

# **SEWARD PENINSULA Federal Subsistence Regional Advisory Council**



USFWS/Carl Johnson

*Nome and icy coastline.*

## **Meeting Materials**

March 20–21, 2012

Nome, Alaska

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**SEWARD PENINSULA SUBSISTENCE REGIONAL ADVISORY COUNCIL**

March 20 – 21, 2013

Aurora Inn

Nome, Alaska

8:30 A.M. – 5:00 P. M. each day or until meeting is concluded

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

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

**DRAFT AGENDA**

\*Asterisk identifies action item.

- 1. Call to Order (Chair)**
- 2. Roll Call and Establish a Quorum (Secretary)..... 4**
- 3. Welcome and Introductions (Chair)**
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    - 1. 805(c) letter
    - 2. Federal Subsistence Board Meeting
  - B. Council member reports
- 8. Public and Tribal Comment on Non-Agenda Items (Chair)**
- 9. Wildlife Closure Reviews\***
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<b>15. Adjourn (Chair)</b>	

**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 Seward Peninsula Subsistence Regional Advisory Council Coordinator Alex Nick at 907-543-1037 or contact the Office of Subsistence Management at 1-800-478-1456 for general inquiries.

## REGION 7—Seward Peninsula Regional Advisory Council

Seat	Yr Apptd <i>Term Expires</i>	Member Name and Community
<b>1</b>	<b>2013</b>	<b><i>Vacant</i></b>
<b>2</b>	1995 <b>2013</b>	<b>Peter Garfield Buck</b> White Mountain, Alaska
<b>3</b>	2010 <b>2013</b>	<b>Louis H. Green Jr.</b> Nome, Alaska
<b>4</b>	2010 <b>2013</b>	<b>Tom L. Gray</b> Nome, Alaska
<b>5</b>	2011 <b>2014</b>	<b>Reggie K. Barr</b> Brevig Mission, Alaska
<b>6</b>	<b>2014</b>	<b><i>Vacant</i></b>
<b>7</b>	2008 <b>2014</b>	<b>Fred D. Eningowuk</b> <i>Shishmaref, Alaska</i>
<b>8</b>	1994 <b>2015</b>	<b>Elmer K. Seetot Jr.</b> Brevig Mission, Alaska
<b>9</b>	2013 <b>2015</b>	<b>Charles F. Saccheus</b> Elim, Alaska
<b>10</b>	2010 <b>2015</b>	<b>Timothy E. Smith</b> Nome, Alaska

## Seward Subsistence Regional Advisory Council

Meeting Minutes  
October 3-4, 2012  
Aurora Inn  
Nome, Alaska

9:00 a.m.

Meeting was called to order by Louise Green, Jr. at 9:00 a.m.

Roll call by Alex Nick, Council Coordinator.

### *Members Present*

Louie Green, Jr.  
Tim Smith  
Peter G. Buck  
Elmer Seetot, Jr.  
Tom Gray  
Reggie K. Barr  
Fred D. Eningowuk

### *Members Absent*

None

### *Meeting Participants*

Alex Nick, Carl Johnson, Dr. David Jenkins, Don Rivard (online), OSM; Sandy Rabinowitch, Fred Tocktoo, Ken Adkisson, NPS; Tony Gorn, Letty Hughes, Nikki Braem, Carmen Dagget, Jennifer Yuhas (online), ADF&G; Mr. Larry Peterson, Sitnasuak Native Corporation; Dr. Glenn Chen, BIA; Chuck Wheeler, Nome Eskimo Community; Daniel Sharp, (online), BLM

### *Welcome Remarks*

Mr. Louie Green, Chair, introduced himself and welcomed everyone to the Council meeting in Nome and said that there is a lot of work to be done in a couple of days. He asked everyone to introduce themselves. See participant list above.

### *Review and adoption of agenda*

Tim Smith added chum salmon bycatch update under old business and requested a report on status of customary trade. He also added report on the Northern Bering Sea Regional Aquaculture Association and muskox status in Unit 22 under new business. Tom Gray suggested the Board of Fish proposals be added on the agenda following the Federal fisheries proposals for Council discussion.

### *Motion*

Peter Buck made a motion to adopt revised agenda. Motion was seconded by Tim Smith. Motion passed.

*Review and Approval of previous meeting minutes*

*February 15-16, 2011 Minutes*

Alex Nick reminded Council February 15-16, 2011 draft minutes was reviewed by the Council during its meeting in fall 2011 and Council deferred these draft minutes until Tim Smith and Alex Nick work on revisions of draft minutes. Alex Nick thanked Mr. Smith for his hard work on the revision of February 2011 draft minutes. Tim Smith noted some minor edits needed on third sentence from the bottom on page 8 of workbook. Correction needed is a missing word between “subsistence” and “collect”. Correct wording should be “qualified subsistence users” inserted between “subsistence” and “collect”.

*Motion*

Elmer Seetot made a motion to accept February 15-16, 2011 minutes as modified. Motion was seconded by Peter Buck. Motion passed.

*February 7, 2012 Minutes*

Mr. Sandy Rabinowitz with National Park Service (NPS) noted some corrections needed on the draft minutes from February 7, 2012. Correction would read “NPS is considering liberalization of existing regulation”. Elmer Seetot suggested a correction regarding harvest numbers, with Tim Smith suggestion to remove the whole sentence. Mr. Seetot also noted another change regarding information he had provided on seals.

*Motion*

Elmer Seetot, Jr. made a motion to accept February 7, 2012 minutes as modified. Tim Smith seconded the motion. Motion carried.

*Reports*

There were not any Council member reports.

*Public and Tribal Comments on Non-Agenda Items*

Mr. Chuck Wheeler spoke about Norton Sound chum salmon fishery disaster that occurred about year 2000 and noted ADF&G declared disaster at that time did not exist in year 2007. He said nothing was done to restore or enhance fisheries at that time. He opposed experimental permitting system in the Pacific fisheries in the Bering Sea because that would affect marine mammals. In the past, possible pollutant from mined ore that was shipped out from Red Dog mine was not mentioned in any of the public meetings.

*2013-2015 Federal Subsistence Fisheries Proposals*

**Proposal FP13-02** requested to revise marking of subsistence caught salmon in the Yukon River. Mr. Don Rivard presented proposals analysis online. Mr. Rivard pointed out Alaska Department of Fish and Game comments in the Council workbook.

*Motion*

Tim Smith made a motion to adopt proposal FP13-02. Motion was seconded by Tom Gray.

Council members expressed concerns about the idea of aligning Federal fisheries regulations with the State regulations because Federal Government has its own mission while the State of Alaska

has its own mission. One of the reasons Council was not comfortable with this proposal is there could be micro-management of the fisheries resources that may get people angry. Removing fins sounds ridiculous and this additional requirement may be imposed on the subsistence users. People affected including agency staff and other interested group should provide comments on this issue before it goes forward at the Board level. However, Council felt this would simplify salmon marking requirements for subsistence harvest of salmon by making State and Federal requirements the same. It is better to provide just one marking on subsistence harvested salmon to avoid confusion.

Motion carried.

**Proposal FP13-03** requested to revise daily harvest limit of Pike Fish in all waters of Yukon River from Holy Cross downstream to Paimute Slough. Mr. Don Rivard provided analysis for proposal FP13-03.

*Public comments*

Chuck Wheeler with the Nome Eskimo Community provided comments and stated he didn't know what resource population is in the analysis and he thought the proponent felt there is a threat to the resource. He thought this proposal is going from no harvest of the resource to a limited harvest of the resource in the area of concern.

Mr. Larry Peterson with Council Native Corporation provided comments. Main point of his comment is that the local people's subsistence needs are not being adequately taken into account when it comes to resource escapement goals because it is being managed to the lowest possible goal. Council Native Corporation Board of Directors submitted a proposal requesting escapement range of about 4,800. Mr. Peterson operates commercial fishery in Nuikluk River. Board of Fish proposal his organization submitted is proposal number EF032212176.

*Motion*

Tim Smith made a motion to support proposal FP13-03. Motion was seconded by Tom Gray.

A Council member felt the proponent who submitted FP13-03 is placing subsistence fishers in the same level as that of sport interests in this proposal and that member didn't like that, noting that concern for subsistence fishing should be placed higher than that of sport interests. In some areas, pike fish numbers are decreasing to an extinction point. The Yukon River area could produce a lot of pike fish and whole area is producing pike fish and pike gets concentrated in winter season. Council also felt it is not necessary to set limits on subsistence harvests of pike and put sport fishing above subsistence fishing for pike fish. This proposal is not needed for conservation of pike fish as proposal makes it sound like it is. No one fishes pike to feed their dogs anymore these days. Subsistence fishers harvest pike for elders for use in making akutaq (Eskimo Ice Cream).

Motion failed.

**Proposal FP13-06** requested to limit customary trade of Yukon River Chinook salmon to those with a current customary and traditional use determination for Yukon River Chinook salmon.

**Proposal FP13-07** requested same as FP13-06 but only in times of shortage when there is no Yukon River Chinook salmon commercial fishery and restrictions on subsistence fishing are in place. **Proposal FP13-08** requested to limit customary trade of Yukon River to those with a current customary and traditional use determination and to ensure that any individual who purchases Chinook salmon under customary trade uses it only for personal or family

consumption. Mr. Don Rivard provided analysis for proposals FP13-06, FP13-07, and FP13-08. Council discussed these proposals with staff in length.

*Public comment*

Mr. Chuck Wheeler commented he lived on the Yukon River for about eleven years in the past and he commercially fished for Chinook salmon at that time. Subsistence harvest in most cases for fish and wildlife resources is 2-3 percent of the total harvest of resources. In regards to \$750.00, there is home use of resource to consider, there's bartering of the resource and customary trade of the resource. One cannot go to his fish camp three times round trip on \$750.00 because of how much 100 gallons of gasoline costs. ANILCA says that in times of shortage subsistence activity has a priority. He asked who has a priority to harvest subsistence resource, is it commercial fisherman under State laws? Or does it mean subsistence users have to yield for other uses? Subsistence users have yielded long enough already. When one puts a \$750.00 dollar figure for customary trade, \$25.00 per pound of fish could buy only 30 pounds of fish. Currently, active subsistence fishers usually have a full time jobs and takes some time off to go out subsistence fishing. People with a job could afford to do subsistence activity because they got all equipment and supplies they need to fish and beside that their extended family offers to assist them monetarily when they share their harvests. The person who can't afford to go out subsistence fishing is usually on a Quest Card.

*Motion*

Mr. Tim Smith made a motion to oppose FP13-06, FP13-07, and FP13-08. Motion was seconded by Mr. Tom Gray.

Customary trade of Yukon River salmon has taken place for generations in the past. Council felt customary trade is a legitimate subsistence activity that was practiced in the past. The State and Federal agencies should have been more proactive when bycatch issues have emerged in the past and concerns about salmon issues were raised by the Western region. No action was taken in those years to deal with salmon issues. There are various factors such as mining, increased predation, chemicals that are disposed by boats in the Bering Sea and other factors. Subsistence users should not be blamed for decrease of Chinook salmon.

Motion passed.

**Proposal FP13-09** requested that the Federal Subsistence board prioritize direct personal or family consumption over customary trade of Yukon River drainage Chinook salmon. The proponent is concerned with low Yukon River Chinook salmon runs. **Proposal FP13-10** requested that the Federal Subsistence Board prioritize family consumption over customary trade of Yukon River drainage Chinook salmon. The proponent is also concerned with low Yukon River Chinook runs, and asserts that customary trade contributes to Yukon River Chinook declines. Dr. David Jenkins provided analysis for FP13-09 and FP13-10.

