

SEWARD PENINSULA Federal Subsistence Regional Advisory Council



Coastline near Nome, Alaska.

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Meeting Materials
October 3–4, 2012
Nome, Alaska

What's Inside

Page

1	Agenda
4	Roster
5	February 2012 Meeting Minutes
14	Proposal Review Procedures
15	Northern-Yukon Area Maps
18	FP13-02
25	FP13-03
41	FP13-06/07/08
62	FP13-09/10
72	FP13-11
79	FP11-08
112	Briefing on Memorandum of Understanding
126	Draft 2014 Fisheries Resource Monitoring Program Priority Information Needs
133	BLM Announcement of Scoping Period for Hunting Guide Capacity Study
134	Regulatory Cycle Review Briefing
138	Guidance on Annual Reports
140	Charter
144	OSM Briefings
163	Meeting Calendars

SEWARD PENINSULA SUBSISTENCE REGIONAL ADVISORY COUNCIL

Aurora Inn Conference Room — Nome, Alaska

October 3–4, 2012

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

DRAFT AGENDA

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

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

*Asterisk identifies action item.

1. Call to Order (Chair)	
2. Roll Call and Establish a Quorum (Secretary)	4
3. Welcome and Introductions (Chair)	
4. Review and Adopt Agenda*(Chair)	1
5. Review and Approve Previous Meeting Minutes* (Chair)	
A. February 2011 draft meeting minutes	
B. February 2012 draft meeting minutes	
6. Reports	
A. Chair’s report	
B. Council member reports	
7. Public and Tribal Comment on Non-Agenda Items	
8. Federal Subsistence Regulatory Proposals	
A. 2012 Fishing Season Review for Yukon and Kuskokwim Rivers (ADF&G and USFWS)	
B. FP13-02: Revise marking of subsistence caught fish	18
C. FP13-03: Revise harvest limit	25
D. FP13-06, 07 and 08: Chinook — Revise customary trade regulations to only allow trade between Federally qualified users with customary and traditional use determination	41
E. FP13-09/10: Chinook — Prioritize use of Chinook salmon	62
F. FP13-11: Chinook — Define “significant commercial enterprise” as sales exceeding \$750 Per household	72

G. FP11-08: Chinook salmon — Prohibit customary trade of salmon in the Yukon River Fisheries Management Area	79
9. Council’s Comments on State Wildlife Proposals*	
A. Proposal 41 — 5 AAC 85.045(a)(20). Hunting seasons and bag limits for moose.	
B. Proposal 40 — 5 AAC 85.045(a)(16). Hunting seasons and bag limits for moose.	
C. Proposal 44 — 5 AAC 92.015(a)(4), (8), (9) & (13), and 92.015 (b) (4), (7), (8) & (10) Brown bear tag fee exemptions. Reauthorize the current resident tag fee exemptions for brown bear in Units 18, 22, 23, and 26A	
D. Proposal 109 — 5 AAC Chapter 85. Season and bag limits.	
10. Old Business (Chair)	
A. Review the draft Memorandum of Understanding between Federal Subsistence Board and State of Alaska and develop comments/recommendations (<i>Sandy Rabinowitch</i>)*	112
11. New Business (Chair)	
A. Discussion of open Council Application/Nomination Period and outreach to increase number of applications/nominations for Regional Advisory Council membership	
B. Review Board’s Annual Report Reply	
C. Fisheries Resource Monitoring Program Priority Information Needs (<i>OSM Fisheries</i>) *	126
D. BLM Hunting Guide Capacity Study — comments and recommendations for scoping*	133
E. Regulatory Cycle Review — comment and recommendations*	134
F. Identify FY2012 Annual Report Topics*	
G. Council Charter Review*	140
12. Agency Reports	
A. OSM.....	144
1. Staffing Update	
2. Budget Update	
3. Council Membership Application/Nomination Update	
4. Rural Determination Process and Method Review	
5. Briefing on Consultation Policies	
B. NPS	
C. BIA	
D. BLM	
E. ADF&G	
F. Native Organizations	
13. Future Meetings	163
A. Confirm date and location of winter 2013 meeting (Feb. 12 – 13, 2013 in Nome)*	

B. Select date and location of fall 2013 meeting*

14. Closing Comments

15. Adjourn (*Chair*)

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

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
1	2005 2011	<i>Vacant</i>
2	2005 2012	<i>Vacant</i>
3	2010 2013	Louis H. Green Jr. Nome, Alaska 99762
4	1995 2013	Peter Garfield Buck White Mountain, Alaska 99784
5	1994 2012	Elmer K. Seetot Jr. Brevig Mission, Alaska 99785
6	2010 2013	Tom L. Gray Nome, Alaska 99762
7	2008 2013	<i>Vacant</i>
8	2011 2014	<i>Reggie K. Barr</i> <i>Brevig Mission, Alaska 99785</i>
9	2008 2014	Fred D. Eningowuk <i>Shishmaref, Alaska 99772</i>
10	2010 2012	Timothy Edwin Smith Nome, Alaska 99762

SEWARD PENINSULA SUBSISTENCE REGIONAL ADVISORY COUNCIL

Meeting Minutes
February 7, 2012
Aurora Inn
Nome, Alaska

Meeting was called to order by Mr. Michael Quinn, Chair

Roll call was taken by Mr. Peter G Buck, Secretary

Members Present:

Michael H. Quinn
Reggie K. Barr
Peter G. Buck
Louis L. Green
Anthony M. Keyes, Jr. (telephone)
Emer K, Seetot, Jr.
Timothy E. Smith

Members Absent:

Fred D. Eningowuk, excused
Tom L. Gray, excused

Meeting Participants

Alex Nick, Carl Johnson, Helen Armstrong, Don Rivard (telephone) OSM;
Fred Tocktoo, Ken Adkisson, Sandy Rabinowitch, NPS; George Pappas, Tony Gorn, Letty
Hughes, ADF&G ; Dan Sharp, BLM; Chuck Fagerstrom, Sitnausak Corporation; Tina Hile;
Glenn Chen, BIA

Welcome

Mr. Michael Quinn gave welcoming remarks and welcomed Mr. Reggie K. Barr, a new Council member from Brevig Mission, to Council membership.

Review and Adoption of draft agenda

Council reviewed draft agenda and Chair Mike Quinn recommended Council election of officers be moved between agenda items 12 and 13. This would make it easier for Council to do its business first before Council elects its officers.

Motion

Mr. Tim Smith made a motion to move election of officers between agenda items 12 and 13. Seconded by Peter Buck. Motion carried.

Motion

Mr. Elmer Seetot, Jr. made a motion to adopt agenda as revised. Motion was seconded by Mr. Tim Smith. Motion carried.

Election of Officers

Note: Council officer elections took place near the conclusion of Council meeting

Council elected its officers for Fiscal Year 2012 and election results are as follows:

Mr. Louis Green Jr., Chair
Mr. Timothy E. Smith, Vice Chair
Mr. Peter G. Buck, Secretary

Review and Approval of Previous Minutes

a. Minutes from February 2011 meeting (Deferred)

Alex Nick reported the corrections requested on the draft minutes from February 2011 Council meeting are still pending because Mr. Tim Smith and Mr. Nick have not had chance to worked on the corrections. Mr. Nick and Mr. Smith are planning to work on the corrections on a later date.

b. Minutes from September 21-22, 2011 meeting

The Council reviewed draft minutes from September 21-22, 2011 page by page for any corrections needed. Upon conclusion Council of its review, Council took following action.

Motion

Mr. Louis Green made a motion to adopt the minutes from September 21-22, 2011 as written. Motion was seconded by Mr. Peter Buck. Motion carried.

805(c) Report

805(c) report is being drafted and is not signed by the Federal Subsistence Board Chair. Council Coordinators are to draft 805(c) letters and have the letter signed by Federal Subsistence Board Chair before it is sent to the Council members.

Ms. Helen Armstrong updated Council about the Federal statewide wildlife proposals the Federal Subsistence Board reviewed during its meeting on January 17-20, 2012 meeting. Ms. Armstrong also updated Council the Federal Subsistence Board's action on the Seward Peninsula regional proposal WP12-61. The proposal requested reduction of wolf harvest limit and the proposal failed.

Public comment on non-agenda items

Mr. Chuck Fagerstrom with the Sitnasuak Corporation provided public comments relating to Sitnasauk business. In 2012 Sitnasuak Corporation plans to advocate for enhancement of fish species in the Seward Peninsula region. The corporation plans to be communicative and cooperative with the Federal and State agencies. Corporation met with Nome Eskimo Community and the meeting was intended to reach an agreement how the two organizations could work together. There are seven drainages within the Seward Peninsula region but other regional activities could impact other region's areas. Mr. Fagerstrom went on and identified place names and locations of the drainages that drains into the Norton Sound. Sitnasuak Corporation plans to meet with Mr. Tim Smith and Mr. Charlie Lean with the Norton Sound Economic Development Corporation (NSEDC) in the future. Mr. Fagerstrom and Council members exchanged much information during Mr. Fagerstrom's presentation. Important impacts in the region could be caused by increased beaver populations, natural disasters, and human caused impact on the drainages such as water and sewer disposals that could leak into some of the drainages. Other factors that may have an impact on salmon spawning streams could be contamination such as Japan Nuclear power plant radiation that could possibly going be carried from Japan to the Alaska's Ocean.

Tribal Consultation

Ms. Helen Armstrong with the Office of Subsistence Management informed the Council this is the opportunity for Tribal councils and the Alaska Native Claims Settlement Act (ANCSA) corporations to comment on the Federal regulatory proposals. The copy of the tribal consultation policy update is located on page 16 of Council's workbook that can be discussed by the Council later during the meeting.

