draft policy and gain direction for future action related to specific aspects of the draft policy.

January 2012 –Workgroup co-chairs Leonetti and Trumble presented the Draft Tribal Consultation Policy to the Board. The Board approved the draft language and supported the Workgroup in providing this draft to all Tribes and ANCSA corporations and to the Regional Advisory Councils for their review and comment.

January-March 2012 – Regional Advisory Councils reviewed the draft policy and provided feedback to the workgroup.

February 2012 – A letter was sent to Tribes and ANCSA corporations from Board Chairman Tim Towerak to ask for their comment on the draft policy.

April 2012 – The Workgroup met to review and incorporate changes based on feedback from Tribes, ANCSA corporations, and Regional Advisory Councils.

May 2012 – The consultation workgroup co-chairs Leonetti and Trumble presented the Draft Tribal Consultation Policy to the Board. The Board discussed and unanimously approved the adoption of the Policy!

June 2012 – Board Chairman Tim Towerak sent a letter to all Tribes and ANCSA corporations providing them with the adopted policy and soliciting nominations for more members on the Workgroup. Additional members were needed from ANCSA corporations since their input is needed in drafting a supplemental policy for ANCSA corporations.

August- December 2012 – The Workgroup sought input and guidance from field-level managers from each of the five agencies, and the Interagency Staff Committee to further develop the draft guidelines.

January 2013 – the Workgroup met, improved the draft guidelines, and prepared for the Winter Federal Subsistence Board meeting. The Tribal and ANCSA representatives nominated and elected a new Tribal Co-Chair, Rosemary Ahtuangaurak, who is on the North Slope RAC and has been on the Workgroup since its inception.

January 2013 – Federal Subsistence Board gave minor edits to the guidelines.

February-April 2013 – Guidelines, with letter from Chair Tim Towerak, was sent to all Tribes for review and feedback. Guidelines and short summary were provided to RACS for review and feedback.

“Tribes and Alaska Native peoples have been this lands’ first conservationists and first multiple use land managers.” - Lillian Petershoare, Workgroup Member, United States Forest Service

Federal Subsistence Board

Government-to-Government Tribal Consultation Policy

Preamble

The Federal Subsistence Board (Board) recognizes that indigenous Tribes of Alaska are spiritually, physically, culturally, and historically connected to the land, the wildlife and the waters. These strong ancestral ties to the land, wildlife and waters are intertwined with indigenous ceremonies such as songs, dances, and potlatches. The customary and traditional way of life has sustained the health, life, safety, and cultures of Alaska Native peoples since time immemorial. To effectively manage the Federal Subsistence Program, the Board will collaborate and partner with Federally recognized Tribes in Alaska to protect and provide opportunities for continued subsistence uses on public lands.

The United States has a unique legal and political relationship with Indian tribal governments, which has been established through and confirmed by the Constitution of the United States, statutes, executive orders, judicial decisions and treaties. In recognition of that special relationship, and pursuant to direction given by the Secretaries of the Interior and Agriculture to implement Executive Order 13175 of November 2000, “Consultation and Coordination with Indian Tribal Governments,” and to meet the requirements of the Presidential Memorandum of November 5, 2009, “Tribal Consultation,” the Board is developing this Government-to-Government Tribal Consultation Policy. This Policy sets out the Board’s responsibility to engage in regular and meaningful consultation and collaboration with Federally recognized Indian Tribes in Alaska on matters that may have substantial effects on them and their members. This Policy also upholds the Congressional mandate to implement the provisions of the Alaska National Interest Lands Conservation Act (ANILCA) of 1980, P.L. 66-487, which, with its implementing regulations, defines the roles and responsibilities of the Departments of the Interior and Agriculture in administering subsistence management of fish and wildlife on Federal public lands.

Government-to-government consultation undertaken through the Board’s process is a direct two-way communication conducted in good faith to secure meaningful participation in the decision-making process to the full extent allowed by law. The Board will consider and respond to the Tribes’ concerns brought forth through the consultation process (as defined in this policy) before making final decisions.