*Public comment*

Mr. Chuck Wheeler commented that he opposed the proposal. Part of the reason Mr. Wheeler oppose this proposal is increased costs triggered by costs of fuel that is ever-increasing.

*Motion*

Mr. Tim Smith made a motion to support proposal FP13-09 and FP13-10. Motion was seconded by Mr. Peter Buck.

Council felt this proposal is inconsistent with the ANILCA purposes. ANILCA does not prioritize subsistence uses of resources over other uses, and also this is not a conservation issue. If this proposal is adopted, enforcement of the law is going to be impossible. Harvest of Chinook salmon will remain the same regardless of how salmon harvested are being used.

Motion failed.

**Proposal FP13-11** requested to define “significant commercial enterprise” as sales exceeding \$750 per household. Dr. David Jenkins provided analysis for the proposal.

*Public comment*

Mr. Chuck Wheeler commented that to put a dollar limit on customary trade is unacceptable because a limit is imposed and will not continue. Considering a \$7.00 per gallon of gasoline and equivalent to diesel fuel, it’s insignificant. Some people are fortunate to receive energy assistance and food stamps to supplement their needs. But there is no alternate heating fuel like wood burning stoves because there are no wood available elsewhere. Cost of energy in comparison with Bristol Bay and Cook Inlet that costs approximately \$125.00 per month in that area versus 50 cent per kilowatt hour in this area is high.

*Motion*

Mr. Tim Smith made a motion to support FP13-11. Motion was seconded by Mr. Peter Buck.

Council noted that one of its purposes is to protect the rights of subsistence users that are being abused. “Significant enterprise” needs to be defined because for example, \$6,000.00 is not a significant amount of money, \$6,000.00 a year earning could be considered as a hobby. Trawlers are allowed to take up to 60,000 Chinook salmon a year – that is a significant activity. It is erroneous to put burden on subsistence users. Council concluded this proposal is not needed and the dollar limits in the proposal are too low.

Motion failed.

**Proposal FP11-08** requested to prohibit customary trade of salmon in the Yukon River. Dr. David Jenkins of OSM provided analysis for proposal FP11-08.

*Public comment*

Mr. Chuck Wheeler commented that he opposed this proposal. There should be observers placed in the trawl fisheries. Also agencies should work toward restriction bycatch in the Bering Sea.

*Motion*

Tim Smith made a motion to adopt proposal FP11-08. Motion was seconded by Mr. Fred D. Eningowuk.

Council felt that this proposal is not enforceable and is not in consistent with the Alaska National Interests Lands Conservation Act that does not prioritize subsistence uses over other uses.

Motion failed.

*State Proposals*

Council had a great deal of discussion about State Board of Game proposals. Tony Gorn with the Alaska Department of Fish and Game made clarifications on the information about State proposals Council wanted to review and discuss with the State staff. These proposals were on the agenda for discussions purposes because in January 2013 Board of Game was to meet in Sika. Mr. Gorn said he would be comfortable to discuss proposals relating to Unit 22, not proposals intended for other Game Management Units. The Council had a great deal of discussions about State Board of Game proposals 40, 41, 42, 43, and 44. State Board of Game proposals relating to Unit 22 – reauthorization of antlerless moose hunt – were taken up in November 2011 by the Board of Game, but still need to be reauthorized annually. After a lengthy discussion about Board of Game proposals, Council took the following action.

*Motion*

Tim Smith made a motion to support State Board of Game proposal 44. Motion was seconded by Mr. Tom Gray.

Motion carried 4-2.

*Salmon Bycatch Review*

Don Rivard with the Office of Subsistence Management provided a brief update on salmon bycatch in the Bering Sea. The North Pacific Fishery Management Council is meeting on October 1-9, 2012, in Anchorage, and chum salmon bycatch in the Bering Sea/Aleutians is on the agenda. There is possibility during its December 2012 meeting the NPFMC will choose a preferred preliminary alternative as level of bycatch. In 2011 191,000 chum salmon were caught as bycatch. This year number is approximately 20,000. Chum salmon runs in Western Alaska did pretty well.

*Old Business*

Sandy Rabinowitch presented the draft Memorandum of Understanding between Federal Subsistence Board and State of Alaska to develop comments and recommendations.

The Council felt that if the MOU is adopted as revised it would not feel the need to make any significant changes. Council reviewed the Board of Fish (BOF) proposals at that time and opposed Board of Fish proposals while State Fish and Game supported most of BOF proposals. MOU's goal is the Federal and State of Alaska work together on resource management issues. Council understands the MOU agreement applies to the Federal public lands only and as written looks like it is one sided agreement.

*Public Comment on MOU:*

Chuck Wheeler with the Nome Eskimo Community provided his comments and agreed with Council's comments. More specifically an MOU should have in the preamble coordination addressed. Generally when MOU is developed there's not only coordination, there's cooperation, consideration, and concessions and that is not included in the draft MOU. Because the Federal program is discussed, including dual management of fish and game, the real problem is third-parties not participating in the discussions of its contents. What's discussed in a roundabout way is cooperative management and parties are alluding to it however, they don't want to bring it forward totally. There were discussions many years ago about alternative options they haven't gotten to it yet.

*Motion*

Peter G. Buck made a motion to approve the draft Memorandum of Understanding between the Federal Subsistence Board and State of Alaska. Tim Smith seconded the motion.

Motion passed unanimously

*New Business*

*Discussion of open Council Application/Nomination Period and outreach to increase number of application/nominations for Regional Advisory Council membership*

Carl Johnson with the Office of Subsistence Management updated Council about Council application and nomination process. He informed the Council last eight years there has been steady decline of Council applications in all ten regions. In 2012 there were only 67 applications received for Council membership. One of the underutilized aspects of this program is the opportunity for organizations or individuals to nominate someone. Key part of that is the person who is being nominated must be aware that he or she is being nominated. Alex Nick added that he has contacted several villages regarding Council membership application and nomination process. Mr. Sandy Rabinowitch also added the Council could assist toward getting message out through information and education in schools or local meetings.

The Council authorized the Council Coordinator to send a letter to area councils, villages and organizations encouraging these entities to submit nominations to the Council.

*Review Board's Annual Reply*

Carl Johnson acknowledged Council member Tim Smith for clarification of Council's intent on its annual report on topic of a muskox. Office of Subsistence Management was able to provide a revised version of the annual reply as a result of Mr. Smith's assistance. The key portion of the revision sent to Council members via mail relate to muskox issue.

*Fisheries Resource Monitoring Program Priority Information Needs*

Karen Hyer with the Office of Subsistence Management presented draft Fisheries Resource Monitoring Program priority information needs and said that now is the time for the Council to provide their input. During discussions, Council members noted the two biggest issues of concern in the Seward Peninsula region were salmon bycatch in the trawl fisheries in the Bering Sea, and Area M intercepts in the Aleutian Islands. After much discussions with Ms. Hyer and Mr. Daniel Sharp with BLM, the Council identified three additional issues to add to the Fisheries Resource Monitoring Program priority information needs list. On the navigability information on BLM lands, Mr. Sharp will provide additional information to Ms. Hyer on later date.

*BLM Hunting Guide Capacity Study – comments and recommendations for scoping*

Mr. Daniel Sharp with BLM said the State of Alaska has some 1500-1600 licensed guides and 300-400 licensed guides will have assigned area. BLM currently assigns special recreation permits to guides that apply. BLM 60-day scoping period has ended. What BLM is going to is develop a range of alternatives from the standard of nothing and let status quo continue and provide some limit of guide numbers to operate on BLM lands. Draft environmental assessment will be coming out with a range of alternatives in the next year. Regional Advisory Councils will be allowed to provide their comments in the future.

*Regulatory Cycle Review – comments and recommendations*

Carl Johnson of OSM provided a brief history of the meeting and regulatory cycles of the Federal Subsistence Management Program. Last year during some of the Council meetings and during the Federal Subsistence Board meeting a couple of issues emerged. It was pointed out January is not

good time to hold meetings because it's coldest time of winter season. Some Council members travel to the Board meetings during hazardous weather conditions. Fall Council meetings occur when subsistence gathering of resources take place and is also the busiest time of fall season. After discussing options and alternatives in length, the Council discussed and agreed that it was satisfied with the current regulatory cycle. Council specifically expressed their concerns as to how a July 1 effective date of fisheries regulations would be impacting the region's subsistence users who are already well into their summer fishing season at that time of year.

*FY 2012 Annual Report Topics*

Mr. Alex Nick referred to page 138 where Council could find guidance on annual reports. Carl Johnson informed Council this is the time to provide its annual report topics. There was a question raised whether or not Fisheries Resource Monitoring Program funding can be used outside of Federal jurisdiction. There is possibility a small amount of Federal funding could be used for fisheries monitoring projects and combine funds with the State and other Federal agency funds from the National Oceanic and Atmospheric Administration for example. After discussions of issues in length, the Council identified three topics for its 2012 annual report.

*Council Charter Review*

Carl Johnson informed the Council that they are limited to make any changes on its Charter. Alex Nick said in the past the Council made recommendations to change part of its Charter such as removal of Council members. Council recommendations did not go forward. Mr. Johnson added when Washington D.C. reviewed Council recommendations to change its Charter, Washington D.C. felt that would be more appropriate language for By-laws. But since the Councils do not use bylaws, that sort of information is contained in the Council Operations Manual.

*Agency Reports*

Carl Johnson gave OSM update as follows:

*Staffing Update*

There has been significant number of hiring changes in OSM in year 2012. Mr. Johnson has complete staff of Council Coordinators. A new Native Liaison has been hired and his name is Jack Lorrigan.

*Budget Update*

There are some budget issues and overall travel restrictions apply to OSM. There is going to be approximately 30 percent budget cut on OSM travel. This would mean less discretionary travel for Council operations such as to other meetings like YRDFA meetings, or Western Arctic Caribou Working group meetings.

*Council Membership Application/Nomination update*

In the Council workbook, there is just a quick Council membership applications and nominations update. There is nothing else to add.

*Rural Determination Process and Method Review*

The Federal Subsistence Board after it was dealing with Saxman issue came up about Saxman being deemed as nonrural under the old system. The Board decided to reopen how the Board would evaluate communities to determine whether or not communities are nonrural or rural for the Federal subsistence Program. The issue would take a couple of years to resolve.

*Briefing on Consultation Policy*

There was a working group that was charged to draft implementation policy for Federal Subsistence Board tribal consultation and now the Board has tribal consultation policy in place. Currently the Alaska Native Claims settlement Act (ANCSA) consultation policy is in a draft stage. The federal Subsistence Board is waiting to finalize its ANCSA corporation consultation policy because it has to follow directions of the Department of the Interior. The Department of the Interior recently issued its final ANCSA corporation policy so the Board will finalize its policy in the near future.

*National Park Service*

Ken Adkisson with the National Park Service gave an update on alternative method for assessing brown bear populations for developing population estimates. A draft brown bear monitoring protocol was just completed and is out for peer review. National Park Service is going to conduct brown bear survey in Bering LandBridge. The Park Service is completing its environmental assessment for establishing a commercially guided hunting concession program in the Preserve and the draft environmental assessment should be out later this fall and will be available for public comment.

Sandy Rabinowitch with the National Park Service added that NPS finished all the work on environmental assessment and has taken some comments, analyzed comments and followed all procedures. What NPS is going to do is write up Finding of No Significant Impact (FONZI). This is procedural part of National Environmental Policy Act (NEPA) process. There is a whole formal Federal rulemaking process and takes between 18-24 months.