Regulatory proposals

Ms. Helen Armstrong informed the Council that there are not many places within the Seward Peninsula region that are being managed by the Federal agencies, thus limiting the authority of the Federal Subsistence Board to enact regulations regarding the harvest of fish. The Council asked if it would become necessary to submit Federal fishery proposals, would someone be able to submit any Federal fisheries before regulatory change proposal deadline. Answer was yes they could. Council concluded should it become necessary to submit a Federal regulatory change proposal, someone from the region would submit a regulatory change proposal.

Old Business

2011 Draft Annual Report

The Council reviewed the draft 2011 Annual Report and noted there were two additional issues that needed to be added. The first issue was a recommendation on the Customary Trade limit in the Yukon River drainage. Mr. Mike Quinn directed Council members Mr. Tim Smith and Mr. Louie Green to work on the additional issues for the Customary Trade to be included in the Draft 2011 Seward Peninsula Annual Report. Second issue was that the Council wanted to add to its annual report concerns that the Federal budget cuts that may have an impact on the Council business and Council's roles and responsibilities.

New Business

A. Gates of the Arctic Subsistence Resource Commission Proposal Regarding Per Diem (Hunting Plan 11-01)

Sandy Rabinowitch with NPS referred to page 56 on the Council's workbook. Mr. Rabinowitch indicated there are two kinds of commissions set up under Alaska National Interests Lands Conservation Act (ANILCA), the Federal regional advisory councils (ANILCA Section 805) and the subsistence resource commissions (ANILCA Section 808). Each National Park and National Monument where subsistence activities are allowed has Subsistence Resource Commission, or SRC, and there are seven SRCs in Alaska. They are authorized to make hunting plan recommendations to the Secretary of the Interior. This request is from the Gates of the Arctic Subsistence Resource Commission. In 2011, the Gates of the Arctic Subsistence Resource Commission recommended to the Secretary there should be an increase in the amount of per diem rates for the SRCs and the regional advisory councils. When SRCs makes recommendations, their recommendations are presented to the regional advisory councils and this is to avoid future disagreements. This proposal would cover both SRC and RAC per diem increase. In Seward Peninsula region there is no Subsistence Resource Commission. In other regions like Western Interior and the Eastern Interior Regional Advisory Councils, Councils appoints SRC members because of the regional land management status. The Secretary, the Governor of Alaska and Councils makes appointments to SRC membership where appropriate. At least one Council member did not know SRCs exists within NPS regions. It was explained by NPS staff that in some regions such as the Seward Peninsula region there are not Subsistence Resource Commissions.

Agency Reports

A. OSM

Ms. Helen Armstrong with OSM gave an update on OSM updates. The Federal Subsistence Board has published proposed regulations to increase the number of the Federal Subsistence Board to add two public members who are subsistence users. There was application period and appointments were made to add two new members but the information received who new FSB members are did not meet book production deadline. Two new FSB members appointed on January 27, 2012. The new Board members are Charlie Brower of Barrow and Anthony Christianson of Hydaburg.

The Board proposed to the State that they have a joint working group to work on revising the Memorandum of Understanding (MOU). They now have joint MOU working group that had several meetings and the group is expected to report to the Board at its May 2012 meeting.

There' has been decision by the Board to address rural determination process, which defines which communities are rural and presents those recommendations for regulatory changes. During its January 2012 meeting, the Board discussed this and decided to publish a proposed rule to solicit comments from the public on the rural determinations. In the near future the regional advisory councils will be asked to provide some comments. Last time when the Board took this up they decided Saxman would no longer be rural and would become nonrural. There has been continuing controversy over Saxman being in nonrural status. As part of the Secretarial review process, the public has asked that Saxman's nonrural status be reconsidered and now it is being reexamined by the Board.

US Fish and Wildlife Service has a program called Student Career Employment Program (SCEP). That program is being changed to Pathways. Fish and Wildlife Service is pushing for student hire to support science students in their studies. There is going to be anthropologist hired under this program. Currently applications are being reviewed. Ms. Kay Larson-Blair originally from Dillingham area was one of the first SCEP students. A Council member had a concern about effect on the Council business when some of the past OSM staff like Ms. Barbara Atoruk and Ms. Ann Wilkinson retired. There should be recognition for all of their efforts on behalf of the Council.

B. USFWS

No report

C. NPS

Mr. Sandy Rabinowitch with the National Park Service (NPS) Alaska region gave an update on the environmental assessment that has been just completed related to the collections of antlers, horns, bones, and hoofs of animals on NPS managed public lands. The review is being conducted under the National Environmental Policy Act (NEPA). The public comment period starts on February 7, 2012 and lasts for 60 days. The Environmental Assessment has been released for public review. The NPS is planning to liberalize existing regulations, which prohibit the collection of such items on NPS lands, and allow qualified subsistence collect shed horns and bones and benefit from those collections for personal use. Urban residents would not be qualified to engage in subsistence collections of shed or discarded animal parts and plants. On page 35 of

Council's workbook, NPS asks three questions, on the first bullet question is "Do you need a full copy of the Environmental assessment for comment and review?" Second question is "Which alternative(s) are best for your areas and why? And the last question is "How important would it be for your communities to be able to collect nonedible shed or discarded animal parts and plants from NPS areas to make and sell handicrafts?" NPS is interested to hear from the public which alternatives or collections of alternatives they would prefer. There are four alternates in the document to choose from. National Park Service Regional Director has identified Alternative D as a preferred alternative. After much discussion and information exchange, the Council took following action.

Motion

Mr. Tim Smith moved the Council support Alternative B and to establish a record as to why the Council supports Alternative B. Motion was seconded by Mr. Louis Green.

Mr. Ken Adkisson with Bering Land Bridge National Preserve gave several updates related to that unit's activities. He discussed the newsletter put together by Arctic Network Inventory and Monitoring Program and its contents, identifying a few monitoring efforts and projects that will be ongoing. Due to low staffing levels, NPS integrated to a large degree with the Arctic Network and Inventory and Monitoring Program. NPS staff efforts center around monitoring on the status of key wildlife species such as caribou, muskox, and Dall sheep. NPS called to the Council's attention several matters that NPS will be focusing on this year.

There is going to be an interagency effort to update the muskox population estimate. The Burger-Adams Comparative Muskox Study will be ongoing for one more year in Cape Krusenstern and Bering Land Bridge. The collaring period was extended, so this spring staff will be out collaring several animals. NPS had planned to install four weather stations; three of those went out in the Preserve last summer and fourth one will go out this summer.

There are couple more Environmental Assessments (EAs) NPS is working on, one of which will be an amendment to the general management plan for the Park that will focus on development in the Serpentine Hot Springs area. The other one is Park Service's Environmental Permitting System (PSEPS).

The Bering Land Bridge is moving towards a development of the concession contract guided sport hunting program. NPS contacted several guides in communities and consulted with the communities. Several alternatives were tentatively identified. The NPS expects that a draft environmental document for the program should be ready for public review and comment sometime this summer.

NPS is also working on a long-term range monitoring program in the Preserve – mostly in the Eastern, Central, and Southern parts of the Preserve – that is going to involve putting 18 exclosures out in various locations. This will be done on winter range and high lichen cover range to evaluate the long-term trends and vegetation.

Mr. Adkisson updated the Council on the population levels of wildlife in Unit 22. He noted that there was not much hunting on Federally managed lands because there are not much Federal lands in Unit 22D. A Council member pointed out that the NPS did away with going to the communities of Teller, Brevig Mission, Wales and Shishmaref for the Federal quota and that a majority of hunters now are based out of Nome. He said what was priority hunt is now taken over by other interested hunters that have not yet harvested muskox. In the future the

communities mentioned will experience problems on the availability of wild game meat because there is no indication to revive Federal quota system for mentioned communities. The communities mentioned are predominantly marine mammal hunters but they do harvest land big game other than caribou.

Mr. Adkisson provided other information relating to issuing the Bering Land Bridge hunt permits in Unit 22.

D. BLM

Dan Sharp with the Bureau of Land Management (BLM) provided BLM update. In 2007, the Alaska Department of Natural Resources began reinvigorating its guide concession program and basically divide the state for guide concessions. The BLM plans to establish a guiding concession program parallel to what state initiative is, and will try to come up with a comparable number of guide concessions that will be allowed to operate on BLM lands. Mr. Sharp referred to handouts and indicated that there are numbers of proposed State permitted guided concessions. The State is asking BLM to come up with comparable numbers of guided concessions. BLM is planning to begin the National Environmental Protection Act (NEPA) process to do an environmental assessment, like what NPS is doing on collections of shed antlers as reported by Mr. Rabinowitch. This plan will not address transporters, but rather is intended to address commercial big game guiding on LM lands. BLM is preparing the environmental assessment and it will be available for public comment. At this point, BLM is not permitting any concessions anywhere because of ANILCA and other requirements such as land use plan and BLM is the only Federal agency that has not done NEPA process. BLM permits guides to use BLM managed Federal public lands for business and goes through NEPA evaluation for each permit issued at the field office level. BLM does not have process to do number of concessions to date. There was Kobuk Seward land use plan that was implemented following a record of decision in 2008. The land use plan froze the number of commercial big game guides in the Squirrel River area.

E. ADF&G

Tony Gorn and Letty Hughes with the Alaska Department of Fish & Game (ADF&G) provided an update on muskox permit hunts in Unit 22. Ken Adkisson covered most of the musk ox hunt and there were a few things to add to Adkisson's report. They added information for muskox hunt in Unit 22E; the RX104 hunt. In Unit 22B West, 4 muskox were harvested out of 15 allowed. In 22B East in Koyuk/Elim area, quota was 3 animals and none were harvested. In 22C which was closed and turned into a weapon restricted area, harvest method was changed to shotgun, muzzle loader, and archery for cow harvest. Permits were made available as a first-come first-served basis, and 8 permits were issued. They then discussed the Unit 22D, Kuzitritin and southwest for moose hunt; out of a quota for 54 moose, 44 bull moose were harvested. An emergency order opened the moose hunt on January 1. In Unit 22B West, Darby Mountains there was a winter hunt for eight antlered bulls and two bulls were harvested. In Unit 22A, the moose census will start on February 20, 2012 in the Unalakleet River drainage; residents in Stebbins and St. Michael wondered about moose numbers and had requested census in the past.