Two Department-level consultation policies provide the foundation for this policy. They are the Department of the Interior’s *Policy on Consultation with Indian Tribes (2011)* and the Department of Agriculture’s *2010 Action Plan for Consultation and Collaboration*. This policy is consistent with the

Government-to-Government Tribal Consultation Policy

Department-wide consultation policies, and it expands on them to apply the policies to the Federal subsistence management program.

The intent of this policy is to describe a framework under which the Board and Federally recognized Tribes in Alaska may consult on ANILCA Title VIII subsistence matters under the Board's authority.

Background

The Federal Subsistence Program, as established by ANILCA and implemented by the Secretaries of the Interior and Agriculture, is a multi-agency program consisting of five agencies: Bureau of Indian Affairs, Bureau of Land Management, U.S. Forest Service, National Park Service, and U.S. Fish and Wildlife Service. These bureaus and rural subsistence users maintain the opportunity for a subsistence way of life by rural Alaskans on Federal public lands while managing for healthy populations of fish and wildlife. The Federal Subsistence Regional Advisory Councils have a foundational role in the Federal Subsistence Program. By statute, the Board must defer to Federal Subsistence Regional Advisory Council recommendations related to the taking of fish and wildlife on public lands unless they are: a) not supported by substantial evidence, b) violate recognized principles of fish and wildlife conservation, or c) would be detrimental to the satisfaction of subsistence needs (ANILCA § 805(c)). The Board distinguishes the deference to Federal Subsistence Regional Advisory Councils from the Tribal government-to-government relationship enjoyed by Federally recognized Tribes, and this Policy will not diminish in any way either the consultation obligations towards Federally recognized Tribes or its deference obligations to the Federal Subsistence Regional Advisory Councils.

The Federal Subsistence Management Program regulations are published twice in the Code of Federal Regulations (CFR): 50 CFR Part 100 and 36 CFR Part 242. The regulations have four subparts. Subparts A and B are within the sole purview of the Secretaries of the Department of the Interior and the Department of Agriculture. Responsibility and decisions relating to the provisions of Subparts C and D are delegated by the Secretaries to the Federal Subsistence Board. Subpart C concerns Board Determinations, including rural and customary and traditional use determinations, while subpart D consists of the regulations for taking fish, wildlife and shellfish.

Goals

The goals of the Federal Subsistence Management Program are to:

1. Create and maintain effective relationships with Federally recognized Tribes in Alaska.
2. Establish meaningful and timely opportunities for government-to-government consultation.
3. Be responsive to requests from Federally recognized Tribes in Alaska to engage in consultation.
4. Work with Federally recognized Tribes in Alaska to improve communication, outreach and education.
5. Acknowledge, respect and use traditional ecological knowledge.
6. Recognize the importance of coordination, consultation and follow-up between the Federal Subsistence Board and Federally recognized Tribes in Alaska.

Government-to-Government Tribal Consultation Policy

7. Integrate tribal input effectively into the decision-making process for subsistence management on public lands and waters while maintaining deference to the Federal Subsistence Regional Advisory Councils.

Consultation

1. Communication

It is the Board's intention that information sharing between Tribes and the Board/Federal staff will occur early and often. Information sharing includes, but is not limited to, sharing of traditional knowledge, research and scientific data. Communication between the Federal agencies and Tribes will occur in a timely manner to maximize opportunities to provide input to the Board's decisions. For in-season management decisions and special actions, consultation is not always possible, but to the extent practicable, two-way communication will take place before decisions are implemented. When Tribes bring up issues over which the Board does not have jurisdiction, the Board and Federal staff will provide Tribes with contact information for the state or Federal agency that can address the issue and will also provide the tribes' contact information to the relevant state or Federal agency

2. Roles and Responsibilities

Board members are responsible for implementing this policy and ensuring its effectiveness. The Native Liaison in the Office of Subsistence Management is the key contact for the Board's consultations with Tribes. The Native Liaison will also assist Federal land managers and Tribes with their consultations, as requested and as needed. Federal land managers and staff have a local relationship with Tribes and will maintain effective communications and coordination.