*Bureau of Indian Affairs*

No update

*Bureau of Land Management*

See Daniel Sharp's update under BLM Hunting Guide Capacity Study

*Alaska Department of Fish and Game*

Ms. Carmen Daggett introduced herself and informed Council that she would like to announce the Northern Norton Sound Advisory Committee meeting on October 30, 2012 at the Kawerak building.

Ms. Nikki Braem with the ADF&G Subsistence division updated Council that ADF&G do not have much work planned in Unit 22. Most of their work is going to be in Unit 23 for variety of reason such as proposals and developments for roads, possible mine, Chukchi Sea drilling. On Western Arctic Caribou Herd surveys, there will not be survey in Unit 22. ADF&G staff will survey Kotzebue, and move on to Stebbins and Diomedea in 2014 and Shaktolik in 2015. Funding for this project is through SEAP. Ms. Braem answered much of Council's questions.

*Native Organizations*

No update

*Future Meetings and Location*

Winter 2013 Meeting

Council discussed its scheduled meeting date on February 12-13, 2013 and changed meeting date to March 12-13, 2013 in Nome, Alaska.

Fall 2013 Meeting  
October 8-9, 2013 in Nome, Alaska

*Adjournment*

Meeting was adjourned at 5:40 p.m.

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*Alex Nick*, DFO  
USFWS Office of Subsistence Management

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*Louis Green, Jr.*, Chair  
Seward Peninsula Subsistence Regional Advisory Council

These minutes will be formally considered by the Seward Peninsula Subsistence Regional Advisory Council at its next meeting, and any corrections or notations will be incorporated in the minutes of that meeting.

DRAFT

## **WILDLIFE CLOSURE REVIEW BRIEFING**

As called for in the Closure Policy, the Office of Subsistence Management is reviewing existing wildlife closures to determine whether the original justifications for closure continue to apply. These reviews are being conducted in accordance with guidance found in the Federal Subsistence Board's Policy on Closures to Hunting, Trapping and Fishing on Federal Public Lands and Waters in Alaska, which was adopted in 2007. According to the policy, existing closures will be reviewed at least every three years, and are typically completed on a three-year rotational schedule. Most of the closures being reviewed this cycle were last reviewed by the Federal Subsistence Board (Board) in 2008. A summary of the current closure reviews which are applicable to your Regional Advisory Council are provided.

Section 815(3) of ANILCA allows closures when necessary for the conservation of healthy populations of fish and wildlife, and to continue subsistence uses of such populations. The existing closures represent both situations. For example, the closure for the hunting of muskox in Unit 26 was adopted because of the low muskox population; and the Unit 2 deer closure was adopted because rural residents provided substantial evidence that they were unable to meet their subsistence needs because of competition from other users of the resource.

Distribution and abundance of fish and wildlife populations are known to fluctuate based upon a variety of factors such as weather patterns, management actions, habitat changes, predation, harvest activities, and disease. Subsistence use patterns are also known to change over time in response to many factors including resource abundance, human population changes, among others. It is for these reasons that the Board decisions to establish specific closures are revisited periodically.

The Wildlife Closure Reviews contain a brief history of why a closure was implemented, along with a summary of the current resource condition and a preliminary OSM recommendation as to whether the closure should be continued or deleted from the regulations.

Councils are asked to consider the OSM preliminary recommendation and share their views on the issue. Input from the Councils is critical to the development of regulatory proposals needed to address adjustments to regulations. Any regulatory proposals that may result from this review process will be considered through the normal regulatory cycle. The current window for wildlife proposals closes on March 29, 2013. Councils may choose to work with OSM staff to develop a proposal; however proposals addressing these issues can be submitted by anyone.

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

**FEDERAL SUBSISTENCE BOARD**

Adopted August 29, 2007

**PURPOSE**

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

**INTRODUCTION**

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

**BOARD AUTHORITIES**

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

**POLICY**

The decision to close Federal public lands or waters to Federally qualified or non-Federally qualified subsistence users is an important decision that will be made as set forth in Title VIII of ANILCA. The Board will not restrict the taking of fish and wildlife by users on Federal public lands (other than national parks and park monuments) unless necessary for the conservation of healthy populations of fish and wildlife resources, or to continue subsistence uses of those populations, or for public safety or administrative reasons, or "pursuant to other applicable law." Any individual or organization may propose a closure. Proposed closures of Federal public lands and waters will be analyzed to determine whether such restrictions are necessary to assure conservation of healthy populations of fish and wildlife resources or to provide a meaningful preference for qualified subsistence users. The analysis will identify

the availability and effectiveness of other management options that could avoid or minimize the degree of restriction to subsistence and non-subsistence users.

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

### **Decision Making**

The Board will:

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

### **Conditions for Establishing or Retaining Closures**

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

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

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

### **Considerations in Deciding on Closures**

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

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

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

### Reviews of Closures

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

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

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

*/S/ Mike R. Fleagle*

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Chair, Federal Subsistence Board

*/S/ Thomas O. Melius*

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Board Member, U.S. Fish and Wildlife Service

*/S/ Niles Cesar*

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Board Member, Bureau of Indian Affairs

*/S/ Denny Bschor*

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Board Member, U.S. Forest Service

*/S/ Marcia Blaszak*

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Board Member, National Park Service

*/S/ T. P. Lonnie*

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Board Member, Bureau of Land Management

**FEDERAL WILDLIFE CLOSURE REVIEW  
WCR12-09a**

**Current Location:** Unit 22A (North Unit 22A)—Moose

**Current Federal Regulations**

*Unit 22A—that portion north of and including the Tagoomenik and Shaktoolik River drainages—1 bull. Federal public lands are closed to hunting except by residents of Unit 22A hunting under these regulations.* Aug. 1–Sept. 30

**Closure Dates:** Aug. 1–Sept. 30

**Current State Regulations**

<b>Species and Bag Limits – Moose</b>	<b>Permit/Ticket Required</b>	<b>Open Season</b>
<i>Unit 22A, north of and including Tagoomenik and Shaktoolik River drainages: <b>Residents:</b> One bull</i>	<i>Harvest</i>	<i>Aug. 1–Sept. 30</i>
<i><b>Nonresidents:</b> One bull with 50-inch antlers or antlers with 4 or more brow tines on at least one side</i>	<i>Harvest</i>	<i>Sept. 1–Sept. 14</i>

**WCR12-09b**

**Current Location:** Unit 22A (Central Unit 22A)

**Current Federal Regulations**

*Unit 22A—that portion in the Unalakleet drainage and all drainages flowing into Norton Sound north of the Golsovia River drainage and south of the Tagoomenik and Shaktoolik River drainages—Federal public lands are closed to the taking of moose, except that residents of Unalakleet, hunting under these regulations, may take 1 bull by Federal registration permit, administered by the BLM Anchorage Field Office with the authority to close the season in consultation with ADF&G.* Aug. 15–Sept. 14

**Closure Dates:** Aug. 15–Sept. 14

**Current State Regulations**

<b>Species and Bag Limits – Moose</b>	<b>Permit/Ticket Required</b>	<b>Open Season</b>
<i>Unit 22A, Unalakleet River drainage and all drainages flowing into Norton Sound north of Golsovia River drainage and south of Tagoomenik and Shaktoolik river drainages:</i>	RM841.	Sept. 1–Sept. 14
<i><b>Residents:</b> One antlered bull by permit available in person at license vendors in Unalakleet beginning Aug. 1. Season closed by emergency order when a combined state and federal quota of 22 bulls are taken.</i>		
<i><b>Nonresidents:</b></i>		No open season

**WCR12-09c****Current Location:** Unit 22A remainder**Current Federal Regulations**

*Unit 22A, remainder—1 bull. However, during the period Jan. 1–Feb. 15, only an antlered bull may be taken. Federal public lands are closed to the taking of moose except by residents of Unit 22A hunting under these regulations.*

**Closure Dates:** Aug. 1–Sept. 30, Jan. 1–Feb. 15**Current State Regulations**

<b>Species and Bag Limits – Moose</b>	<b>Permit/Ticket Required</b>	<b>Open Season</b>
<i>Unit 22A remainder. <b>Residents:</b> One bull</i>	Harvest	Aug. 1–Sept. 30
<i>OR One antlered bull</i>	Harvest	Jan. 1–Jan. 31
<i><b>Nonresidents:</b> One bull with 50-inch antlers or 4 or more brow tines on at least one side</i>	Harvest	Sept. 1–Sept. 30

**Regulatory Year Initiated:** 1995/1996**Regulatory History**

In 1995, the Federal Subsistence Board (Board) adopted Proposal 42 with modification to change the moose season in Unit 22A from Aug. 1–Sept. 30 to Aug. 1–Oct. 10, with the October portion of the season being closed to all users, except for residents of Unit 22A (FSB 1995a). The ADF&G subsequently submitted Request for Reconsideration RFR95-11 in 1995, challenging that the Oct. 1–Oct. 10 portion of the season was not based on substantial evidence and violated established principles of wildlife management. The Board reversed their decision on Proposal 42 because the season extension was not

consistent with the maintenance of a healthy moose population and returned the closing date for the fall moose season in Unit 22A to Sept. 30 (FSB 1995b). The Board recognized that October was a customary and traditional time to harvest moose by residents of Unit 22A; however, the October season extension overlapped the rut and could have led to an unsustainable harvest (FSB 1995b). Action on RFR95-11 also closed the winter season (Dec. 1–Jan. 31) on Federal public lands in Unit 22A to all users, except for residents of Unit 22A (FSB 1995b). The Seward Peninsula Subsistence Regional Advisory Council submitted Proposal 50 in 1996 to ensure the actions taken by the Board with RFR95-11 would be continued. The Board's motion to adopt Proposal 50 with modification to only close Federal public lands within the Unalakleet River (main fork) drainage to non-Federally qualified users failed with a tied vote in May 1996 (FSB 1996). However, the Board's action on RFR95-11 remained in Federal regulation.

In 1998, the Board adopted Proposal P98-086 with a modification to change the harvest limit from one antlered bull to one bull for the Aug. 1–Sept. 30 and Dec. 1–Jan. 31 seasons in Unit 22A.

In 2003, the Board of Game made a number of regulatory changes in Unit 22A, including changing the hunt area descriptions, bag limits, and open seasons for moose. The State season in the Unalakleet River drainage area (Central Unit 22A) was shortened by five days from Aug. 1–Sept. 30 to Aug. 1–Sept. 25. In November 2003, the State issued Emergency Order 05-05-03 to shorten the winter season from Dec. 1–Jan. 31 to Dec. 1–Dec. 31 and change the harvest limit from one bull to one antlered bull in the portion of the Golsovia River drainage and south (Unit 22A remainder), and close the winter season north of the Golsovia River drainage (Central and North Unit 22A). Also in 2003, Special Action WSA03-14 was approved by the Federal Subsistence Board to close the winter season in Unit 22A north of the Golsovia River drainage (Central and North Unit 22A), and to change the harvest from one bull to one antlered bull and shorten the season by 31 days in the current Unit 22A remainder area (south of the Golsovia River drainage).

In 2004, Proposal WP04-70 was submitted to expand the temporary changes made with Special Action WSA03-14. Specifically, the proposal requested the following in Unit 22A: 1) change the harvest from one bull to one antlered moose; 2) shorten the fall moose season by 14 days from Aug. 1–Sept. 30 to Aug. 15–Sept. 30 in Central Unit 22A; 3) eliminate the winter seasons in Central and North Unit 22A; and 4) close Federal public lands for moose hunting for all seasons and areas of Unit 22A, except by Unit 22A residents. The Board adopted Proposal WP04-70 with modification, as recommended by the Seward Peninsula Subsistence Regional Advisory Council (FWS 2004). The modified proposal included the original proposed changes, except the harvested was changed from one antlered moose to one bull during the fall seasons in all areas of Unit 22A, and the harvest season in Central Unit 22A was shortened by an additional five days to Aug. 15–Sept. 25. The proposal also modified the hunt area descriptions for Unit 22A (see Current Federal Regulations for detailed descriptions of the Central, North, and remainder areas of Unit 22A) to mirror 2003 Board of Game actions.