Tony Gorn provided an update on the state's consideration of a subsistence muskox hunt. The Board of Game looked at the geographic area used to define the Seward Peninsula muskox population and how that relates to the amounts necessary for developing a subsistence quota number. In the past years it was just defined as the Seward Peninsula and first time the Board took a look at areas like northern 22A and Unit 23 east of Buckland. Now, when harvestable surpluses are discussed it is either Tier II or registration hunts. Although there is no hunt in areas mentioned, the Board of Game defined where animals are going to go. The Board of Game

rewrote the section of muskox code that basically gives the Department flexibility for options to continue a registration hunt or enter into a Tier II hunt scenario. The significant thing the Board of Game did is they lowered Amounts Necessary for Subsistence (ANS) from 40 to 50 down to 10 to 25. This change preserves or produces some type of opportunity for drawing hunt scenarios if harvestable surplus is above 25 in Unit 22E. Historic community harvests were used by the Board of Game to decide amounts necessary for subsistence hunts. In Unit 21, resources are managed cooperatively with Federal agencies like National Park Service and the Bureau of Land Management. Mr. Gorn provided information on the positive customary and traditional use determinations for wolves and ANS information in Unit 22 for ptarmigan. The Board of Game did C&T and ANS for ptarmigan, ANS for ptarmigan is 125 to 900.

F. Native Organizations

There were no Native organization reports. Mr. Peter Buck provided some information on White Mountain Indian Reorganization Act (IRA) Council's Watershed survey that was ongoing in White Mountain for its third year. Results indicated that water temperatures have been rising. Studies included microscopic animals at the bottom of river.

Future Meetings

After discussion of its fall 2012 Council meeting, the Council confirmed it would be held on October 3 and 4, 2012 in Nome, Alaska.

After a brief discussion, Council established its winter 2013 meeting on February 12 and 13, 2013 in Nome, Alaska.

Closing comments

- Mr. Mike Quinn stated he enjoyed being a Council member and he thanked everyone for putting their faith in him while he served as a Chair. He was hoping he have succeeded as a RAC Chair. He said in Game Management Unit 22 things seem to be doing well except there were some fisheries issues. He likes the Federal subsistence management program because it seems to be more responsive and more accurate than that of the State. When there is an increase in the wildlife populations the Federal management provides more subsistence harvest opportunities than that of State management by eliminating closures.
- Mr. Peter Buck thanked Michael Quinn for serving as a RAC Chair. Mr. Buck stated that he did not report on fishery activities that occurred last summer. White Mountain subsistence fishers were fortunate and they did well last summer. They harvested more humpback salmon and other fish and they put away sufficient fish for the winter supply. At this point, the ice in front of White Mountain is broken up and he expects that will have an effect on crab fishing. He didn't think broken ice will affect seal hunting it will probably affect only crab fishing. There are abundant numbers of snow shoe hare in White Mountain area and as a result predators like lynx, red fox, and wolves have increased in numbers in the area we well. Mr. Buck congratulated Mr. Louis Green for becoming a new Chair. Buck said Mr. Green has a lot of respect for his elders.
- Tim Smith commented that he hopes each Council member would talk to the people in the area about the upcoming decisions on chum salmon bycatch in the trawler Pollock fisheries in the Bering Sea. Chum salmon bycatch is getting lot of attention, not as much as that of the Area M interception. Area M was dealt with in the 1990s, and at that time there were lot of people that testified. When the North Pacific Fishery Management Council (NPFMC) held its meeting in Nome there weren't very many people that

testified or talk to the NPFMC members. NPFMC will be dealing with chum bycatch measures in March or April 2012. This meeting is important so people should provide their public comments on chum salmon bycatch. Travel cost to Anchorage is expensive so people should provide their written public comments and submit comments to NPFMC. Highest alternative being considered on chum bycatch is about 325,000 fish and that's more than the amount fishermen in Norton Sound harvested in the past other than the commercial harvest in 1983 that harvested about same amount.

- Mr. Anthony Keyes thanked Mike Quinn for bringing Council more than a mile and opening up new areas and changes for future Council business expectations.
- Mr. Reggie Barr brought up his concern about Chinook salmon in Brevig Mission and Teller including Pilgrim River and Salmon Lake areas. The Alaska Department of Fish and Game needs a better management plan for Chinook in the areas mentioned. He is aware of enforcement efforts in these areas. Muskox is nuisance when it comes to the edible plants in Unit 22. Muskox has an effect on migratory bird populations in the muskox habitat.
- Mr. Elmer Seetot brought up his concern about public and staff attendance of the Council meeting. He said this is the lowest public and staff attendance he has ever seen; public and staff attendance supports the Council's business. Due to the climate change, seals were wintering in freshwater areas such as Imuruk Basin and first time and seals are visibly present in these areas. The confluence of the Kuzitrin River has been important for whitefish harvest under the ice in wintertime. There is a long pattern of use by area communities for this area. At this time there is only two whitefish set nets at the mouth of Kuzitrin River. Unit 22D is important for whitefish harvest and there is a high level of participation in the area. There are some restrictions in place for the subsistence users in the Pilgrim Spring. Seetot believes he and others should not be precluded from use of the area by new land owner because he and others have a long term pattern of use of subsistence resources in that area. Along with other users, he should not be told that he cannot hunt, fish, or gather food in the area.
- Mr. Louis Green thanked the Council for electing him as the new Chair and noted it has been a long time since he served as Chair. He noted that Mike Quinn has made a lot of comments in the past and he is not afraid to say anything on record. He added the Council should follow that as an example, that he considers this the charge of Council members. Should any of the Council members need to talk to other Council members, he encouraged them to do so without hesitation and that would lead to more discussion of issues at the future Council meetings.

Adjourn

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

Alex Nick, DFO

USFWS Office of Subsistence Management

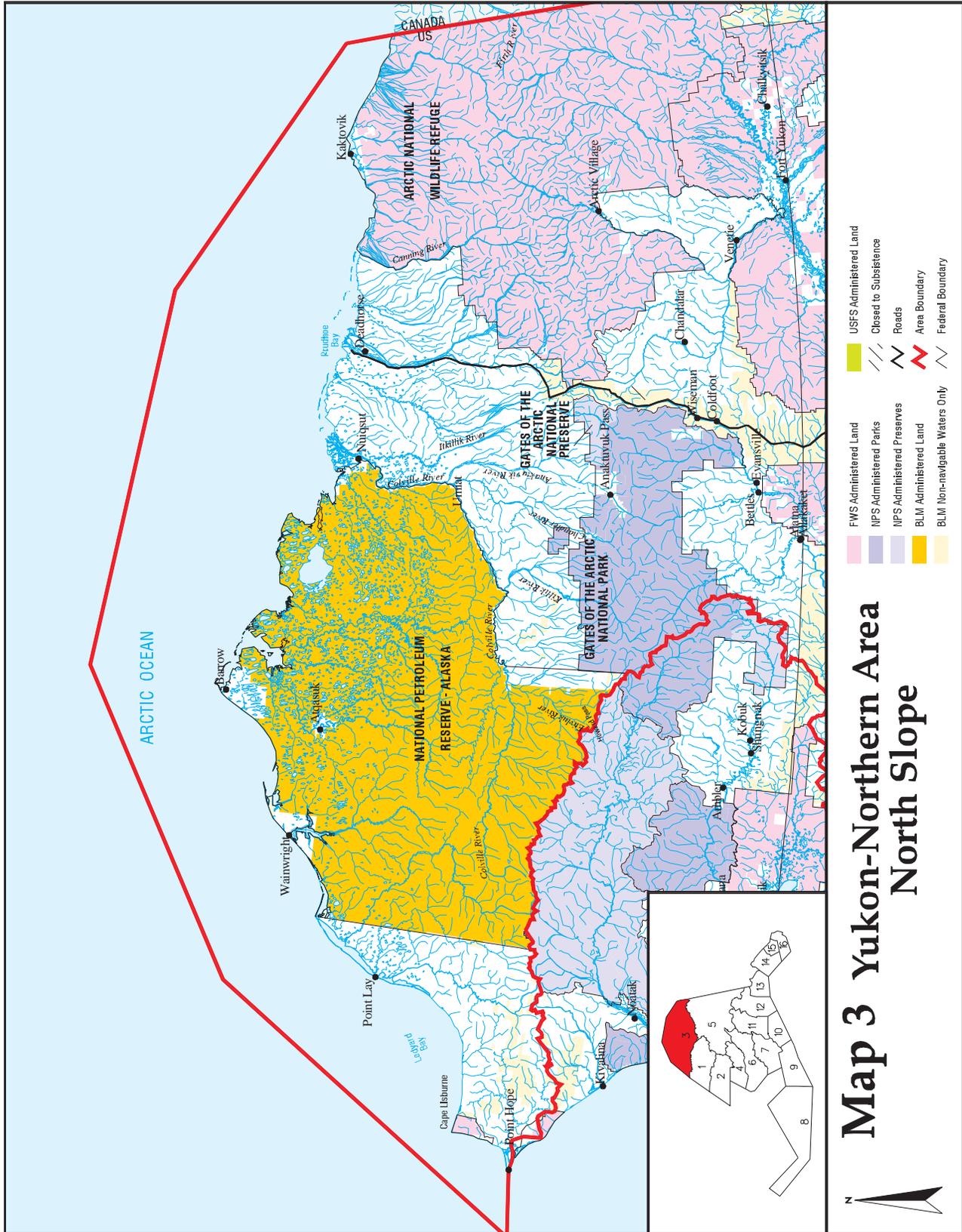
Louis Green, Chair
Seward Peninsula Subsistence Regional Advisory Council