3. Topics for consultation are listed under the definition for "Action with Tribal Implications." They may include, but are not limited to:

- Regulations (e.g., taking of fish, wildlife and shellfish - harvest amounts, methods and means, cultural and educational permits and funerary/mortuary ceremonies; emergency and temporary special actions; customary and traditional use determinations and customary trade)
- Policies and guidance documents [Note: this is consistent with page 3 "Definitions" of DOI Policy "Departmental Action with Tribal Implication".]
- Budget and priority planning development [Note: this is consistent with page 16 USDA Action Plan for Tribal Consultation and Collaboration (Nov 2009) and page 3 "Definitions" of DOI policy – "Departmental Action with Tribal Implication" – specifically "operational activity".]
- Agreements (e.g. Cooperative Agreements, Memorandum of Understanding, Funding Agreements)

Government-to-Government Tribal Consultation Policy

4. Timing

Timing of consultation will respect both the Federal subsistence management cycle and the Tribal timeframes for doing business. The requirement of early notification, methods of notice, availability of Federal analyses and time and place of Federal Subsistence Regional Advisory Council meetings and Board meetings are described in Appendix A of the “Federal Subsistence Consultation Implementation Guidelines.” A chart showing the Federal subsistence management cycle is in Appendix B of the same document

5. Methods

No single formula exists for what constitutes appropriate consultation. The planning and implementation of consultation will consider all aspects of the topic under consideration. The Board will be flexible and sensitive to Tribal cultural matters and protocols. Familiarity with and use of Tribes’ constitutions and consultation protocols will help ensure more effective consultation. Consultation may be prompted by a Federally recognized Tribe in Alaska or by the Board. Methods for correspondence, meetings, and communication are further described in Appendix A: “Federal Subsistence Consultation Implementation Guidelines.”

Accountability and Reporting

The Board will monitor consultation effectiveness and report information to the Secretaries, pursuant to the Department of the Interior and Department of Agriculture policies. On an annual basis, the Board will evaluate whether the policy has been implemented and is effective and what progress has been made towards achieving the seven goals outlined in this policy. The Board will actively seek feedback from Federally recognized Tribes in Alaska on the effectiveness of consultation, and the Board’s evaluation will summarize and reflect this feedback. The Board will modify the consultation process to incorporate needed enhancements, as identified through the annual review. The Board will provide Tribes an oral and written summary of the evaluation and changes, if any, in Board meetings with Tribes.

Training

Training on this policy for Federal staff will conform to the requirements of the Department of the Interior and Department of Agriculture consultation policies. The Board recognizes the unique traditional values, culture and knowledge that Tribes can impart and shall incorporate Tribes into the training for the Board and staff. The Board will accompany subsistence users in the field to gain direct experience in traditional Alaska Native hunting and fishing activities. In addition, Federal Subsistence Management training will be offered to representatives of Tribal governments and Tribal members on a regular basis as funding allows. A list of possible venues for training is included in Appendix C: “Venues for Training.”

Government-to-Government Tribal Consultation Policy

Alaska Native Corporation Consultation

Refer to the supplemental policy for consultation with Alaska Native Claims Settlement Act (ANCSA) corporations.

Adopted by the Board on May 9, 2012

Government-to-Government Tribal Consultation Policy

Definitions

Action with Tribal Implications – Any Board regulations, rulemaking, policy, guidance, legislative proposal, grant funding formula changes, or operational activity that may have a substantial effect on an Indian Tribe in Alaska.

Alaska National Interest Lands Conservation Act of 1980 (ANILCA) – Title VIII of the Act provides for the protection and continuation of subsistence uses of fish and wildlife by rural Alaskans on Federal public lands.

ANCSA Corporations – As defined in 43 U.S.C. § 1606, those regional and village corporations formed by Congress through the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 et seq., to provide for the settlement of certain land claims of Alaska Natives.

Consensus Agenda – The Federal Subsistence Board’s consensus agenda is made up of regulatory proposals for which there is agreement among the affected Regional Advisory Councils, a majority of the Interagency Staff Committee members, and the Alaska Department of Fish and Game concerning a proposed regulatory action. Anyone may request that the Board remove a proposal from the consensus agenda and place it on the non-consensus (regular) agenda. The Board votes on the consensus agenda after deliberation and action on all other proposals.