Portions of Unit 22A were affected by temporary regulatory changes in 2005 that were subsequently adopted into Federal regulations by Board action in 2006. The Central Unit 22A moose harvest was temporarily closed in 2005 when the Board approved Special Action WSA05-03 due to conservation concerns regarding low population and recruitment estimates. The State moose season was also closed in Central Unit 22A in 2005 by Emergency Order 05-04-05. The Board then adopted Proposal WP06-39 in 2006 to close Federal public lands in Central Unit 22A. In Unit 22A remainder, harvest seasons were shifted from Dec. 1–Dec. 31 to Jan. 1–Jan. 31 in 2005 with the Board's approval of Special Action WSA05-12/13 and in 2006 with the adoption Proposal WP06-38. The Unit 22A remainder season adjustment mirrored State regulation changes associated with the adoption of State Proposal 6 and Emergency Order 05-08-05 in 2005.

The Central Unit 22A closure to all users was modified in 2008 when the Board adopted Proposal WP08-36/37 with modification to allow residents of Unalakleet to harvest one bull moose between Aug. 15–Sept. 14 by Federal registration permit. As part of the analysis for this proposal, a Section 804 analysis was conducted in Central Unit 22A, which determined that residents of Unalakleet were the most dependent on moose in the area. The Board of Game also lifted the State closure by establishing a Sept. 1–Sept. 14 moose season in Central Unit 22A based on action on State Proposal 19 in 2007.

Proposal WP10-80 requested that the winter moose season in Unit 22A remainder be shifted from Jan. 1–Jan. 31 to Jan. 15–Feb. 15. The Board adopted the proposal with modification to extend the season to February 15, but kept the starting date as January 1. The proposed modification provided additional harvest opportunity to Federally qualified subsistence users because few antlered bulls would be available during the two-week extension.

Inclement weather has affected the winter moose harvest in Unit 22A remainder, which has resulted in multiple special action requests to extend the seasons. Special Action WSA07-08, submitted by the Stebbins Community Association, requested that a Feb. 1–Mar. 1 season be added in Unit 22A remainder to provide additional opportunity to harvest moose. The Board approved the special action, but modified the season to Feb. 27–Mar. 5. Special Action WSA08-17 extended the winter bull moose season on Federal public lands within Unit 22A remainder an additional two weeks (Feb. 7–Feb. 20) in 2009. The season extension was approved by the Board to provide additional opportunity for Federally qualified subsistence users to harvest moose after a period of inclement weather and high gas prices prevented users from hunting moose. The 2011/2012 winter was unusually cold and prevented many Federally qualified subsistence users from harvesting moose during the Jan. 1–Feb. 15 season in Unit 22A remainder. In February 2012, Special Action WSA11-09 was authorized by the Board and Emergency Order 05-06-12 was issued by the State to provide a 14-day extension to the winter moose season in Unit 22A remainder to provide additional harvest opportunity.

**Closure Last Reviewed:** 2008 — WCR08-09.

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

Section §815(3) of ANILCA states:

*Nothing in this title shall be construed as – (3) authorizing a restriction on the taking of fish and wildlife for nonsubsistence uses on the public lands (other than national parks and monuments) unless necessary for the conservation of healthy populations of fish and wildlife, for the reasons set forth in 816, to continue subsistence uses of such populations, or pursuant to other applicable law;*

The Board believed there was a conservation concern due to the observed decline in the moose population, along with poor calf recruitment, in Unit 22A. With concurrence from ADF&G, the Board chose to limit the harvest to residents of Unit 22A (FSB 1995a).

**Council Recommendation for the Original Closure:**

The Seward Peninsula Subsistence Regional Advisory Council supported Proposal 42 (1995), extending the season dates from Aug. 1–Sept. 30 to Aug. 1–Oct. 10. The Board made the modification to close the October portion of the season to all users, except residents of Unit 22A, as suggested by the State. The Council did not have the opportunity to make a recommendation on this modification; however, the

Council Chair was supportive of the amendment as nonlocal use of the area during October was low (FSB 1995a).

### State Recommendation for the Original Closure:

The Alaska Department of Fish and Game opposed Proposal 42 because the proposal did not indicate users were not being accommodated by current regulations, and the 10-day season extension could result in increased harvest that could adversely impact the low-density moose population. The ADF&G stated that if the Board were to approve the proposal, they should restrict harvest within the 10-day season extension to residents of Unit 22A (FSB 1995a).

### Biological Background

Historically, moose immigrated into the Seward Peninsula in the late 1930s, and by the late 1960s became a resident species due to suitable habitat in Unit 22. Moose populations increased during the 1970s and peaked between 7,000 and 10,000 animals during the 1980s (Gorn 2008). Density independent factors were believed to have caused the population decrease during the 1990s, with several severe winters during that time period (Nelson 1995). Populations within Unit 22 have not recovered to peak levels of the 1980s, with brown bear predation on moose calves being speculated as the main limiting factor (Gorn 2008). Population estimates are only available for Central Unit 22A; however, the confidence interval of the current population estimate (452–639 moose; **Table 1**) overlaps with the management goal of 600–800 moose for all of Unit 22A.

**Table 1.** Population and age class estimates for moose in the Central Unit 22A area during spring, 1989–2012 (Gorn 2010; Gorn 2012, pers. comm.). Population estimates were calculated using the geospatial population estimation technique, except for 1989 when the Gasaway method (Gasaway et al. 1986) was utilized. Short yearlings were defined as moose at 9 to 10 months of age.

Year	Survey area (mi <sup>2</sup> )	Population estimate (± 90% CI)	Density estimate (mi <sup>2</sup> )	Short yearlings (%)
1989	1,124	325 (187–464)	0.29	16%
2003	2,000	75 (46–103)	0.04	15%
2005	2,400	123 (81–164)	0.05	8%
2008	2,400	339 (259–419)	0.14	21%
2012	2,400	545 (452–639)	0.23	19%

### North Unit 22A

Currently, there are no population estimates for North Unit 22A, but short yearling recruitment surveys have been conducted in the Shaktoolik and Ungalik River drainages. Short yearling surveys estimate the proportion of moose in age classes based on minimum population counts. In 2000 and 2003, the

percentages of short yearlings observed during the surveys were 11% and 15% in the Shaktoolik River drainage and 3% and 0% in the Ungalik River drainage, respectively (Gorn 2010). However, only 1 adult moose was observed in the Ungalik River drainage in 2003 (Gorn 2010).

### Central Unit 22A

Surveys were conducted during spring between 1989 and 2012 to estimate the size of the moose population in Central Unit 22A (**Table 1**). Beginning in 2003, surveys estimated moose numbers for the entire Unalakleet River drainage using the geospatial survey technique (Kellie and DeLong 2006). The 1989 survey utilized the Gasaway method (Gasaway et al. 1986) and covered a more limited portion of the Unalakleet River drainage. The moose population appears to have declined between 1989 and 2003, but since has increased (**Table 1**). However, while the population has increased, the density of moose in Central Unit 22A has remained low compared to other areas of Alaska (Gorn 2012, pers. comm.). Low moose numbers and poor recruitment resulted in closures to non-Federally qualified subsistence moose hunting during the winter season in 1995 and all seasons in 2004 in Unit 22A to allow the population a chance to recover.

Managers have assessed recruitment via spring short yearling surveys in Central Unit 22A. Along the main stem of the Unalakleet River, both the total number of moose observed and the percentage of short yearlings observed has been variable (**Table 2**). Throughout the central portion of Unit 22A, recruitment appeared to be similar between 2006 and 2007 despite differences in sightability (due to survey conditions) during the surveys (Gorn 2008). Age class estimates generated by the geospatial population estimation technique were also used to estimate the proportion of short yearlings. During years that population estimation surveys were conducted, recruitment was at or above 15%, except in 2005 when short yearlings represented an estimated 8% of the population (**Table 1**).

**Table 2.** Minimum counts of adult and calf moose observed during spring population composition surveys in areas of Central Unit 22A, 2000–2006 (Gorn 2010).

Area	Year	Adult	Short yearlings	Short yearlings (%)
<b>Unalakleet River (main stem)</b>	2000	77	7	8%
	2003	16	3	16%
	2006	37	13	26%
	2007	70	12	15%
<b>Central portion</b>	2006	137	27	16%
	2007	82	12	13%

Unit 22A remainder

Currently, there is no population estimate for moose in Unit 22A remainder. An aerial moose composition survey was conducted in the Golsovia River drainage (the northern boundary of Unit 22A remainder) in the fall of 2003, and estimated the population composition at 50 bulls:100 cows and 67 calves:100 cows; however, the composition estimate was based on 26 moose (18 adults, 8 calves) observed during the survey.

Short yearling recruitment surveys were conducted in portions of Unit 22A remainder. In 2000 and 2003, 27% and 21% of moose observed in the Golsovia River drainage and 33% and 35% of moose observed in the main stem of the Pikmiktalik River were short yearlings, respectively (Gorn 2010). Few moose (21 to 35 moose) were observed during any of the surveys in Unit 22A remainder (Gorn 2010).

**Harvest History**

The ADF&G harvest ticket database for Unit 22A provides a reasonably accurate summary of harvest by nonresident and non-local Alaska residents, but harvest by local residents is thought to be underreported (Persons 2003, pers. comm.). In addition, the ADF&G Community Profile Database has limited information on moose harvests in Unit 22A. For example, only two years of data (1980 and 2002) is available for the Village of Stebbins (ADF&G 2012). The most complete moose harvest data available for Unit 22A comes from the large mammal harvest surveys conducted by Alaska Department of Fish and Game and Kawerak, Inc. in Shaktoolik during 1999, 2000, and 2003; in Unalakleet in 2002 and 2004; in Stebbins in 2002, and in St. Michael in 2003.

Throughout Unit 22A, the annual reported moose harvest is low compared to other areas of the state; however, unreported harvest is common throughout the unit. The long-term (1983–2010) average annual harvest of 23 moose (**Table 3**) and residents of Unalakleet harvested 55% of the reported moose. Unalakleet residents continue to be the primary user, as they were associated with 67% of all reported moose between 2008 and 2010. Nonlocal residents and nonresidents accounted for 15% and 9% of the reported harvest between 1983 and 2010, respectively; however, harvest for these non-Federally qualified users has been low in recent years (**Table 3**).

North Unit 22A

All Federal public lands in North Unit 22A are closed to moose hunting except for residents of Unit 22A. The reported moose harvest in North Unit 22A is generally low, with an average of 2.9 moose being harvested annually between 1983 and 2010, and most of the reported harvest was associated with residents of Shaktoolik (46%) (OSM 2012). However, residents of Shaktoolik only reported harvesting two moose between 2004 and 2010, which accounted for 13% of the reported harvest during that period. Nonresident hunters accounted for 25% of the reported harvest between 2004 and 2010. The reported harvest should be considered a minimum level as harvest has been underreported. In 1999 Shaktoolik residents reported taking two moose based on the harvest ticket database (OSM 2012), whereas village harvest surveys estimated that 14 moose were harvested in Shaktoolik that year (ADF&G 2012). Likewise, 2 moose were reportedly harvested by Shaktoolik residents in each of the years 2001 and 2003, but village harvest surveys reported that 14 and 10 moose were harvested during those respective years. Most of the Shaktoolik harvest occurs in August and in the northern portion of Unit 22A. Before 1999, there was almost no nonresident harvest in this area.