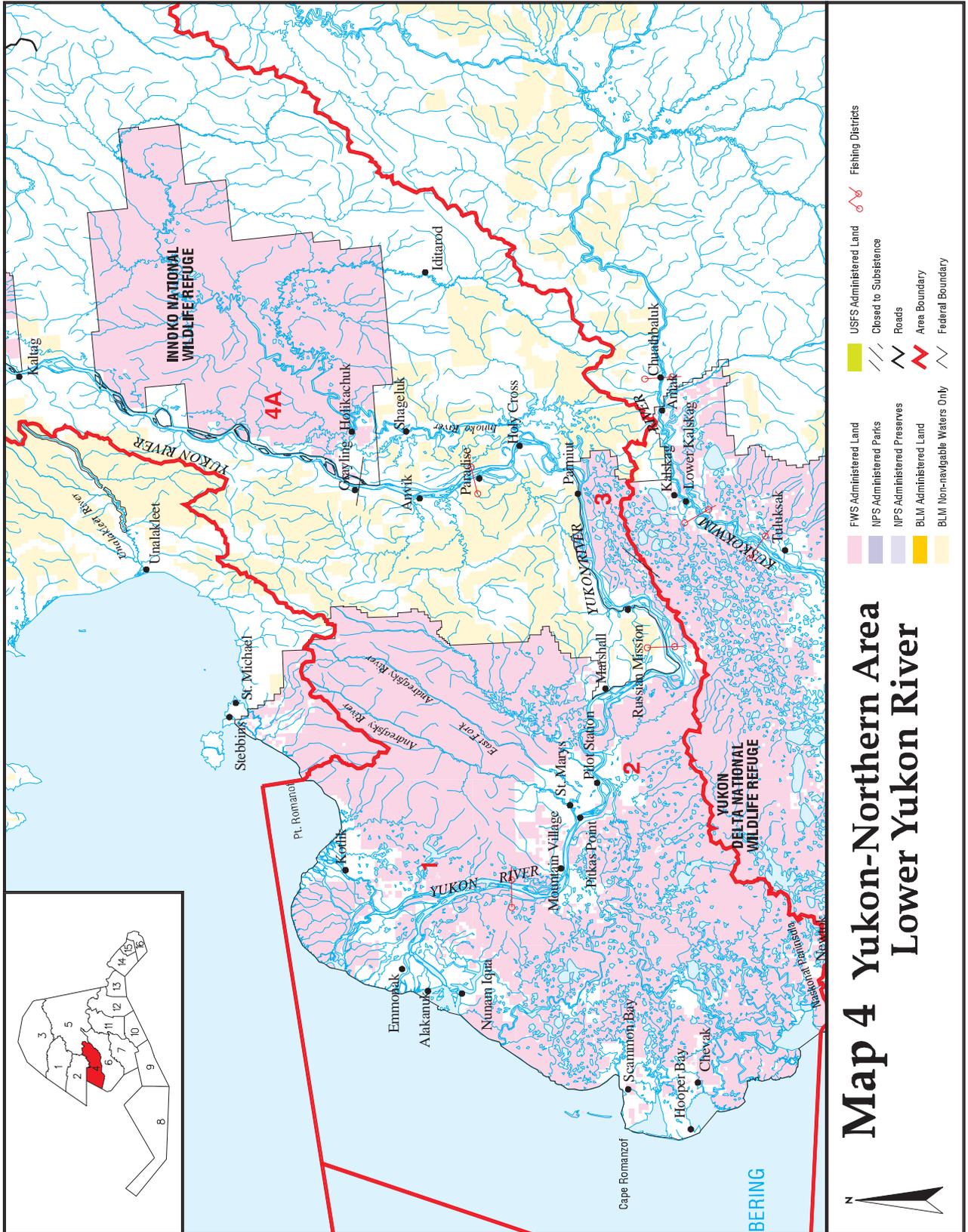
These minutes will be formally considered by the Seward Peninsula Subsistence Regional Advisory Council at its next meeting, and any corrections or notations will be incorporated in the minutes of that meeting.

DRAFT

PROPOSAL REVIEW PROCEDURES

1. Introduction of proposal and presentation of analysis
2. Agency comments: (a) Alaska Department of Fish and Game, (b) Federal agencies, (c) Native/Tribal/Village/Other, and (d) Interagency Staff Committee comments
3. Advisory Group Comments: (a) Neighboring Regional Advisory Council(s), (b) Local Fish and Game Advisory Committees, and (c) National Park Service Subsistence Resource Commissions
4. Summary of written comments
5. Public testimony
6. Regional Advisory Council recommendation motion (always a positive motion)
 - a. Discussion/Justification
 - i. Is there a conservation concern? How will your recommendation address the concern?
 - ii. Is your recommendation supported by substantial evidence including traditional ecological knowledge?
 - iii. How will the recommendation address the subsistence needs involved? Will it be detrimental to subsistence users?
 - iv. Will the recommendation unnecessarily restrict other uses involved?
 - b. Vote





FP13-02 Executive Summary	
General Description	Proposal FP13-02 requests a change in the marking of Chinook salmon taken for subsistence purposes in Districts 1, 2, and 3 on the Yukon River. <i>Submitted by the U.S. Fish and Wildlife Service, Fairbanks Fish and Wildlife Field Office</i>
Proposed Regulation	§___.27(e)(3)(xx) <i>In Districts 1, 2, and 3, from June 1 through July 15, you may not possess Chinook salmon taken for subsistence purposes unless the dorsal fin has both tips (lobes) of the tail fin have been removed immediately after landing before the person conceals the salmon from plain view or transfers the salmon from the fishing site.</i>
OSM Preliminary Conclusion	Support
Yukon/Kuskokwim Delta Regional Council Recommendation	
Western Interior Regional Council Recommendation	
Seward Peninsula Regional Council Recommendation	
Eastern Interior Regional Council Recommendation	
Interagency Staff Committee Comments	
ADF&G Comments	Support
Written Public Comments	2 Support (See comments following the analysis of FP11-08)

DRAFT STAFF ANALYSIS FP13-02

ISSUES

Proposal FP13-02, submitted by the U.S. Fish and Wildlife Service, Fairbanks Fish and Wildlife Field Office, requests a change in the marking of Chinook salmon taken for subsistence purposes in Districts 1, 2, and 3 on the Yukon River.

DISCUSSION

Marking requirements for Yukon River Chinook salmon were initially adopted by the Federal Subsistence Board to be consistent with State regulations current at the time of adoption. However, this marking requirement was not changed in response to the State's action in 2007, and the State and Federal regulations currently are inconsistent in regards to Chinook salmon marking requirements in Districts 1, 2, and 3 on the Yukon River. Changing the Federal marking requirement for Chinook salmon will align the Federal regulations with the existing State regulation.

Existing Federal Regulation

Yukon-Northern Area — Salmon (Special Provisions)

§ __.27(e)(3)(xx) In Districts 1, 2, and 3, you may not possess Chinook salmon taken for subsistence purposes unless the dorsal fin has been removed immediately after landing.

Proposed Federal Regulation

Yukon-Northern Area — Salmon (Special Provisions)

*§ __.27(e)(3)(xx) In Districts 1, 2, and 3, **from June 1 through July 15**, you may not possess Chinook salmon taken for subsistence purposes unless ~~the dorsal fin has~~ **both tips (lobes) of the tail fin have been removed immediately after landing before the person conceals the salmon from plain view or transfers the salmon from the fishing site.***

Relevant State Regulations

Yukon-Northern Area — Salmon

5 AAC 01.240. Marking and use of subsistence-taken salmon.

(c) In Districts 1–3, from June 1 through July 15, a person may not possess king salmon taken for subsistence uses unless both tips (lobes) of the tail fin have been removed before the person conceals the salmon from plain view or transfers the salmon from the fishing site. A person may not sell or purchase salmon from which both tips (lobes) of the tail fin have been removed.

5 AAC 05.377. Unlawful possession of subsistence-taken salmon.

It is unlawful to purchase salmon from which the dorsal fin has been removed as required by 5 AAC 01.240. Possession of salmon taken for subsistence purposes from which the dorsal fin

has not been removed is prima facie evidence that the salmon was taken and possessed for commercial purposes.

These existing state regulations are inconsistent and could cause difficulties for Federally qualified subsistence users.

Extent of Federal Public Waters

For purposes of this discussion, the phrase “Federal public waters” is defined as those waters described under 36 CFR 242.3 and 50 CFR 100.3. The Federal public waters addressed by this proposal are those portions of the Yukon River located within, or adjacent to, the external boundaries of the Yukon Delta National Wildlife Refuge in Districts 1, 2 and 3.

Customary and Traditional Use Determinations

For salmon other than fall chum salmon, residents of the Yukon River drainage, and the community of Stebbins have a positive customary and traditional use determination. For fall chum salmon, residents of the Yukon River drainage, and the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak have a positive customary and traditional use determination.

Regulatory History

In February 2007, the Alaska Board of Fisheries adopted a proposal changing the marking requirement for subsistence-taken salmon in Districts 1–3 from removal of the dorsal fin to removal of both tips of the tail fin (*5 AAC 01.240. Marking and use of subsistence-taken salmon*). The rationale cited in the subcommittee report was to foster better compliance because marking would be easier, to make the regulation consistent with other areas of the state, to clarify when subsistence marking requirements would be in place, to use a more sanitary mark, and to discourage subsistence caught fish from entering the State’s commercial fisheries. The Federal Subsistence Management Program comment to the Alaska Board of Fisheries for that proposal was to support the change.

Chinook Salmon Subsistence Harvests

Chinook salmon subsistence harvests have been approximately 50,000 fish annually in the Alaskan portion of the Yukon River over the past 20 years. However, subsistence harvest levels of Chinook salmon have declined since 2007 due to declining run abundance and resultant harvest restrictions. The proposed regulatory change to marking will have no effect on the level of harvest.