Consultation – The process of effective and meaningful government-to-government communication and coordination between the appropriate Federal agency and Tribe(s) conducted before the Federal government takes action or implements decisions that may affect Tribes.

Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) – Requires regular and meaningful consultation and collaboration with Tribal officials in the development of Federal policies that have Tribal implications to strengthen the United States government-to-government relationships with Indian Tribes, and to reduce the imposition of unfunded mandates upon Indian Tribes.

Federal Subsistence Board – The Board administers the subsistence taking and uses of fish and wildlife on public lands and exercises the related promulgation and signature authority for regulations of subparts C and D. The voting members of the Board are: a Chair, appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture; two public members appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture who possess personal knowledge of and direct experience with subsistence uses in rural Alaska; the Alaska Regional Directors of the U.S. Fish and Wildlife Service, National Park Service, and Bureau of Indian Affairs; the Alaska Regional Forester of the U.S. Forest Service; and, the Alaska State Director, Bureau of Land Management.

Federally Recognized Tribe in Alaska – Any Alaska Native Tribe, band, nation, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. §479a.

Interagency Staff Committee (ISC) – The ISC is made up of senior staff from the National Park Service, U.S. Fish and Wildlife Service, Bureau of Indian Affairs, Bureau of Land Management, and USDA Forest Service. The ISC members serve as the primary advisors for their agency’s respective Board member.

Office of Subsistence Management (OSM) – The OSM provides support to the Federal Subsistence Board and the Federal Subsistence Regional Advisory Councils. The staff includes fish and wildlife biologists, cultural anthropologists, technical and administrative staff, an Alaska Native liaison and liaisons to the Alaska Department of Fish and Game, and the Alaska Boards of Fish and Game.

Government-to-Government Tribal Consultation Policy

Regional Advisory Councils – Title VIII of ANILCA provides a foundational role for the ten Regional Advisory Councils in the development of regulations guiding the taking of fish and wildlife on Federal public lands in Alaska. Council members, a majority of whom are rural subsistence users, are appointed by the Secretary.

Special Action – An out-of-cycle change in the seasons, harvest limits or methods and means of harvest. The two types include: 1) emergency, which are effective for up to 60 days, and 2) temporary, which are effective for the remainder of the regulatory cycle.