**Table 3.** Moose harvest by residents of Unit 22A communities and non-local hunters using a State and Federal (Unalakleet residents only) registration permits in Unit 22A, 1983–2010 (OSM 2012).

Community	Mean harvest 1983-2003 (range)	Year						
		2004	2005	2006	2007	2008	2009	2010
Shaktoolik	2.5 (0–5)	0	0	0	1	1	0	0
St. Michael	2.8 (0–6)	2	2	3	5	5	6	6
Stebbins	1.8 (0–4)	0	5	0	4	1	1	1
Unalakleet	14.3 (6–22)	4	0	2	1	14	26	15
Non-local resident	3.7 (0–8)	3	5	7	4	1	0	2
Non-resident	3.0 (0–9)	3	2	4	3	2	0	1
<b>Total annual harvest</b>	<b>24.5</b> <b>(11 – 44)</b>	<b>12</b>	<b>14</b>	<b>16</b>	<b>18</b>	<b>24</b>	<b>33</b>	<b>25</b>

### Central Unit 22A

All Federal public lands in Central Unit 22A are closed to moose hunting except for residents of Unalakleet. Unalakleet residents hunting under Federal regulations reportedly harvested 28 moose between 2008 and 2011 (**Table 4**), which comprised 36–60% of the community’s total reported harvest. In Central Unit 22A, an average of 15 moose was reported to have been harvested each year between 1983 and 2010, and residents of Unalakleet accounted for 81% of the total harvest. Harvest data should be considered a minimum estimate as unreported harvest is common. Residents of Unalakleet reported that 13 moose were taken in 2002 in Central Unit 22A (OSM 2012), while village harvest survey in Unalakleet found that an additional 16 moose were taken but not reported (ADF&G 2012). In 2004, four moose were reported on harvest tickets (OSM 2012), but a village harvest survey estimated five additional moose were harvested (ADF&G 2012). The village harvest survey found that 81% of the harvest took place in September, which is thought to be typical (Persons 2003, pers. comm.). Most moose hunting in the Unalakleet River drainage by residents of Unalakleet occurs upstream of where the Chirosky River enters the Unalakleet, and is on Federal public lands (Ivanoff 2007, pers. comm.).

**Table 4.** Moose harvest data for Federal public lands in Central Unit 22A, which is closed to the harvest of moose except by residents of Unalakleet (OSM 2012). Harvest data was reported by Federally qualified subsistence users as part of the permit requirements for Federal registration permit FM2201.

Year	Permits issued	Permits used	Moose harvested	Harvest success
2008	74	54	5	9%
2009	62	41	10	24%
2010	77	57	9	16%
2011	59	40	4	10%

### Unit 22A remainder

All Federal public lands in Unit 22A remainder are closed to moose hunting except for residents of Unit 22A. The local communities, St. Michael and Stebbins, represented 44% and 19% of the total reported harvest between 1983 and 2010, respectively. Between 2008 and 2010, residents of St. Michael accounted for the majority (76%) of the reported moose harvest in the remainder area. As with other areas of Unit 22A, many harvested moose are not reported. In 2002, four moose were reported harvested by residents of Stebbins based on the harvest ticket database (OSM 2012), but an additional 16 moose were reported in a Stebbins village harvest survey database (ADF&G 2012). In 2003, residents of St. Michael reported two harvested moose (OSM 2012), but the village survey estimated an additional three moose were harvested (ADF&G 2012). The preferred time to hunt in Unit 22A remainder is during the winter because moose habitat is difficult to access before freeze up in this area. Harvest during the fall season is very low.

### **OSM Preliminary Recommendation:**

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

### **Justification**

The status quo is necessary to continue subsistence uses under Section 804 of ANILCA and does not violate the prohibition of ANILCA Section 815(3).

The justification for the original closures in 1995 was based on conservation concerns regarding the decline in the moose population and poor calf recruitment in Unit 22A. The moose population in Central Unit 22A has been increasing since 2003 due to management actions that included closing Federal public lands to all harvest between 2005 and 2008. The closure was partially lifted in 2008 by allowing moose to be harvested on Federal public lands only by residents of Unalakleet. Reported harvests on Federal public lands have been relatively small (< 10 moose per year) in Central Unit 22A, and both reported harvest and harvest success have declined from 2009 to 2011. Current harvest levels have allowed the moose population to increase in Central Unit 22A, and the population is approaching the management objective for Unit 22A. However, the population is still at a low density. The closure to harvesting moose in Central

Unit 22A except for residents of Unalakleet should remain in place to allow the population to continue recovering.

The closures in North Unit 22A and Unit 22A remainder should also remain in place due to the lack of population data. No population estimates are available for either portion of Unit 22A, and recruitment surveys have not been conducted in the areas since 2003.

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**FEDERAL WILDLIFE CLOSURE REVIEW  
WCR12-29**

**Closure Location:** Unit 22D remainder — Muskox.

**Current Federal Regulation**

*Unit 22D remainder – 1 muskox by State Tier II or Federal registration permit (FX2208); however, cows may only be taken during the period Aug. 1 – Mar. 15. Annual harvest quotas and any needed closures will be announced by the Superintendent of the Western Arctic National Parklands, in consultation with ADF&G and BLM. Federal public lands are closed to the harvest of muskox except by Federally qualified subsistence users.*

**Closure Dates:** Aug. 1 – Mar. 15

**Current State Regulations**

<b>Species and Bag limits—Muskox</b>	<b>Permit/Ticket Required</b>	<b>Open Season</b>
<i>Unit 22D Remainder</i>	<i>TX102</i>	<i>Aug. 1 – Mar. 15</i>
<i>Residents: One bull by permit</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. During the April 1995 Federal Subsistence Board meeting, 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. Additionally, Federal public lands in each subunit were closed to non-subsistence hunting of muskox. .

Proposal 51 (1996) – submitted by the Seward Peninsula Subsistence Regional Advisory Council, requested an increase in the harvest quota for muskox in Unit 22D from 2 to 12. The Federal Subsistence Board adopted the proposal with modification at its April 1996 meeting to change the harvest quota from 2 to 8 muskox, which was more in line with the three percent sustainable harvest rate established for the species in other Units on the Seward Peninsula.

Proposal 89 (1998) – submitted by the Seward Peninsula Subsistence Regional Advisory Council, requested that the muskox season start a month earlier on Aug. 1 and be extended for two months later to Mar. 31 for Unit 22D, Unit 22E, and Unit 23 SW, with a harvest limit of one bull by Federal registration permit. The hunt would be closed when 8 bulls had been harvested. The proposal was adopted with modification by the Federal Subsistence Board at its May 1998 meeting to close the season Mar. 15 due to biological concerns for the species.

Proposal 99-46 – submitted by the Seward Peninsula Subsistence Regional Advisory Council, requested that the Federal muskox season in Unit 22D, Unit 22E and 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 00-56 – submitted by Grace Cross, Chair of the Seward Peninsula Subsistence Regional Advisory Council, requested that the separate Federal harvest permits for BLM and NPS lands for muskox in Unit 22D be eliminated, and that one permit be issued for all Federal public lands within the unit. The proposal was adopted with modification by the Federal Subsistence Board at its May 2000 meeting, eliminating the separate Federal harvest permits and transferring six of the permits into the State Tier II system.

WP01–35 – submitted by the Seward Peninsula Muskox Cooperators Group, requested a change to the harvest limit in Unit 22D remainder from one bull to one muskox, additionally no more than 13 cows could be harvested, and the total combined harvest would not exceed 32 animals. The proposal was adopted by the Federal Subsistence Board at its May 2001 meeting.

WPA02–37 – submitted by the Seward Peninsula Subsistence Regional Advisory Council, requested revision of the Federal subsistence muskox harvest in Units 22B, 22D, 22E, and 23 SW and that the Superintendent of the Western Arctic National Parklands would be authorized to announce annual harvest quotas and any needed closures in consultation with ADF&G and BLM. The proposal was adopted by the Federal Subsistence Board at its May 2002 meeting.

WP04–71 – submitted by Thomas Sparks, requested that the customary and traditional use determination for muskox for Units 22B and 22D be expanded to include all residents of Unit 22, excluding residents of St. Lawrence Island. The proposal was adopted with modification by the Federal Subsistence Board at its May 2004 meeting to add residents of Unit 22C and 22B west of the Darby Mountains and residents of Unit 22C and White Mountain to Unit 22D in the Kougarok, Kuzitrin and Pilgrim River drainages.

WP06–41 – submitted by the Seward Peninsula Muskoxen Cooperators Group, requested the use of a designated hunter permit for muskoxen in Unit 22. The proposal was adopted by the Federal Subsistence Board at its May 2006 meeting.

WP10-73 – submitted by the Seward Peninsula Subsistence Regional Advisory Council, requested expansion of the customary and traditional use determination for muskoxen in all of Unit 22D to add residents of Units 22B west, 22C, and 22E. The proposal was adopted with modification by the Federal Subsistence Board at its May 2010 meeting to add all residents of Unit 22B, with no distinction between east and west.

In 2011 the Alaska Board of Game adopted Proposal RC34 (A) making the muskox hunting regulation in Unit 22D part of a threshold-based hunt regime conditioned on the harvestable portion available in Units 22B, 22C, 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 23SW for 2012-2013 regulatory year because the harvestable portion was below ANS.

**Closure last reviewed: 2008 - WCR08-29**

**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 Federal Subsistence Boards' intent was to provide a subsistence priority for Alaskan residents with a positive C&T determination for muskox.

**Council Recommendation for the Original Closure:**

Proposal 44 (1995): Seward Peninsula Subsistence Regional Advisory Council recommendation - Support; Northwest Arctic Subsistence Regional Advisory Council recommendation - No recommendation for Unit 22.

**State Recommendation for the Original Closure:**

Neutral - Although ADF&G agreed with the intent of the 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 direct comments about the closure were made.

**Biological Background**

In 2010, 878 muskox were counted in Unit 22D, comprising approximately 30% of the total number of muskox on the Seward Peninsula core expanded area (n = 2903). In Unit 22D remainder, the total number of muskox counted was 481 or 17% of the population (Gorn 2011).

Muskox management on the Seward Peninsula is guided by recommendations from the Seward Peninsula Muskox Cooperators Group (SPMCG). 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) and were updated in 2011 to more accurately reflect current management and population status for the species (Gorn 2011):

- Allow for continued growth and range expansion of the Seward Peninsula muskox population.
- 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 system in Unit 22B and 22C for viewing, education, and other non-consumptive 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.

The ADF&G management objectives include:

- Complete censuses at 2-year intervals to document changes in population and distribution.
- Complete composition surveys on a biennial basis on the Seward Peninsula to document changes in age and sex structure of the population.
- Participate in the Muskox Cooperators Group meetings and facilitate exchange of information and ideas among agencies and user groups.

The muskox population in Unit 22D more than doubled in size between 1992 and 1998 (**Table 1**). The population leveled off between 2002 and 2005 and decreased somewhat in 2007. ADF&G completed 5 minimum counts in Unit 22D between 1998-2007 that averaged 760 animals. Results from 2010 surveys showed some growth in the population, but movement of animals between units may be responsible for the observed increase and not indicative of growth. The growth rate of the muskox population on the Seward Peninsula has changed significantly in recent years. Between 1970 and 2000, the population in the core count area grew at an annual rate of 14%, but since 2007, the annual growth rate has been 3.8% (Gorn 2011). Recent surveys conducted in March of 2012 showed a 28% decrease from 2010 numbers for muskox in 22D remainder (Gorn 2012).