Effects of the Proposal

This marking requirement change is not expected to alter salmon harvest because subsistence caught fish are currently required to be marked. Removal of both tips of the tail fin should be easier to accomplish than removal of the dorsal fin, would not result in any damage to the flesh of the salmon, and would result in an easily seen mark that would help discourage sales of subsistence caught salmon to commercial buyers.

Currently there are many regulations subsistence users must be aware of on the Yukon River including boundaries, methods and means, and season dates. Aligning State and Federal marking requirements regulations will provide a modest reduction in regulatory complexity.

OSM PRELIMINARY CONCLUSION

Support Proposal FP13-02.

Justification

By aligning Federal salmon marking requirements with existing State requirements, regulatory complexity will be modestly reduced and subsistence harvest of salmon will not be affected. Adoption of this regulation will not impose any additional burden on Federally qualified subsistence users since they are already required to mark the salmon they take. In fact, the new marking requirement may make marking salmon easier and more sanitary.

ADF&G Comments on FP13-02
July 12, 2012, Page 1 of 3

Alaska Department of Fish and Game
Comments to Regional Advisory Council

Fisheries Proposal FP13-02: Revise the marking requirement for subsistence-caught Chinook salmon in Yukon River Districts 1, 2, and 3 from removal of the dorsal fin immediately after landing to removal of both tips (lobes) of the tail fin before the person conceals the salmon from plain view or transfers the salmon from the fishing site.

Introduction: This proposal, submitted by the U.S. Fish & Wildlife Service (Service) Fairbanks Field Office, seeks to revise the marking requirement for subsistence-caught Chinook salmon in Yukon River districts 1, 2, and 3.

Federal marking requirements for Yukon River Chinook salmon were initially adopted to be consistent with state regulations current at the time. However, due to an oversight, this requirement was not amended in follow-up to the state's 2007 action. Changing the federal marking requirement at this time will bring this regulation back in line with the state regulation.

Impact to Subsistence Users: If this proposal is adopted, the marking requirement change is not expected to alter salmon harvest because subsistence-caught fish are still required to be marked.

Yukon River subsistence users are required to be aware of many regulations, including boundaries, equipment, and season dates. Aligning state and federal marking requirements in regulation will alleviate burden to subsistence users by reducing regulatory complexity between federal and state management.

Impact to Other Users: If this proposal is adopted, it will also simplify commercial fish buying operations by reducing the variety of fish markings crews must look for when accepting deliveries.

Opportunity Provided by State: Salmon may be harvested under state regulations throughout the majority of the Yukon River watershed, including a liberal subsistence fishery. Gear types allowed are gillnet, beach seine, hook and line attached to a rod or pole, handline, and fish wheel. Although all gear types are not used or allowed in all portions of the Yukon River drainage, drift and set gillnets, and fish wheels harvest the majority of fish taken for subsistence uses. Under state regulations, subsistence is the priority consumptive use. Therefore, state subsistence fishing opportunity is directly linked to abundance and is not restricted unless run size is inadequate to meet escapement needs. When the Yukon River Chinook salmon run is below average, state subsistence fishing periods may be conducted based on a schedule implemented chronologically throughout the Alaska portion of the drainage, which is consistent with migratory timing as the salmon run progresses upstream. Federal regulations under Special Actions to restrict federally-eligible users have been rare and mirrored the state inseason actions necessary to meet escapement goals, except where state and federal regulations differ in subdistricts 4-B and 4-C. Amounts reasonably necessary (ANS) for subsistence Chinook salmon (5AAC 01.236 (b)), as determined by the Alaska Board of Fisheries (BOF), have not been met in the Yukon River drainage the last four years.

ADF&G Comments on FP13-02
July 12, 2012, Page 2 of 3

In February 2007, the BOF adopted a similar action in regulation 5 AAC 01.240(c). *Marking and use of subsistence taken salmon*: In Districts 1-3, from June 1 through July 15, a person may not possess king salmon taken for subsistence uses unless both tips (lobes) of the tail fin have been removed before the person conceals the salmon from plain view or transfers the salmon from the fishing site. A person may not sell or purchase salmon from which both tips (lobes) of the tail fin have been removed.

The rationale cited in the BOF committee report was to foster better compliance because marking would be easier. The regulation would be consistent with other areas of the state, it clarified when subsistence marking requirements would be in place, and it was thought to be a more sanitary mark that was still needed for enforcement to discourage subsistence-caught fish from entering the state's commercial fisheries. The Federal Subsistence Management Program comment to the BOF at the time was in support of the proposed change

Conservation Issues: The Yukon River Chinook salmon stock is currently classified as a yield concern. Subsistence harvest levels have not reached the ANS the last four years (2008–2011). A majority of the Yukon River drainage escapement goals have been met since 2000, including the Chena and Salcha rivers, which are the largest producers of Chinook salmon in the U.S. portion of the drainage. The agreed-to escapement objective for the Canadian mainstem was met every year from 2001 through 2006, with 2001, 2003, and 2005 being the three highest spawning escapement estimates on record. However, the escapement objective for the Canadian mainstem was not met in 2007, 2008, and 2010. Exploitation rate on the Canadian-origin stock by Alaskan fishermen has changed from an average of about 55% (1989–1998) to an average of about 44% from 2004–2008 (Howard et al. 2009)¹. Although the subsistence harvest was stable at nearly 50,000 Chinook salmon annually through 2006, the recent five-year average (2007–2011) was 43,900. Commercial harvests have decreased over 90% from an average of 100,000 annually (1989–1998) to the recent five-year average (2007–2011) of nearly 9,700 fish.

Enforcement Issue: None noted at this time.

Jurisdiction Issues: The Federal Subsistence Board does not have authority to regulate the nonfederally-qualified users participating in fisheries on waters outside of federal subsistence jurisdiction. While standing on state and private lands (including state-owned submerged lands), persons must comply with state law and cannot harvest under conflicting federal regulations. Enforcement difficulties and user confusion -- concerning where and how federal regulations that are different than state regulations apply -- will result unless detailed maps and explanations specific to the area are provided.

Other Issues: (1) Maps are needed showing the specific boundaries and areas where federal regulations are claimed to apply, along with providing the justification for claiming those boundaries; (2) A large percentage of the lands along the Yukon River are state or private lands

¹ Howard, K. G., S. J. Hayes, and D. F. Evenson. 2009. Yukon River Chinook salmon stock status and action plan 2010; a report to the Alaska Board of Fisheries. Alaska Department of Fish and Game, Special Publication No. 09-26, Anchorage.

ADF&G Comments on FP13-02
July 12, 2012, Page 3 of 3

where federal subsistence fisheries are not authorized to occur; (3) The federal board does not have authority to supersede state commercial and subsistence fisheries regulations unless a full closure is required for conservation purpose within water of claimed federal jurisdiction; and 4) Changes to state commercial and subsistence fisheries must be submitted to the BOF for coordination.

Recommendation: Support. In February 2007, the BOF adopted a similar action in regulation *5 AAC 01.240. Marking and use of subsistence taken salmon*. Changing the federal marking requirement at this time will bring the Federal regulation back in line with the state regulation and be less confusing to the public.

FP13-03 Executive Summary	
General Description	Proposal FP13-03 requests that a daily harvest and possession limit be established at three northern pike taken in all waters of the Yukon River, from Holy Cross downstream to and including Paimiut Slough, and that only one pike may be over 30 inches. <i>Submitted by the Grayling, Anvik, Shageluk and Holy Cross Fish and Game Advisory Committee</i>
Proposed Regulation	<p>§__.27 <i>Subsistence taking of fish</i></p> <p><i>(e) (3) Yukon-Northern Area</i></p> <p><i>(i) Unless otherwise restricted in this section, you may take fish in the Yukon Northern Area at any time. In those locations where subsistence fishing permits are required, only one subsistence fishing permit will be issued to each household per year. You may subsistence fish for salmon with rod and reel in the Yukon River drainage 24 hours per day, 7 days per week, unless rod and reel are specifically otherwise restricted in paragraph (e)(3) of this section(v) Except as provided in this section, and except as may be provided by the terms of a subsistence fishing permit, you may take fish other than salmon at any time.</i></p> <p><i>(xx) In all waters of the Yukon River, from Holy Cross downstream to and including Paimiut Slough, the harvest and daily possession limit for northern pike is three pike, only one of which may be over 30 inches.</i></p>
OSM Preliminary Conclusion	Oppose
Yukon/Kuskokwim Delta Regional Council Recommendation	
Western Interior Regional Council Recommendation	
Seward Peninsula Regional Council Recommendation	
Eastern Interior Regional Council Recommendation	
Interagency Staff Committee Comments	
ADF&G Comments	Defer
Written Public Comments	2 Support (See comments following the analysis of FP11-08)

DRAFT STAFF ANALYSIS FP13-03

ISSUES

Proposal FP13-03, submitted by the Grayling, Anvik, Shageluk and Holy Cross (GASH) Fish and Game Advisory Committee, requests that a daily harvest and possession limit be established at three northern pike taken in all waters of the Yukon River, from Holy Cross downstream to and including Paimiut Slough, and that only one pike may be over 30 inches.