List of Appendices

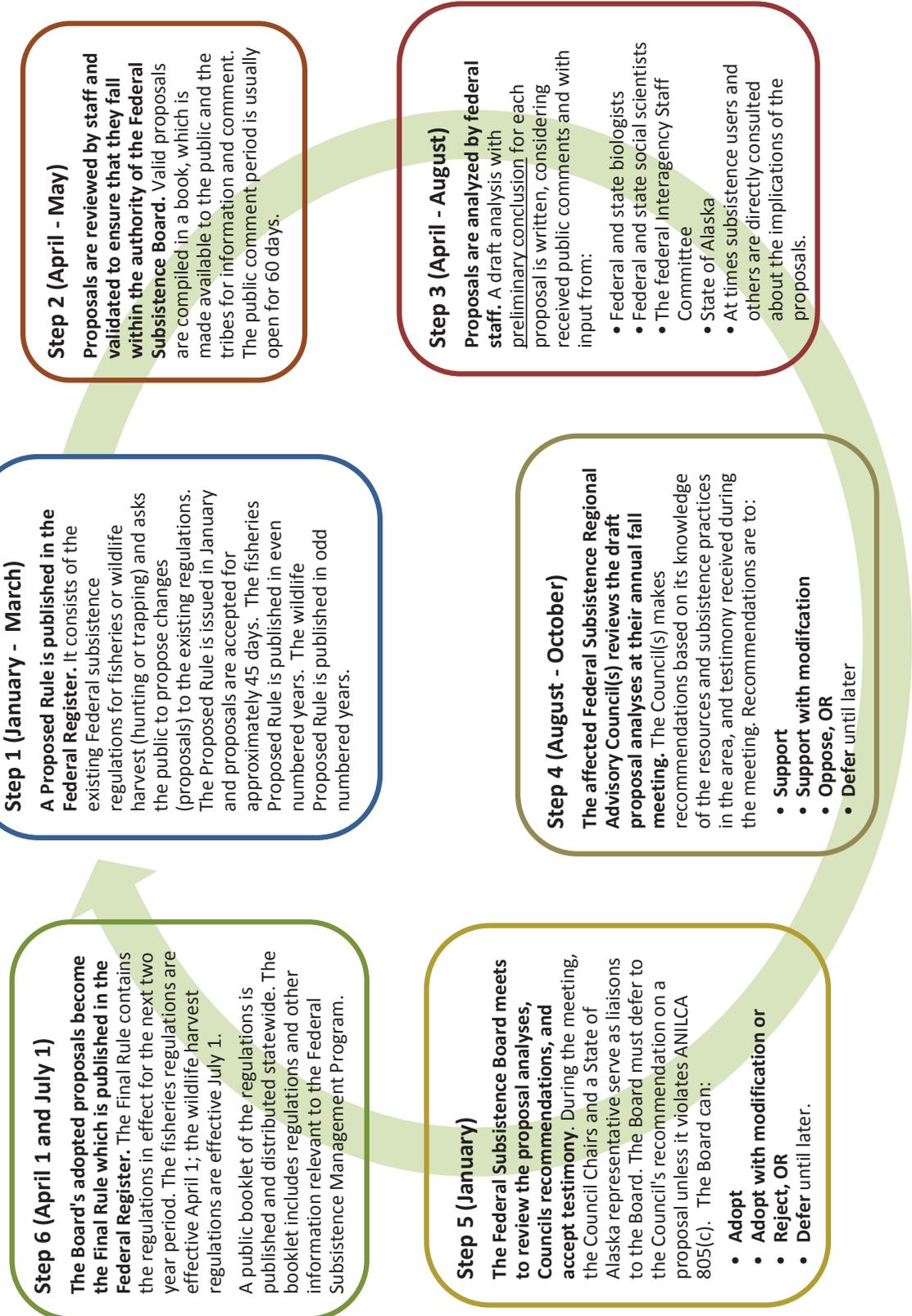
APPENDIX A: Federal Subsistence Consultation Implementation Guidelines

APPENDIX B: Federal Subsistence Management Cycle

APPENDIX C: Venues for FSMP Training



Appendix B FEDERAL SUBSISTENCE MANAGEMENT PROGRAM ANNUAL REGULATORY PROCESS AT A GLANCE



Implementation Guidelines

for the

Federal Subsistence Board Government-to-Government Tribal Consultation Policy

This document provides federal staff additional guidance on the Federal Subsistence Management Program's Tribal Consultation Policy.

REGULATORY PROCESS: The Federal Subsistence Board (Board) is committed to providing Federally Recognized Tribes with the opportunity to be meaningfully involved in the wildlife and fisheries regulatory process. On an annual basis, the Board accepts proposals to change wildlife or fisheries regulations on seasons, harvest limits, methods and means and customary and traditional use determinations. In some instances, regulations are modified in-season, and that is typically accomplished through in-season or special actions taken by either the Board or the relevant land manager. The Board will provide Tribes with the opportunity to consult on the regulatory process, which includes proposal development and review, proposal analysis and review, and decision making by the Board. The process for such involvement is described below.

Tribes must be given the opportunity to consult throughout the Federal Subsistence Management process when a "departmental action with tribal implications"¹ is taken. A regulatory proposal is potentially a departmental action with tribal implications. As information becomes available which changes the recommendations or potential decision on a proposal, affected Tribes will be notified.

Tribal Officials are elected or appointed Tribal leaders or officials designated in writing by a federally recognized Tribe to participate in government-to-government consultations. Federal Officials are those individuals who are knowledgeable about the matters at hand, are authorized to speak for the agency and/or Board, and exercise delegated authority in the disposition and implementation of a federal action.

Step² 1.A.: Call for Proposals (January – March): This step is where changes to fish or wildlife harvesting regulations (seasons, harvest limits, methods and means and customary and traditional use determinations) can be offered. Office of Subsistence Management (OSM) staff or land managers can assist Tribes in developing proposals.