**Table 1.** Muskox census numbers for Unit 22 and Unit 22D, 1992-2012 (Gorn 2011).

<b>Year</b>	<b>Unit 22 muskox population estimate</b>	<b>Unit 22D muskox population estimate</b>
<b>1992</b>	706	340
<b>1994</b>	926	405
<b>1996</b>	951	308
<b>1998</b>	1432	714
<b>2000</b>	1797	774
<b>2002</b>	2050	771
<b>2005</b>	2387	796
<b>2007</b>	2688	746
<b>2010</b>	2903	878

## Harvest History

Harvest of muskox in Unit 22D was originally only by Federally qualified users. As muskox numbers increased, a State Tier II harvest was added in regulatory year 1998/99. In January of 2008, the Alaska Board of Game ended the Tier II permit hunt in several units on the Seward Peninsula, including Unit 22D and adopted regulatory changes that created a combination of Tier I registration permit hunts and drawing permit hunts (Gorn 2011). Between 2001 and 2011, the average muskox harvest in Unit 22D under State regulations has been approximately 34 animals, while the annual Federal harvest has never exceeded 2 animals in this time period (**Table 2**). The State registration permit hunt RX104 in Unit 22D remainder has been closed by emergency order three times since 2008 due to the harvest quota being reached early. In April 2012, the hunt in Unit 22D was changed from Tier I to Tier II, due to a decline in the muskox population.

**Table 2.** Unit 22D muskox harvest 2001-2011 (Gorn 2012, pers. comm. USFWS 2012)

Year	Harvest Quota	State Harvest	Federal Harvest
2001-2002	39	29	0
2002-2003	38	27	0
2003-2004	38	31	2
2004-2005	38	18	1
2005-2006	40	32	0
2006-2007	45	36	0
2007-2008	41	35	1
2008-2009	43	33	0
2009-2010	43	43	0
2010-2011	52	58	0

### OSM Preliminary Recommendation:

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

### Justification

Although the muskox population in Unit 22 continued to grow during the 1990s, the rate of increase leveled off beginning in 2002. Since 2010, surveys have shown a significant decline in muskox numbers within 22D remainder. Federal harvest continues to be low and hunt management is becoming more conservative due to population declines. The status quo is necessary to continue subsistence uses under Section 804 of ANILCA and does not violate the prohibition of ANILCA Section 815(3). Maintaining the status quo is consistent with sound management principles and the conservation of healthy wildlife populations.

**Literature Cited**

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## **GUIDANCE ON ANNUAL REPORTS**

### **Background**

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

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

### **Report Content**

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

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

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

### **Report Clarity**

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

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

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

### **Report Format**

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

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

**Seward Peninsula Subsistence Regional Advisory Council**

c/o U.S. Fish and Wildlife Service  
Yukon Delta National Wildlife Refuge  
Office of Regional Council Coordinator  
P.O. Box 346  
Bethel, Alaska 99559

Phone: 907-543-1037 or 1-800-621-5804 Fax: 907-543-4413

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

Dear Mr. Towarak:

The Seward Peninsula 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 Nome, Alaska on October 3-4 2012, the Council identified concerns and recommendations for its FY 2012 report. The report was then finalized and approved by the Council at its March 20-21, 2013 meeting in Nome. The Council understands and supports the importance of addressing fish and wildlife resource topics annually, expressing its concerns, and addressing long term planning needs that are not addressed through the regulatory cycles throughout the year. The Council looks forward to your continued guidance and support on the topics listed below.

Issue 1: Fisheries Research Needs in the Seward Peninsula

There are multiple land ownership boundaries in the Seward Peninsula region which makes it difficult to identify priority and appropriate fish and wildlife research needs. The Council has brought up the continuously declining salmon fisheries in the Norton Sound/Seward Peninsula region since the early 1990s. In the Seward Peninsula coastal region marine fisheries are managed by the State of Alaska and the Federal agencies outside of three miles from the coastal shoreline. The North Pacific Fishery Management Council is one of the Federal agencies that manage fisheries in marine waters. Inland fisheries are managed by multiple landowners and conservation unit land managers on privately owned and public lands. Council realizes that, no matter who manages salmon fisheries resources in the Seward Peninsula region, there is a definite need for salmon fisheries research and study project in the Seward Peninsula region in effort to enhance salmon returns to all of the salmon spawning streams and habitats within the Seward Peninsula region.

Recommendation:

The Council has previously discussed in the past apparent declines of salmon species that returns to the Seward Peninsula region to spawn. The Council has come to realize that it has come to the point that all salmon fisheries management agencies need to work cooperatively and they need to propose research and study funding for much needed salmon fisheries research in the Seward Peninsula. The Council strongly hereby recommends that the Federal Subsistence Board, the Bureau of Land Management, the National Parks Service, the U.S. Fish and Wildlife Service, and all interested agencies and organizations cooperatively put together a study and research funding proposal, identifying causes of salmon declines in the Seward Peninsula. Funding salmon research and studies in this region is very important to all of the user groups because without doing much needed research project and studies, it would seem to the

users that conservation unit management agencies and organizations are ignoring the effects of salmon decline because research and study results would be important to the resource user groups.

#### Issue 2: Wildlife Research Needs in the Seward Peninsula

In the past there were sufficient numbers of reindeer that provided food for a lot of users in the region. Reindeer herds had declined ever since because some of the reindeer herds were reported missing as they walked off with caribou herds during migration through this region. In the 1980s, there were also sufficient numbers of moose in the Seward Peninsula region and approximately 400 moose were harvested annually at that time by all of the user groups. After the reindeer herds declined in the Seward Peninsula region, moose became one of the important parts of the subsistence user group's diet. In the last couple of years, there have been moose hunting closures put into place due to insufficient numbers of animals for harvest in subunits within Unit 22. These closures caused alternative hunting for other subsistence resources which are not immediately available to be harvested by the subsistence hunters. Unavailable subsistence resources contribute to heightened unnecessary expenses incurred by hunters.

#### Recommendation:

On behalf of the subsistence users, the Council recommends that the Federal Subsistence Board work closely with the Federal agencies that manage Federal public lands and the State of Alaska to provide increased opportunity for subsistence harvest of moose in times of hardship within Unit 22. The decline of reindeer and moose in parts of Unit 22 caused hardship due to increasing cost of living in the region. Subsistence users are those most affected by increasing cost of living due to limited or no income availability in the region.

#### Issue 3: Conduct Inventory of Salmon Spawning Habitats in the Headwaters of Streams and Rivers

The Council is very much aware of salmon that are spawning in non-navigable headwaters of the streams and rivers within the Seward Peninsula region. Drainages such as Niukluk River and Fish River drainages are identified as two of the important salmon spawning rivers in the region. The Council is concerned that some of the important salmon spawning habitats are not identified or have been overlooked in the past by fishery resource managers. With ever declining salmon returns to the Seward Peninsula region, salmon habitats need to be identified so cooperative fisheries research and study projects can be proposed in the future.

#### Recommendation:

The Council recommends that the Federal Subsistence Board consider funding a feasibility study to identify important salmon spawning habitats in the headwaters of all streams and rivers in the Seward Peninsula region. The Council further recommends that should crossover management boundaries prevents further studies, the Federal Subsistence Board continue to allow a joint studies and research with appropriate land management agencies and/or organizations in the Seward Peninsula region. Allowing research studies would benefit all of the user groups and future generations and allow users to enjoy what nature offers seasonally.

If you have questions about this report, please contact me via Alex Nick, Regional Council Coordinator, with the Office of Subsistence Management at 907-543-1037 or 1-800-621-5804.

Sincerely,

Louis H. Green, Jr., Chair  
Seward Peninsula Subsistence  
Regional Advisory Council

cc: Federal Subsistence Board  
Seward Peninsula Subsistence Regional Advisory Council

DRAFT



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

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Mr. Louis H. Green, Jr., Chair  
Seward Peninsula Subsistence  
Regional Advisory Council  
P.O. Box 1890  
Nome, Alaska 99762

Dear Mr. Green:

This letter responds to the Seward Peninsula 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: Federal Budget Cuts**

*There has been a great deal of discussion about forthcoming cuts, but there has not been clear information disseminated as to how significant those cuts will be or how they will affect the Federal Subsistence Management Program. We, as well as people in this region, are concerned about how budget cuts will affect this program and the region. The Council is also very concerned about how such cuts will impair its ability to fulfill its obligations under Title VIII of ANILCA and the Federal Advisory Committee Act.*

**Recommendation:** *That the Board do what is necessary to restrict, prevent and ameliorate any further budget cuts that affect the subsistence program and this region. Additionally, this Council suggests that detailed briefings be provided to all the Regional Advisory Councils so that they have a better understanding of exactly what cuts are being made and how they will affect subsistence users.*

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### **Response**

The Board and the Office of Subsistence Management (OSM) continue to give priority to Council meeting activities. Reductions in the U.S. Fish and Wildlife Service budget continue, as a result travel outside of normal Council meetings in the future will be very limited. Specifically, the Office of Subsistence Management has experienced a declining budget since 2001 due to the economy and other factors beyond its control. FY2013 travel budgets may possibly be further reduced by 30% of FY2010 funding levels. 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 them develop a better understanding of what cuts are being proposed and how these cuts will affect the Federal Subsistence Management Program.

### **Issue 2: Restrictions on Customary Trade**

*We have seen several proposals that would place a cash cap on customary trade activities. The Council feels that there are too many regulatory restrictions being placed on customary trade. Rural Alaskans often find it difficult to meet the rising costs in fuel and food, particularly in regions that are for the most part devoid of cash jobs. It is important for subsistence users to have the maximum opportunity to engage in trade of subsistence harvested materials for cash in order to meet the financial challenges of the subsistence way of life.*

***Recommendation:*** *That the Board rejects any proposal that seeks to place a cash cap on customary trade.*

### **Response**

Title VIII of the 1980 Alaska National Interest Lands Conservation Act (ANILCA) recognized customary trade as a subsistence activity (ANILCA Sec. 803). Although undefined in ANILCA, the term "customary trade" was later defined in Federal subsistence regulations as the "...exchange for cash of fish and wildlife resources regulated in this part, not otherwise prohibited by Federal law or regulation, to support personal or family needs, and does not include trade which constitutes a significant commercial enterprise" (36 CFR 242.4 and 50 CFR 100.4). The Board has also recognized that the practices and cultures are different around the state and as such allowed for that flexibility. The Board may recognize regional differences and regulate customary trade differently for separate regions of the state (50 CFR 100.27(a)(11) and 36 CFR 27(a)(11)).

In January 2011, the Board reviewed three proposals which attempted to establish regulations of customary trade in the Yukon drainage. FP11-05 was withdrawn at the Board meeting; no action was taken on FP11-09; and FP11-08 was deferred. Discussion of the issues surrounding these proposals led the Board to establish a Tri-Council customary trade subcommittee to further discuss customary trade issues related to Yukon River salmon and to provide recommendations on customary trade regulations to the Board (76 FR 12564 March 8, 2011).

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The Tri-Council subcommittee, composed of three members from the Yukon-Kuskokwim Delta Regional Advisory Council, three members from the Western Interior Regional Advisory

Council, and three members from the Eastern Interior Regional Advisory Council, met on May 18-19, 2011, in Anchorage and again on August 23-24, 2012, in Fairbanks. At both meetings, subcommittee members agreed that low runs of Yukon River Chinook salmon require conservation efforts to extend to customary trade practices. If Yukon River Chinook salmon runs return to prior levels, then limits on customary trade may no longer be warranted.