DISCUSSION

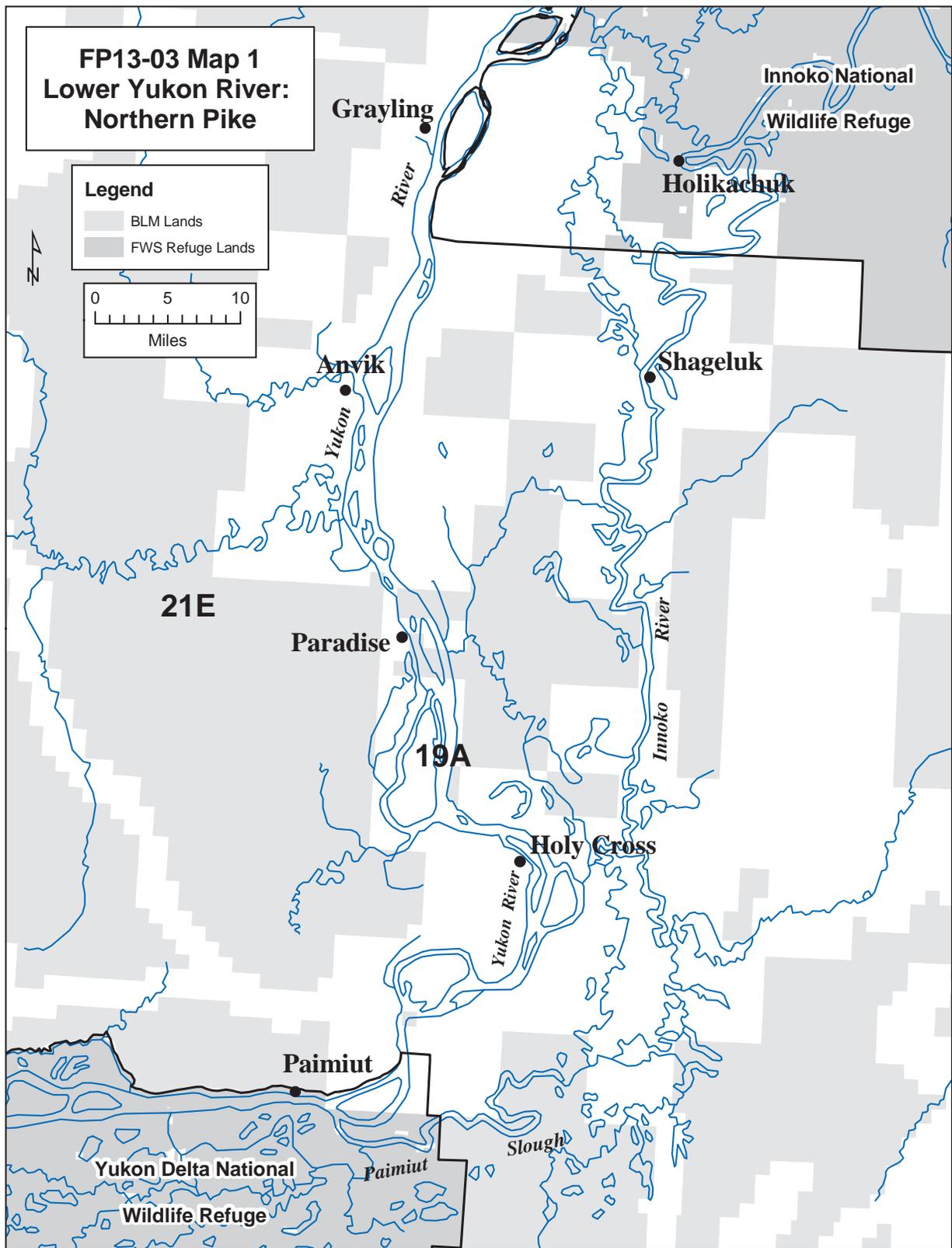
Members of the GASH AC are concerned that the State and Federal subsistence fisheries are taking more pike than is sustainable from the Yukon River drainage in an area from Holy Cross downstream to and including Paimiut Slough (**Map 1**). The proponent has submitted a similar proposal to the Alaska Board of Fisheries to consider at its January 18–20, 2013, meeting in Anchorage. The proponent's intent is to implement new regulations limiting all pike fishermen to three pike in possession in all waters of the area, spreading the burden of conservation amongst all users (Werba 2012, pers. comm.).

During conversations with the Chair of the GASH AC and another member from Holy Cross, the proponent asked to change the original proposal to allow the daily harvest and possession limit to be ten northern pike with no restriction on size (Chase 2012, pers. comm.; Werba 2012, pers. comm.). This analysis will focus on the original proposal as published, since this is the version presented for public review. The proponent could provide comments on their proposal at the Western Interior Regional Advisory Council meeting.

The area under consideration in this analysis are the waters of the Yukon River in the area of Paimiut Slough where a popular winter subsistence fishery is located. These waters are the focus of the analysis, because these are the only Federal public waters within the proposal area.

The proponent states that each year, members of the GASH AC either observe or hear about, up to 30 separate groups of three to six fishermen camping in the area for several days at a time. While camping, they ice fish for pike night and day with tip up poles. Currently, there is no harvest or possession limits in State and Federal subsistence regulations. The GASH AC is very concerned what this targeted fishing pressure will have on the pike stocks and would like to see some form of limits being placed to insure that pike are available for future generations and for multiple user groups. The proponent continues that its proposal will help preserve the pike population, which otherwise will be impacted by high fishing pressure when they are most vulnerable—grouped together and hungry during the winter months. The proponent stated that by limiting the daily harvest it will insure that the pike that are caught through the ice are carefully utilized to prevent spoilage and waste. The proponent explains that by only allowing the daily harvest of one pike over 30 inches, it will benefit the population by insuring that more large females make it through the winter and are able to spawn come spring. The proponent states that by going from an unlimited harvest limit to this proposed limit, it will impact subsistence users, but the harvest limit is a daily limit so the same number of pike can still be caught, just not all at once, which will insure that the pike are being utilized.

The proponent explained the potential benefit to sport/recreational fishermen in the summers. This will help preserve the pike population in this part of the Yukon River, as well as the Innoko since those fish overwinter in this part of the Yukon River. The open harvest limit right now can easily lead to a



population crash which will shut down any sports fishing in the area for pike. Also, with less pike being taken out during the winter, there is the chance that there may be more pike available for the summer sport season.

Existing Federal Regulation

§__.27 Subsistence taking of fish

(e) (3) Yukon-Northern Area

(i) Unless otherwise restricted in this section, you may take fish in the Yukon Northern Area at any time. In those locations where subsistence fishing permits are required, only one subsistence fishing permit will be issued to each household per year. You may subsistence fish for salmon with rod and reel in the Yukon River drainage 24 hours per day, 7 days per week, unless rod and reel are specifically otherwise restricted in paragraph (e)(3) of this section

(v) Except as provided in this section, and except as may be provided by the terms of a subsistence fishing permit, you may take fish other than salmon at any time.

Proposed Federal Regulation

§__.27 Subsistence taking of fish

(e) (3) Yukon-Northern Area

(i) Unless otherwise restricted in this section, you may take fish in the Yukon Northern Area at any time. In those locations where subsistence fishing permits are required, only one subsistence fishing permit will be issued to each household per year. You may subsistence fish for salmon with rod and reel in the Yukon River drainage 24 hours per day, 7 days per week, unless rod and reel are specifically otherwise restricted in paragraph (e)(3) of this section
(v) Except as provided in this section, and except as may be provided by the terms of a subsistence fishing permit, you may take fish other than salmon at any time.

(xx) In all waters of the Yukon River, from Holy Cross downstream to and including Paimiut Slough, the harvest and daily possession limit for northern pike is three pike, only one of which may be over 30 inches.

Relevant State Regulations

Subsistence Fishing

Yukon-Northern Area

5AAC 01.210. Fishing seasons and periods

(h) Except as provided in 5 AAC 01.225 and except as may be provided by the terms of subsistence fishing permit, there is no closed season on fish other than salmon.

5AAC 01.220. Lawful gear and gear specifications

(k) A person may use a hook and line attached to a rod or pole when subsistence fishing only

(1) in the waters between the latitude of Point Romanoff and the latitude of the western most point of the Naskonat Peninsula, including those waters draining into the Bering Sea and those of the Yukon River drainage downstream from the lower mouth of Paimiut Slough; or

(2) through the ice.

Sports Fishing

5 AAC 73.010. Seasons, bag, possession, and size limits, and methods and means in the Yukon River Management Area

(a) Except as otherwise specified in this section or through an emergency order issued under AS 16.05.060, sport fishing is permitted year round in the waters of the Yukon River Management Area.

(b) Except as otherwise specified in (c) of this section, the following are the general bag, possession, and size limits for finfish in the waters of the Yukon River Management Area:

(7) northern pike: the bag and possession limit is 10 fish, with no size limit;

(c) The following are the exceptions to the general bag, possession, and size limits, and fishing seasons specified in (a) of this section for the Yukon River Management Area:

(1) in all waters of the Innoko River drainage, including all waters draining into the Yukon River from Holy Cross downstream to and including Paimiut Slough, the bag and possession limit for northern pike is three fish, of which only one fish may be 30 inches or greater in length;

Extent of Federal Public Waters

For the purpose of this discussion, the phrase “Federal public waters” is defined as those waters described under 36 CFR 242.3 and 50 CFR 100.3. The Federal public waters addressed by this proposal are those portions of the Yukon River located within, or adjacent to, the external boundaries of the Yukon Delta National Wildlife Refuge, from the confluence of Paimiut Slough upstream to the border of the refuge, including Paimiut Slough (**Map 1**).

Customary and Traditional Use Determinations

Residents of the Yukon-Northern Area have a customary and traditional use determination for all freshwater fish, other than salmon.

Regulatory History

Since the 1990s, GASH area communities have voiced concerns to both State and Federal management bodies about an increased presence of sports fisherman, a possible decline in the northern pike population, a decrease in larger fish, and large harvests of northern pike from subsistence users not from the GASH communities (Schaff 2003). In 2001, proposal FP01-32 was submitted by a resident of Holy Cross seeking to close the Innoko River and its tributaries to non-subsistence fishing (State sport fishing)

for Northern pike and sheefish, from its confluence with the Yukon River to 30 miles upstream of the old Holikachuk village site. At the time, local residents of surrounding villages were concerned about increased non-subsistence use in the area. During its December 2001 meeting, the Federal Subsistence Board rejected the proposal, citing that the local stocks of sheefish and pike appeared to be healthy, the sport fish harvest was low, and that a proposal was recently submitted to the Fisheries Resource Monitoring Program to investigate sheefish and pike in the affected area. The study was subsequently funded as project 02-037, *Contemporary Subsistence Uses and Population Distribution of Non-Salmon Fish in Grayling, Anvik, Shageluk, and Holy Cross* (Brown, et. al. 2005).