Federal Agencies Contacts representatives of affected Tribes, when possible, prior to submitting regulatory proposals.

OSM Sends a return receipt letter to Tribes:

- announcing the call for proposals and describing what this means;
- providing an overview and timeline of the annual Federal Subsistence

¹ Department of Interior Policy on Tribal Consultation

² Steps in these guidelines correspond to the steps in the Board's Tribal Consultation Policy *Appendix B: Federal Subsistence Management Program Annual Regulatory Process at a Glance*.

Regulatory process;

- providing name and contact information for OSM staff who can provide assistance in reviewing and developing proposals.

Step 1.B.: Federal Subsistence Regional Advisory Council (RAC) Meetings: (Winter Meetings February-March): During these meetings, the RACs develop proposals to change subsistence regulations. The Tribes have the opportunity to work with the RACs to draft proposals.

OSM Sends public notice to all Tribes announcing all RAC meetings.

- If available, teleconference information is included in announcements and posted to the Federal Subsistence Management Program’s website.

Arranges teleconference line for RAC meeting(s) so Tribes can participate in the RAC meetings. Tribes may discuss proposals with the RACs and relevant federal staff.

Posts meeting materials on the Federal Subsistence Management Program’s website so Tribes can review the materials.

Coordinates with Interagency Staff Committee and Tribal representatives to draft summary reports on Tribal Consultations (if any have taken place since the fall RAC meetings). These written summaries are provided to the RACs. Tribal representatives are encouraged to share in delivery of this report.

Step 2-3: Review of Regulatory Proposals (April-May) Once the Proposals are received by OSM, they are compiled into a book that includes all proposals from throughout Alaska. Tribes will have the opportunity to review the proposals.

OSM Sends Tribes the proposal book with a link to the Federal Subsistence Management Program website, and a description of the process schedule. Name and contact information for OSM staff will be included in the proposal book.

Coordinates with appropriate Federal staff to notify Tribes if a particular proposal might impact them.

If Tribe(s) is interested in consulting at this step, they should contact OSM Native Liaison and discuss course of action.

STEP 3: Proposal Analysis (April – August): Each of these proposals will be analyzed by agency staff to determine their effects on the resource, other resources, other users, etc.

OSM Draft analyses will be made available to Tribes one month prior to RAC meetings.

One or more teleconferences will be scheduled to provide consultation open to all Tribes to discuss all proposals.

Step 4: Federal Subsistence Regional Advisory Council (RAC) Meetings (Fall meetings August - October): During these meetings, RACs develop recommendations on the proposal based on their review of the analysis, knowledge of the resources and subsistence practices in the area, testimony received during the meeting, and Tribal input.

OSM Sends public notice to all Tribes announcing all RAC meetings, including teleconference information if available.

Arranges teleconference line for RAC meeting(s) so that Tribes can participate. Tribes may discuss proposals with the RACs, and appropriate federal staff.

Posts meeting materials and teleconference information on the Federal Subsistence Management Program's website so that the Tribes can review the materials.

Coordinates reports on prior Tribal consultations during the regulatory cycle to the RACs, and encourages Tribal representatives to share in delivery of this report.

A written summary of relevant consultations will be provided to RACs.

Step 5: Federal Subsistence Board Meeting (January): This is where the Board reviews the staff analyses, considers recommendations provided by the RACs, input provided by the State, consults with Tribes, and makes a decision as to whether to adopt, reject, defer, or take no action on each proposed change to the subsistence regulations. Tribal Consultation will occur at the Board meeting in person or via telephone.

OSM Sends meeting announcement to Tribes, including teleconference call information.

Posts meeting materials on the Federal Subsistence Management Program's website so that Tribes can review the materials before the meeting.

During the meeting, OSM staff and/or Tribal representatives will report on the results of prior Tribal consultations.

Following the meeting, OSM will send notification on meeting results to the Tribes. Tribes who consulted on proposals will be notified of the outcome by telephone.

In-Season Management and Special Actions (Emergency and Temporary): Because the regulatory process occurs on a bi-annual basis (fish one year, wildlife the next), sometimes issues come up that

require immediate action; these actions may be taken as needed to address harvest regulations outside of the normal regulatory process.