Based on its discussions, and on a careful review of public input on regulatory changes, the subcommittee developed two recommendations, which were later presented to these Councils for review. The subcommittee strongly preferred the first recommendation, but developed the second to address the issue of a “significant commercial enterprise.”

- 1) Customary trade of Yukon River Chinook salmon may only occur between Federally qualified rural residents with a current customary and traditional use determination.
- 2) Preclude customary trade of Yukon River Chinook salmon between rural residents and others.
  - a. Establish a \$750 limit per calendar year per qualified household;
  - b. Require customary trade recordkeeping and receipt form.

The subcommittee believes that in times of low abundance, Yukon River Chinook salmon should remain within the Yukon River drainage for subsistence uses. It also believes it is important to curtail large customary trades involving Chinook salmon which are reported to occur in urban areas of Alaska and may rise to the level of a significant commercial enterprise, contrary to Federal regulations. By allowing customary trade only between Federally qualified rural residents with a customary and traditional use determination for Yukon River Chinook salmon, the subcommittee hopes that the cultural practice of customary trade will continue, but possibly at a lower level, recognizing the need for conservation. This was the intent of the subcommittee’s preferred recommendation.

There are currently seven customary trade proposals focused on Yukon River Chinook salmon, one of which recommends a \$750 limit on customary trade. Analysis for these proposals will be presented at your fall 2012 meeting, for your discussion and recommendation.

### **Issue 3: Allow Additional Designated Hunter for Each Recipient**

*In Unit 22E on the Seward Peninsula, engaging in a designated hunt for ungulates on Federal public lands can be dangerous because the hunter must travel alone on often unsafe snowmachine trails. The Board should consider whether requiring a hunter to travel alone under such dangerous travel conditions is in the best interest of subsistence users. From November through December, the Bering Sea is usually not frozen solid and is unsafe for traveling. Due to tidal activities in the vicinity of river and stream outflows, the coastal shore is*

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*often not safe for snowmachine or off road vehicle travel. If a subsistence hunter traveling alone while hunting falls through open water or is involved in a snowmachine accident, there usually is no one else around for miles to help. Weather conditions can change without warning in the Seward Peninsula region. As a result of ever changing weather conditions there is always danger of losing life when accidents occur. This is why an alternate designated hunter is needed – to provide backup and support for the designated hunter.*

**Recommendation:** *Currently, Federal and State agencies allow only one designated hunter per recipient to harvest ungulates. The Council hereby recommends the Board provide for an additional designated hunter who would be required to accompany the primary hunter in the field while hunting for one or more recipients. Allowing a designated hunter team to hunt on behalf of one or more recipients would lessen an individual hunter's potential for injuries or fatalities in the field, thus heightening public safety. This also would lessen the cost of any potential fatal accident investigations on Federal public lands. The new and revised designated hunter permits would allow only the primary designated hunter to harvest an animal in the field for recipient(s); the alternate designated hunter would only harvest if the primary hunter is unable to do so due to being incapacitated or disabled in the field. An alternate designated hunter's primary purpose would be for backcountry safety of the primary designated hunter.*

### **Response**

The Board appreciates the Council's concerns with the designated hunter regulations. In order to address these concerns, the Council could submit a proposal to change the designated hunter regulations during the winter Council meeting in 2013. When submitting a proposal regarding designated hunter regulations, the Council should be clear as to whether or not it is a statewide proposal or only for the Seward Peninsula region as well as which species are included in the proposal.

### **Issue 4: Human-Muskoxen Encounters**

*When Muskoxen were introduced in Alaska near established communities in Unit 22, the likelihood and consequences of human-muskoxen interactions were overlooked. Muskoxen easily become habituated, which is problematic, as they are not afraid to confront what they perceive to be physical threats. When the muskoxen population increased in the recent years near villages, they increasingly competed for important subsistence food sources such as berries and other edible plants. As a result, muskoxen have increasingly become a threat to subsistence users on berry picking grounds. Muskoxen have proven to be unpredictable and dangerous in other situations. An incident near Russian Mission about a year ago illustrates this point: when a dog musher's dogs were killed by a lone muskox.*

*State and Federal wildlife regulations prohibit harassment of animals and require that hunters salvage all of the edible meat, hide, and skull when animals are harvested in defense of life and property (DLP). Due to the difficulty of harvesting and transporting the meat of such large*

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*animals, residents are reluctant to take muskoxen in DLP. This increases the likelihood of dangerous human-muskoxen encounters.*

***Recommendation:*** *The Board and the Alaska Board of Game need to revisit wildlife harvest restrictions and place a higher emphasis on safety of qualified subsistence users from harm by wildlife encounters on State and Federal public lands. Threats by muskox and other animals are ever emerging statewide. Allowing more flexibility for a DLP taking of muskox would not harm the population as there continues to be growth in its population numbers. Local advisory committees and Regional Advisory Councils could assist in developing strategies for addressing increased human-muskoxen encounters.*

### **Response**

The Board acknowledges the Council's safety concerns regarding human-muskoxen interactions. Muskoxen have been known to occupy areas in and near populated areas, including villages and camps, which can increase the likelihood of an interaction. Discussions at the Seward Peninsula and Northwest Arctic Council meetings have included resource conflicts between muskoxen and people, difficulties getting muskoxen to move away from areas, and potentially dangerous muskoxen encounters. Encounters with muskoxen often differ from encounters with other ungulate species because muskoxen have a propensity to hold their ground when threatened.

In situations where a muskox 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.* "Harass" is defined under 5 AAC 92.990(70) and *means to repeatedly approach an animal in a manner which results in the animal altering its behavior.* As for salvage requirements for muskoxen taken in DLP situations, the meat and horns would have to be salvaged and surrendered to the State. The hide and skull would not have to be salvaged, as stated by the Council. The Council's recommendation to liberalize the DLP regulations is the responsibility of the State; thus, requests for changes should be taken up directly with the State through the Alaska Board of Game.

An increased number of muskoxen taken in DLP situations, due to more flexible regulations, could be detrimental to the muskox population on the Seward Peninsula, which has recently declined. Due to the decline in muskox groups and low proportions of mature bulls and yearlings in the population, ADF&G recently changed the State muskox hunts in Units 22B, 22C, 22D, and 23 Southwest from Tier I to Tier II hunts. Muskoxen have also substantially declined in Unit 22E; however, the muskox seasons will likely remain in Tier I because the

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amounts necessary for subsistence was lowered from 40–50 to 10–25 muskoxen by the Alaska Board of Game in November 2011 (Adkisson 2012, pers. comm.).

Land management agencies have taken steps to alleviate human-muskoxen problems, which will hopefully decrease the number of instances where DLP situations are necessary. Improving outreach and education may help residents better understand muskox behavior and reduce negative muskox-human interactions. Two cultural exchange workshops were held in late April and early May of this year; one in Mekoryuk, on Nunivak Island, and the other in Nome. The purpose of the workshops was to bring together residents of Mekoryuk and residents of the Bering Strait Region to share knowledge, experience, and evolving traditions of muskoxen related to hunting and utilizing musk oxen, including collecting, processing, and weaving of qiviut. Following the introduction of muskoxen onto Nunivak Island in the 1930s, residents of Mekoryuk initially experienced similar problems to those raised by the Council. However, after years of hunting, which began on Nunivak Island in 1975, muskoxen have become much more wary of humans and tend to avoid the villages; thus, problems have been greatly reduced.

Federal and/or State hunt managers might be able to structure hunts in the various hunt areas on the Seward Peninsula through zoning to increase the proportion of the total allowable harvest coming from areas where most problems occur. Federal and/or State hunt managers might also be able to make it easier to obtain a hunting permit in some situations to provide for the legal harvest and use within existing regulations of what otherwise might end up as a DLP or unreported harvest of a nuisance animal. Harvest options would need to be managed within existing allowable harvest limits and, depending on the specific option, might be implemented through the delegated authority of the hunt manager or through regulatory change. With future human-muskox interactions, timely and detailed incident reporting to the appropriate management agency can help in developing appropriate responses.

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

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

Sincerely,

*/S/ Tim Towarak*

Tim Towarak, Chair  
Federal Subsistence Board

cc: Seward Peninsula 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  
Alex Nick, Council Coordinator, OSM  
Administrative Records



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

## Federal Subsistence Board News Release



Forest Service

### For Immediate Release:

January 14, 2013

### Contact:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 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](mailto:subsistence@fws.gov) with your questions.

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

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## **Wildlife Regulatory Proposal**

To change regulations during the two-year regulatory cycle, submit a request to change the regulations by providing the following information:

- Name
- Organization
- Address
- Phone
- Fax
- E-mail

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, such as sport/recreational and commercial?  
*Please attach any additional information to support your proposal.*

You may submit proposals/comments by one of the following methods:

*Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov> and search for FWS–R7–SM–2012–0104, which is the docket number for this rulemaking.

*By hard copy:* U.S. mail or hand-delivery to: USFWS, Office of Subsistence Management, 1011 East Tudor Road, MS 121, Attn: Theo Matuskowitz, Anchorage, AK 99503-6199, or hand delivery to the Designated Federal Official attending any of the Federal Subsistence Regional Advisory Council public meetings. See “Regional Advisory Councils” (<http://alaska.fws.gov/asm/rac.cfml>) for additional information on locations and dates of the public meetings.

## **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.

Government-to-Government Tribal Consultation Policy

*“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



**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 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 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 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

**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.

## 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"<sup>1</sup> 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.

**Step<sup>2</sup> 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

<sup>1</sup> Department of Interior Policy on Tribal Consultation

<sup>2</sup> 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



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**Step 1 (January - March)**  
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**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 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 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

**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.

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

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January 22, 2013

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

#### **Issue:**

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

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

#### **Background:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Southeast Council Findings:**

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

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

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

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

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

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

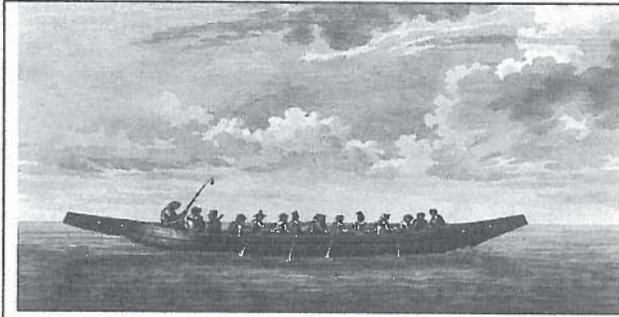
**Action:**

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

**Key Contacts:**

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

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



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

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

***kaadashan@alaska.net***

RAC SE13001.RL

**JAN 11 2013**

Mr. Louis H. Green, Jr., Chair  
Seward Peninsula Alaska Subsistence  
Regional Advisory Council  
P.O. Box 1890  
Nome, Alaska 99762

Dear Mr. Green:

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.

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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

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

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

Gunalchéesh (thank you).

Sincerely,  
/S/

Bertrand Adams Sr., Chair

Enclosures

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

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

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

**PURPOSE**

This policy describes the internal management of the Federal Subsistence Board (Board) and provides explanation to the public regarding the process for making customary and traditional use determinations pertaining to management of hunting, trapping, and fishing on Federal public lands and waters in Alaska. This policy recognizes the unique status of the Regional Advisory Councils and does not diminish their role in any way. This policy is intended only to clarify existing practices under the current statute and regulations. It does not create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its agencies, officers, or employees, or any other person.