These concerns prompted State and Federal managers to hold community meetings within the GASH area communities (Schaff 2003); document traditional ecological knowledge on the importance and uses of non-salmon species to residents of GASH area communities (Brown et al. 2005); investigate the status and movements of northern pike in the Lower Innoko Drainage (Scanlon 2009); and examine possible implications of the northern pike sports fishery in this area on pike abundance (Scanlon 2009). During these local meetings, members of the GASH communities voiced their concerns about mortality linked to the sports harvest, sightings of dead pike lying on sand bars and beaches above the Holikachuk area, and large subsistence harvest from residents of Kalskag and lower villages in the Kuskokwim Drainage. While most concerns were related to a decrease in the abundance of pike, a few of the residents had stated that there are too many northern pike (Schaff 2003).

Biological Background

Northern pike *Esox lucius* is a freshwater fish found throughout the northern hemisphere, including the Yukon drainage. The GASH area, including the Innoko River drainage and Paimiut Slough, contain a large amount of overwintering, spawning, and rearing habitat for northern pike that is largely unaltered and in pristine condition (**Map 2**). During the spring months, northern pike migrate to their spawning areas located throughout the Innoko drainage. Local residents from GASH area communities have reported pike migrating to the sloughs and lakes in early spring, prior to the ice leaving the river. During open water months, northern pike were found over a larger range, moving freely throughout the Innoko drainage (Scanlon 2009). In May of 2003 and 2004, tagged northern pike were found in Reindeer Lake, Reindeer River, and Albert's Slough (Scanlon 2009). It is difficult to determine all spawning locations because the timing of spawning is unknown and there is a large amount of widely dispersed spawning habitat, (Scanlon 2009). Previous studies suggest that northern pike in large river systems may not show fidelity to one particular spawning site (Craig 1996, Taube and Lubinski 1996).

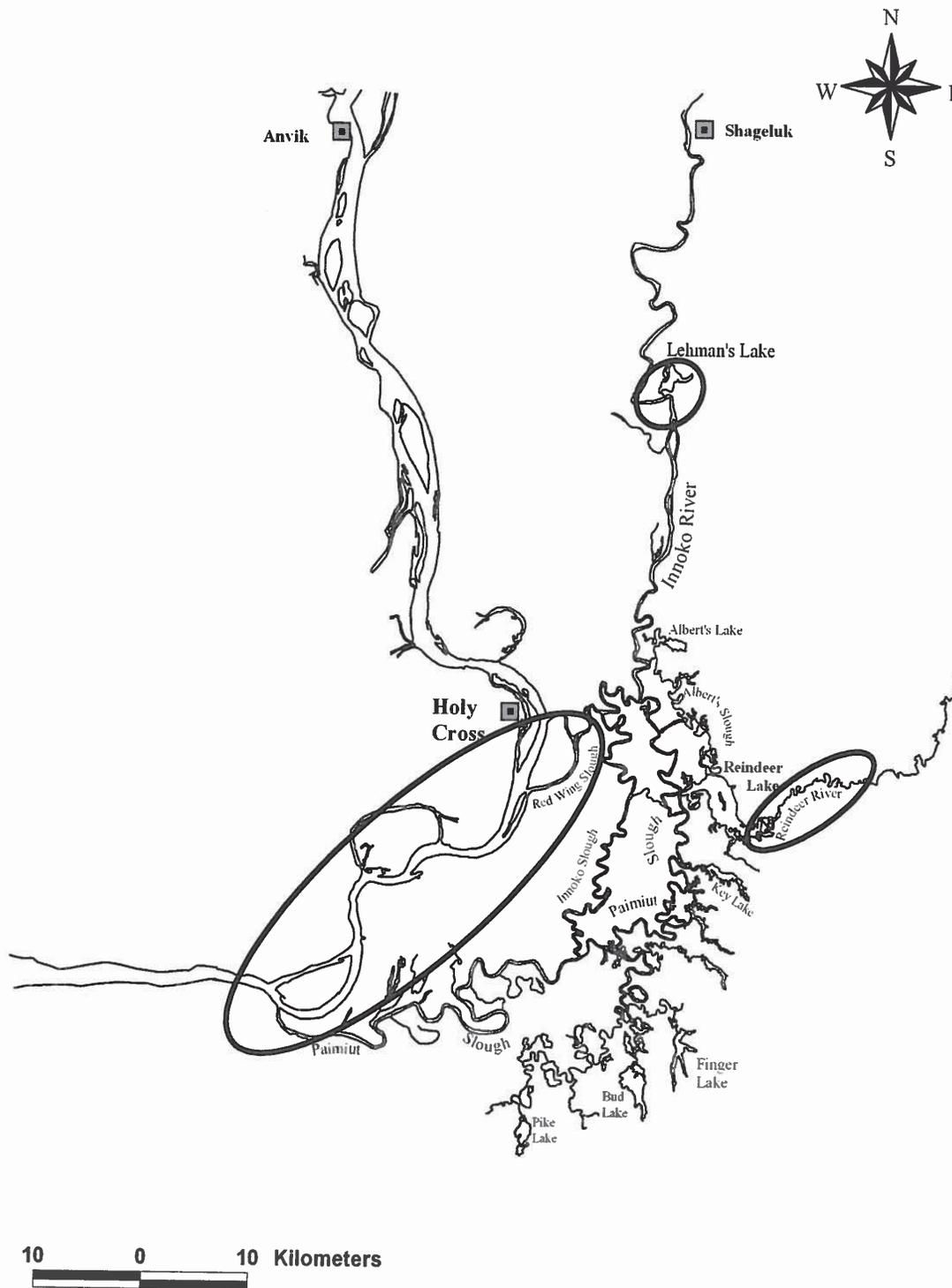
During the winter months, November through March, northern pike are found to congregate in three main areas within the Lower Innoko River drainage: a stretch of the Yukon River from Holy Cross downstream to Paimiut Slough; a section on Reindeer River; and a small section at Lehman's Lake (Scanlon 2009). Most locals from GASH area communities reported that during the winter months, northern pike were primarily present on the east side of the Yukon River, apparently avoiding the west side that has clearer, swifter waters (Brown et al. 2005).

The Alaska Department of Fish and Game (ADF&G) initiated a tagging program along with the Midnight Sun Trophy Northern Pike Adventures guiding operation in 1998 to sample and tag northern pike that were caught and released from their clients. Over five summers the Pike Adventures guiding operation obtained length measurements from, collected scales from, and attached ADF&G tags to more than 2,000 northern pike (Scanlon 2009). To date, only six of these tagged fish have been reported taken the subsistence fishery, less than 2% are captured annually in the sports fishery, and only one tagged fish was captured during a study conducted in 2002 (Scanlon 2009).

PROPOSAL FP13-03

MAP 2

Three main overwintering locations for radio-tagged northern pike in the Lower Innoko drainage (Scanlon 2009).



The 2002 study was conducted to obtain information on spawning and overwintering areas (Scanlon 2002). In June 2002, ADF&G captured and sampled a total of 512 northern pike in the lower Innoko River drainage. These fish measured from 211 mm (~8 in) to 1,180 mm (~39 in) fork length, with 407 fish \geq 400 mm (16 in) fork length. Sixty of these fish \geq 500 mm fork length were implanted with a radio tag to track their movement within the GASH area. Fish were tracked from 2002 to 2004 and showed an extensive range of use throughout the connecting rivers, sloughs, and lakes. Spawning site fidelity was not able to be determined because of the uncertain timing and short duration of spawning and because spawning habitat was highly dispersed over a large area. However, the telemetry data did reveal three main overwintering areas (**Map 2**).

Harvests

Subsistence

Subsistence harvest of northern pike occurs year round in the area affected by this proposal, with the species making up a significant component of the non-salmon diet for residents in the GASH communities (Brown et al. 2005) (**Map 3**). Pike are harvested through various methods depending on the time of the year and the location of fishing.

Neither Federal nor State subsistence regulations require a permit to harvest northern pike, and there are no harvest limits or reporting requirements for this species. As is common in many areas of the state for a number of reasons, the subsistence harvest of northern pike, under both State and Federal subsistence harvest regulations, is not limited (Fall and Shanks 2000, Andersen and Alexander 1992). Harvest estimates are obtained by periodic household harvest interviews. The Division of Subsistence of ADF&G has conducted two household harvest surveys in GASH communities that included the harvest of northern pike. They produced two years of harvest estimates for the four communities, 1990 and 2002. Household harvest surveys provide a snapshot of a pattern of use that varies yearly based on many factors, including, regulations, opportunity, weather, and the availability of other wild foods. Area total estimated harvest of northern pike for 1990 was 3,246 pike and 3,045 pike in 2002 (**Table 1**). Harvests reported from most communities were similar both years, except for Holy Cross, where the reported number of northern pike harvested in 2002 was much less than that reported in 1990.

In 2003 and 2004, 88 northern pike that were sampled from the winter subsistence harvest (Brown et al. 2005). All northern pike were large, ranging from 22 in to 41 in (**Figure 1**). Of the 73 fish for which sex could be determined, females accounted for 62% and all females greater than 32 inches in length were in pre-spawning condition.

In addition to GASH community residents, some residents from Kuskokwim River communities travel to the GASH area in the spring to harvest northern pike (Brown et al. 2005). Some GASH community residents have reported that people from Kuskokwim River and lower Yukon Delta villages travel to Paimiut Slough to fish and leave with “sled loads” of northern pike (Brown et al. 2005).