In-season management actions and decisions on Special Action requests usually require a quick turnaround time and consultation may not be possible. When possible, in-season and land managers will work with Tribes that are directly affected by a potential action prior to taking action. Regular public meeting requirements are followed for special actions that would be in effect for 60 days or longer. Tribes will be notified of actions taken.

Other:

Consultation on non-regulatory issues will be considered by the Federal Subsistence Board on a case-by-case basis.

Training: The Board's policy directs that the Federal Subsistence Management Program follow the Department of the Interior and Agriculture's policies for training of Federal staff.

- OSM staff will work with the ISC to develop training modules on the subsistence regulatory process, customary & traditional use determinations, rural versus non rural criteria, proposal development, Tribal consultation, and the federal budget process. Additionally, OSM staff will work with the ISC and agency Tribal liaisons to develop a training module that federal staff can deliver at regional Tribal meetings (see Appendix C of the FSB's Tribal Consultation Policy) and to interested Tribal councils.
- Other entities responsible for management of subsistence resources, such as marine mammals, migratory birds, halibut, etc. should be invited to the trainings.
- Board members should make every opportunity to directly participate in or observe subsistence activities.
- Board members, OSM, ISC, & Federal Land Management Staff directly involved in Tribal consultation as part of their work responsibilities are recommended to attend regional cross-cultural training to learn the unique communication and cultural protocols of the Tribes with which they interact.

Recommended Training Topics for Federal Staff and Tribal Citizens

- Alaska Native identity, language, cultures, traditions, history, and differences
- Alaska Native perspectives on natural resource management
- Customary and Traditional relationship to land, water, and wildlife
- Tribal Government
- Effects of colonialism on Alaska Native peoples
- Alaska National Interest Lands Conservation Act subsistence provisions
- Natural resource law, especially pertaining to fisheries and wildlife management and conservation

- Subsistence regulations
- Federal subsistence regulatory process
 - Special actions
 - In-season management
 - Customary and traditional use determinations
- Rural Determinations
- Jurisdiction (State of Alaska/Federal Government/Tribal)
- Relevant information about Tribe(s), including history of Tribal interactions with the United States government, Tribal constitutions, and traditional knowledge
- Foundations of the government-to-government relationship and trust responsibility within Federal Indian law as expressed through the U.S. Constitution, U.S. Code, Supreme Court decisions, and executive actions.
- Tribal and Federal consultation policies
- Wildlife and fisheries monitoring, including the Fisheries Resource Monitoring Program
- Co-management or shared stewardship opportunities

Accountability, Reporting, and Information Management

- 1) **Tribal Contact Information:** Department of the Interior (DOI) employees will utilize the DOI Tribal Consultation SharePoint site contact list. U.S. Department of Agriculture (USDA) employees will utilize the Forest Service contact database.
- 2) **Tracking Consultations:** USDA has a consultation database which tracks Forest Service Tribal consultations. Office of Subsistence Management and DOI employees shall utilize the DOI Tribal Consultation SharePoint site database to track and record consultations.
- 3) **Report on Consultations** annually as required by DOI and USDA consultation policies. The OSM Native Liaison provides a summary report annually to the Board on Federal Subsistence Management Program consultations and notes any feedback received from Tribes regarding the policies and the implementation of them.
- 4) **Review of the Tribal Consultation Policy:** Annually, the Consultation Workgroup, OSM Native Liaison, land managers, and ISC should assess the effectiveness of the Tribal Consultation Policy. The Workgroup will report to the Board at its annual winter meeting.
- 5) **Follow-up to Consultations at the Federal Subsistence Board Meeting:** OSM is responsible to follow up on action items from Tribal Consultations at Federal Subsistence Board meetings. Post-Board meeting follow-up includes notification to Tribes of Board actions.



Appendix B FEDERAL SUBSISTENCE MANAGEMENT PROGRAM ANNUAL REGULATORY PROCESS AT A GLANCE



Step 6 (April 1 and July 1)

The Board's adopted proposals become the Final Rule which is published in the Federal Register. The Final Rule contains the regulations in effect for the next two year period. The fisheries regulations are effective April 1; the wildlife harvest regulations are effective July 1.