**INTRODUCTION**

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

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

## **BOARD AUTHORITIES**

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

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

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

## **POLICY**

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

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

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

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

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

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

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

### **Decision Making**

The Board shall:

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

### **Additional Guiding Considerations:**

The Board recognizes that:

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

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

**Definitions:**

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

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

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

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

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

# Southcentral Subsistence Regional Advisory Council

## Comments on Draft C&T Policy

### Decision Making

The Board shall:

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

Together,

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

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

### Additional Guiding Considerations:

The Board recognizes that:

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

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

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

On Page 3 of the Draft Policy:

**Decision Making**

The Board shall:

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

Chuck Burkhardt  
PO Box 272  
Gustavus, AK. 99826

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

Federal Subsistence Board and Staff:

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

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

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

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

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

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

Respectfully,

Chuck Burkhardt

/S/

To: Theo Matuskowitz and Subsistence Board

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

Re: Customary and Traditional use Policy Draft.

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

Thanks for listening.

Erik Weingarh



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

November 28, 2007

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

RE: Comments on Draft Customary & Traditional Use Policy

Dear Mr. Matuskowitz:

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

#### Purpose

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

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

#### Introduction

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

Board Authorities:

No Comment

## Policy

Paragraph one - No comment

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

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

Paragraph four - No comment

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

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

## Decision Making

Bullet one - No comments

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

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

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

Bullet five - No comments

## Additional Guiding Considerations

No comment

## Definitions

No comment

## Summary

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

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

Thank you for the opportunity to provide these comments.

Sincerely,

/S/

Wilson Justin

Cc MSTC Board  
Elaine Sinyon  
Shawn Sanford



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NINILCHIK TRADITIONAL COUNCIL  
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Web Site: [www.ninilchiktribe-nsn.gov](http://www.ninilchiktribe-nsn.gov)

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November 30, 2007

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

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

Dear Federal Board Members,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,  
/S/

Ivan Encelewski  
NTC Executive Director



## YAKUTAT TLINGIT TRIBE

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

December 7, 2007

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

Subject: Policy on Implementation of Customary and Traditional Use Determinations

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

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

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

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

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

Thank you for the opportunity to respond.

Sincerely,

/S/

Victoria L. Demmert, President  
Yakutat Tlingit Tribe

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



November 28, 2007

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

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

Dear Federal Board Members,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

/S/

Linda Tyone,  
Chairperson



## CENTRAL COUNCIL

*Tlingit and Haida Indian Tribes of Alaska*

ANDREW P. HOPE BUILDING

**Office of the President**

320 W. Willoughby Avenue • Suite 300

Juneau, Alaska 99801-9983

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December 7, 2007

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

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

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

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

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

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

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

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

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

Sincerely,

/S/

  
William E. Martin  
President

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

December 1, 2007

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

RE:    Comments on Draft Customary and Traditional Use Policy

Dear Federal Board Members:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

/S/

Julie Kitka  
President

/chd

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

### OFFICE OF THE COMMISSIONER

SARAH PALIN, GOVERNOR

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December 7, 2007

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

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

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

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

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

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

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

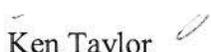
does not provide guidance in the form of procedural steps, identifiable criteria, or analytic thresholds that are necessary to prevent inconsistent and unjustified C&T determinations. The record clearly confirms that such thresholds, criteria, and procedural steps are needed in order to reduce the ongoing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

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

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

Sincerely,

/s/ 

  
Ken Taylor  
Deputy Commissioner

Attachment A: Section Specific Comments on the Draft Policy

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

December 7, 2007, C&T Policy Review  
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)].”

December 7, 2007, C&T Policy Review  
Attachment A, Page 2 of 6

This section of Title I actually states:

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

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

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

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

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

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

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

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

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

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

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### **Decision Making:**

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

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

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

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

### **Additional Guiding Considerations**

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

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

### **Additional Guiding Considerations**

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

### **Definitions**

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

## ATTACHMENT B

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

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

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

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

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

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

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

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

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



December 4, 2007

Theo Matuskowitz  
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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  
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By email : [subsistence@fws.gov](mailto:subsistence@fws.gov)

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

Dear Mr. Matuskowitz:

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

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

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

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

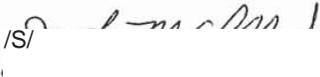
The policy also states that determinations "must be based on a community's long term consistent pattern of use" and that "in all instances, the Board makes a decision based upon the best available information." However, without accountability in the decision making process, it is unclear how the "best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

Theo Matuskowitz

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

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

Thank you for your consideration,



Joe Childers  
President

MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska 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.

# Salmon Bycatch Update

## January 2013

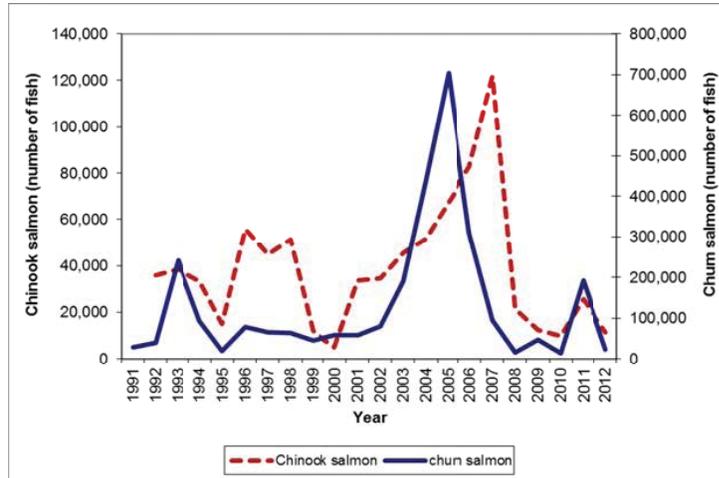


### BACKGROUND & NUMBERS

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

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

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



### CHINOOK SALMON BYCATCH MANAGEMENT: AMENDMENT 91

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

## Salmon Bycatch Update

## January 2013

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

### CHUM SALMON BYCATCH MANAGEMENT

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

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

### WHAT YOU CAN DO TO REDUCE SALMON BYCATCH

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

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 WWW.YUKONSALMON.ORG



YUKON RIVER DRAINAGE FISHERIES ASSOCIATION

**WHEREAS** Chinook and chum salmon provide an essential source of food, income and culture for the people in the \_\_\_\_\_ Regional Advisory Council region, with chum salmon increasingly important for commercial fisheries and subsistence as Chinook salmon decline; and

**WHEREAS** subsistence harvests of Chinook salmon have been severely restricted in recent years, and no directed commercial harvests of Chinook salmon have taken place on the Yukon River; and

**WHEREAS** despite these restrictions the Chinook salmon Canadian escapement goal has only been met in 2 out of the last 5 years and mean run size of Canadian-origin Chinook salmon (which comprise approximately 50% of the run) declined 45% for the period 1998-2010 compared to 1982-1997; and

**WHEREAS** the Board of Fish has recently taken action to restrict subsistence fishing on the first pulse of Chinook salmon as a conservation measure; and

**WHEREAS** the Bering Sea pollock fishery catches these same salmon as bycatch; catching over 122,000 wild Chinook salmon in 2007 and over 700,000 chum salmon in 2005; and

**WHEREAS** according to the best available scientific information half to 70% of the Chinook salmon taken as bycatch are of Western Alaska origin, and of this 40% are from the Yukon River; and

**WHEREAS** the management measures adopted in April 2009 by the North Pacific Fishery Management Council (the Council) provide for a 47,591 bycatch level in most years, with the potential for the fleet to reach 60,000 in two out of every seven years without consequence; and

**WHEREAS** although bycatch has remained well below the cap in recent years, the current management regime allows the potential for the pollock fleet to catch as many as 60,000 Chinook salmon as bycatch; and

**WHEREAS** Chinook salmon bycatch in the pollock fishery is consistently high from October 1 on, and in 2011 over half of the annual bycatch was taken in October and November; and

**WHEREAS** in these times of severe Chinook salmon declines, all sources of mortality must be reduced and all harvesters of salmon must bear equitably in conserving Chinook salmon; and

**WHEREAS** there is currently no limit on chum salmon in the Bering Sea pollock fishery in place;

**THEREFORE BE IT RESOLVED** that YRDFA requests that the North Pacific Fishery Management Council take action immediately to reduce the overall bycatch cap to 30,000 and change the pollock fishing season closing date to Sept. 30 to avoid the consistently high bycatch in October.

**BE IT FURTHER RESOLVED** that YRDFA requests that the North Pacific Fishery Management Council also take action to adopt chum salmon bycatch management measures which will adequately protect Western Alaska chum salmon runs.

# Fall 2013 Regional Advisory Council Meeting Calendar

*August–October 2013 current as of 02/22/13*

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—TBD				
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 02/22/13*

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>
		<b>BB—Naknek</b>				
<i>Feb. 16</i>	<i>Feb. 17</i>  <b>HOLIDAY</b>	<i>Feb. 18</i>	<i>Feb. 19</i>	<i>Feb. 20</i>	<i>Feb. 21</i>	<i>Feb. 22</i>
		<b>SC—Anchorage</b>				
<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**

**Seward Peninsula Subsistence Regional Advisory Council**

**Charter**

1. **Committee's Official Designation.** The Council's official designation is the Seward Peninsula 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. Make recommendations on determinations of customary and traditional use of subsistence resources.
    - f. Make recommendations on determinations of rural status.
    - g. Provide recommendations on the establishment and membership of Federal local advisory committees.
5. **Agency or Official to Whom the Council Reports.** The Council reports to the Federal Subsistence Board Chair, who is appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture.
6. **Support.** The U.S. Fish and Wildlife Service will provide administrative support for the activities of the Council through the Office of Subsistence Management.
7. **Estimated Annual Operating Costs and Staff Years.** The annual operating costs associated with supporting the Council's functions are estimated to be \$100,000, including all direct and indirect expenses and .75 staff years.
8. **Designated Federal Officer.** The DFO is the Subsistence Council Coordinator for the region or such other Federal employee as may be designated by the Assistant Regional Director – Subsistence, Region 7, U.S. Fish and Wildlife Service. The DFO is a full-time Federal employee appointed in accordance with Agency procedures. The DFO will:
  - Approve or call all of the advisory committee's and subcommittees' meetings,
  - Prepare and approve all meeting agendas,
  - Attend all committee and subcommittee meetings,
  - Adjourn any meeting when the DFO determines adjournment to be in the public interest, and
  - Chair meetings when directed to do so by the official to whom the advisory committee reports.
9. **Estimated Number and Frequency of Meetings.** The Council will meet 1-2 times per year, and at such times as designated by the Federal Subsistence Board Chair or the DFO.
10. **Duration.** Continuing.
11. **Termination.** The Council will terminate 2 years from the date the Charter is filed, unless, prior to that date, it is renewed in accordance with the provisions of Section 14 of the FACA. The Council will not meet or take any action without a valid current charter.

**12. Membership and Designation.** The Council's membership is composed of representative members as follows:

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

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

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

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

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

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

**14. Subcommittees.** Subject to the DFO's approval, subcommittees may be formed for the purposes of compiling information or conducting research. However, such subcommittees must act only under the direction of the DFO and must report their recommendations to the full Council for consideration. Subcommittees must not provide advice or work products directly to the Agency. The Council Chair, with the approval of the DFO, will appoint subcommittee members. Subcommittees will meet as necessary to accomplish their assignments, subject to the approval of the DFO and the availability of resources.

15. **Recordkeeping.** Records of the Council, and formally and informally established subcommittees or other subgroups of the Council, must be handled in accordance with General Records Schedule 26, Item 2, or other approved Agency records disposition schedule. These records shall be available for public inspection and copying, subject to the Freedom of Information Act, 5 U.S.C. 552.

//Signed//

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Secretary of the Interior

DEC - 2 2011

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Date Signed

**DEC 03 2011**

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Date Filed