A public booklet of the regulations is published and distributed statewide. The booklet includes regulations and other information relevant to the Federal Subsistence Management Program.

Step 5 (January)

The Federal Subsistence Board meets to review the proposal analyses, Councils recommendations, and accept testimony. During the meeting, the Council Chairs and a State of Alaska representative serve as liaisons to the Board. The Board must defer to the Council's recommendation on a proposal unless it violates ANILCA 805(c). The Board can:

- Adopt
- Adopt with modification or
- Reject, OR
- Defer until later.

Step 1 (January - March)

A Proposed Rule is published in the Federal Register. It consists of the existing Federal subsistence regulations for fisheries or wildlife harvest (hunting or trapping) and asks the public to propose changes (proposals) to the existing regulations. The Proposed Rule is issued in January and proposals are accepted for approximately 45 days. The fisheries Proposed Rule is published in even numbered years. The wildlife Proposed Rule is published in odd numbered years.

Step 2 (April - May)

Proposals are reviewed by staff and validated to ensure that they fall within the authority of the Federal Subsistence Board. Valid proposals are compiled in a book, which is made available to the public and the tribes for information and comment. The public comment period is usually open for 60 days.

Step 3 (April - August)

Proposals are analyzed by federal staff. A draft analysis with preliminary conclusion for each proposal is written, considering received public comments and with input from:

- Federal and state biologists
- Federal and state social scientists
- The federal Interagency Staff Committee
- State of Alaska
- At times subsistence users and others are directly consulted about the implications of the proposals.

Step 4 (August - October)

The affected Federal Subsistence Regional Advisory Council(s) reviews the draft proposal analyses at their annual fall meeting. The Council(s) makes recommendations based on its knowledge of the resources and subsistence practices in the area, and testimony received during the meeting. Recommendations are to:

- Support
- Support with modification
- Oppose, OR
- Defer until later

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.

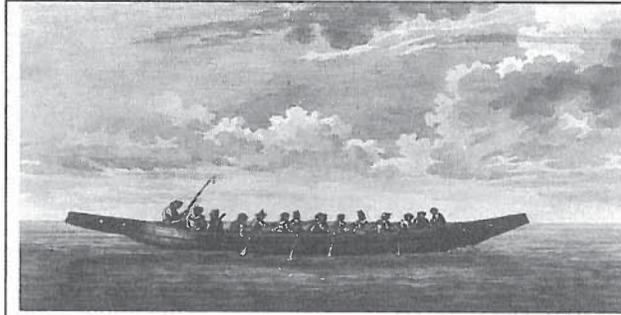
Action:

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. Enoch A. Shiedt, Sr., Chair
Northwest Arctic Alaska Subsistence
Regional Advisory Council
P.O. Box 234
Kotzebue, Alaska 99752

Dear Mr. Shiedt:

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. Enoch A. Shiedt, Sr.

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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 a 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. Enoch A. Shiedt, Sr.

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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
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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 CCHITA 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

P.O. BOX 115526
JUNEAU, AK 99811-5526
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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.

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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

December 7, 2007, C&T Policy Review
Attachment A, Page 6 of 6

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.

(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.

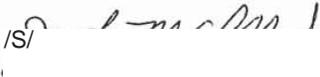
The policy also states that determinations "must be based on a community's long term consistent pattern of use" and that "in all instances, the Board makes a decision based upon the best available information." However, without accountability in the decision making process, it is unclear how the "best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

Fall 2013 Regional Advisory Council Meeting Calendar

August–October 2013 current as of 02/13/13

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
		BB—Dillingham				
Oct. 27	Oct. 28	Oct. 29	Oct. 30	Oct. 31	Nov. 1	Nov. 2

Winter 2014 Regional Advisory Council Meeting Calendar

February–March 2014 current as of 02/13/13

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>
		BB—Naknek				
<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**

Northwest Arctic Subsistence Regional Advisory Council

Charter

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

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

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

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

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

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

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

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

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

//Signed//

Secretary of the Interior

DEC - 2 2011

Date Signed

DEC 03 2011

Date Filed