Large, older female northern pike accounted for 62% of the winter subsistence fishery harvests in 2003 and 2004 (Brown et al. 2005). Northern pike may be particularly vulnerable to the winter subsistence fishery because they congregate in three areas during winter (Scanlon 2009). Only three or four Kalskag residents harvest northern pike on the north side of the Yukon River in Straight Slough, north of Paimiut Island (**Map 2**) (Aloysius 2012, pers. comm.). They average four, one-day trips in late winter (March) and harvest 10–15 fish per trip, with the intention of harvesting one or two fish \geq 48 inches in length per trip. Although residents of the Kuskokwim Area do not have a customary and traditional use determination under Federal subsistence regulations for northern pike in the Yukon River drainage, including the Innoko

PROPOSAL FP13-03

MAP 3

Subsistence and sports use areas for targeting northern pike (Brown et al. 2005).

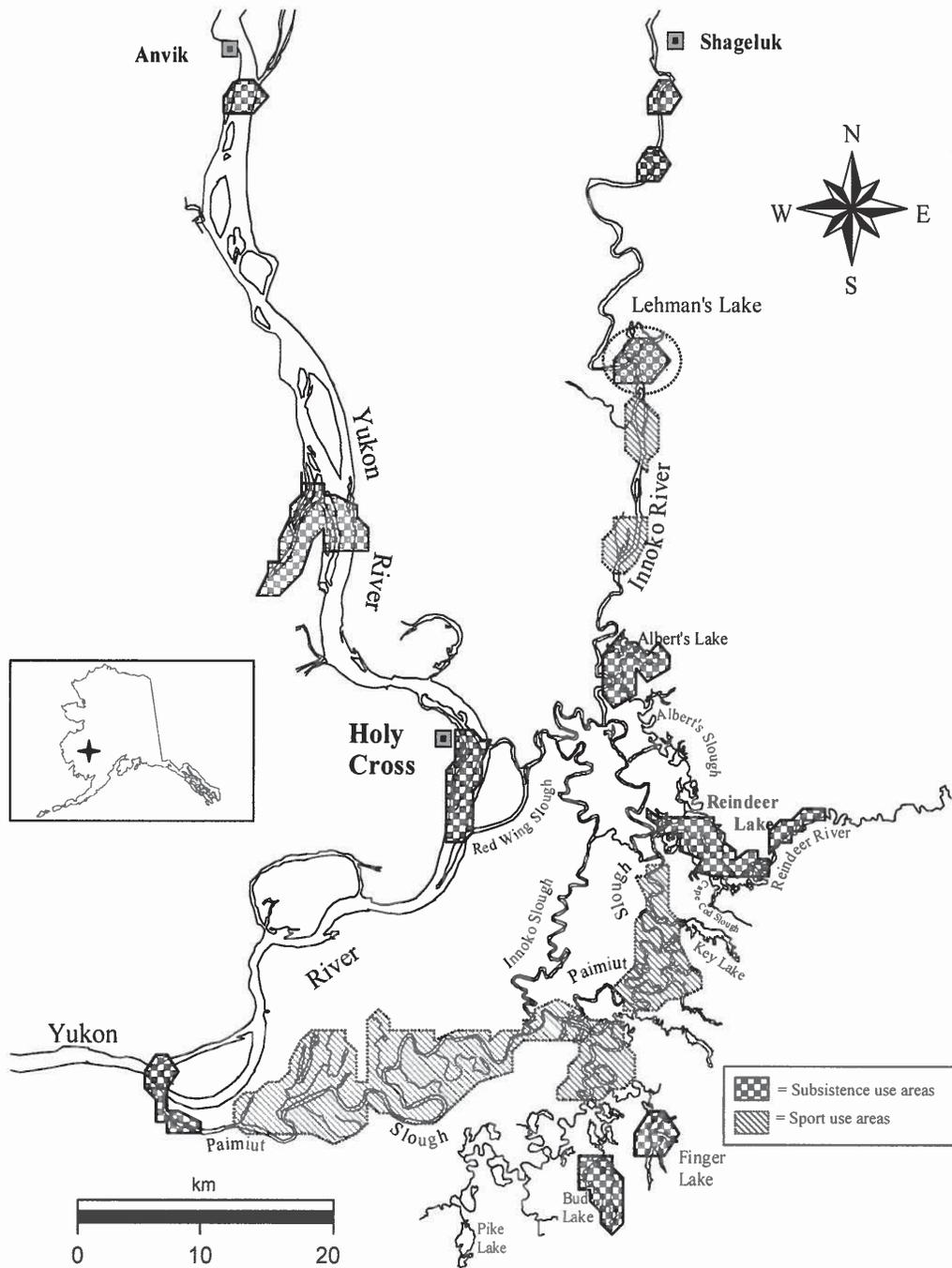


Table 1. The use and harvest of northern pike based on household surveys, Grayling, Anvik, Shageluk, and Holy Cross, all study years (ADF&G 2012).

Community	Study Year	Percentage of Households				Number of Pike Harvested				95% Con-fidence Interval (+/- %)
		Harvesting pike (%)	Using pike (%)	Giving Away pike (%)	Receiving pike (%)	Reported	Estimated Harvest	Lower Estimate	Higher Estimate	
Grayling	1990	60.98				443	508	403	613	14.93
	2002	52.10	68.70	35.40	45.80	762	780	762	838	13.64
Anvik	1990	41.67				314	406	247	574	25.12
	2002	47.10	52.90	20.60	29.40	610	631	611	721	20.43
Shageluk	1990	46.88				835	1,044	795	1,293	50.61
	2002	34.40	68.80	6.30	46.90	1,028	1,288	1,028	1,801	31.21
Holy Cross	1990	43.59				605	1,288	709	1,866	28.14
	2002	21.20	34.60	11.50	13.50	281	346	281	560	5.77

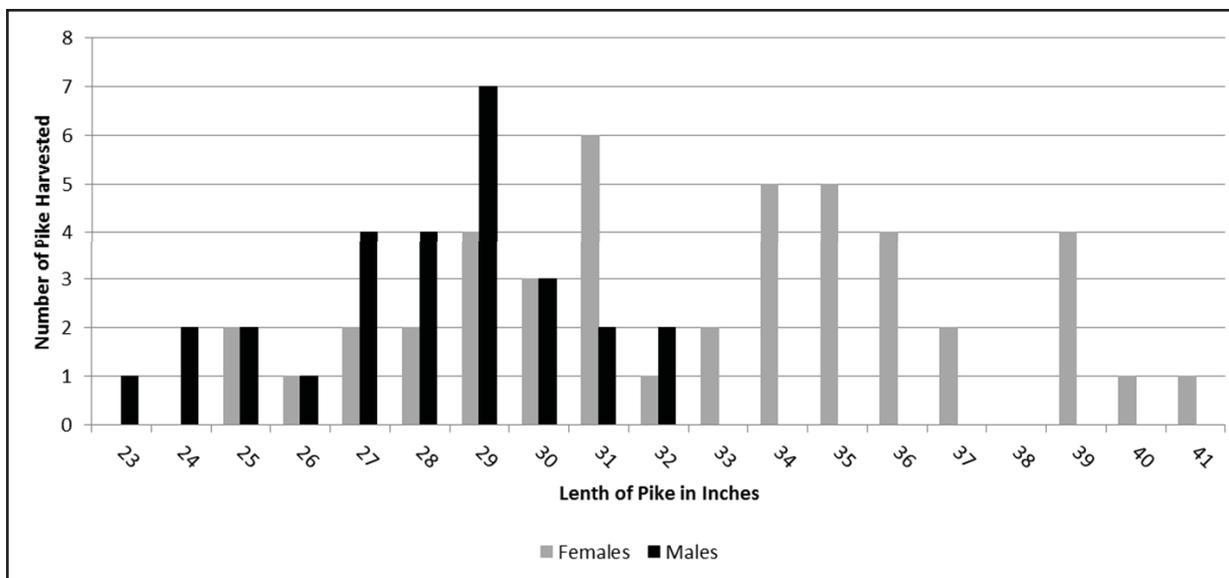


Figure 1. The number of pike harvested by length during the winter subsistence fishery in the GASH area, 2003–2004 (Brown et al. 2005).

River and Paimiut Slough, they are able to subsistence fish for northern pike in the Yukon River drainage in both State and Federally managed waters under State subsistence regulations.

Sports Fishing

In 1995, a small business for guided sports fishing began targeting trophy sized northern pike on the Innoko River, with a focus on catch-and-release (Burr 2011) (**Map 3**). Clients are housed on a moveable houseboat, which limits the number of clients that can be supported at one time. More recently, a few residents from Holy Cross have started small businesses offering guided sports fishing services within the Innoko drainage (Burr 2011). The sports fishery is primarily catch and release. During 1990–1999 the average annual sport fishing catch was 2,071 northern pike and the average annual harvest was 93 (**Table 2**) (Scanlon 2009). During 2000–2008, the average annual catch increased to 7,665 northern pike, while the average annual harvest decreased to 49.

The sports fishery is primarily catch and release and focuses on larger pike, but a small proportion of those caught and released die due to hooking in areas that are linked to increased mortality or to poor handling practices (Burr 1998, Taube and Lubinski 1996, Burkholder 1992). Burkholder (1992) reported catch-and-release mortalities ranging from 3 to 10%. Nearly all the fish that died had been hooked in the gills, eyes, or gullet, while less than 2% of fish that had been snagged on the body or hooked in the mouth died. Burr (1998) conducted a study on the Nowitna River system and found that northern pike were able to tolerate a variety of catch and release fishing practices. Survival remained high even when pike were cradled with two hands under the head and tail out of the water for a total of three minutes, just as anglers might do for a photo. The only mortalities that occurred during the study were in the control group, where two fish captured with a hoop net died. Fishing guides highly encourage clients to practice catch and release while fishing for pike (Burr 2011).

The northern pike population of the lower Innoko River does not appear to be in danger from over harvest (Scanlon 2009, Burr 2011). However, since both the sports and subsistence fisheries target large northern

Table 2. Sports catch, harvest, and total angler days for northern pike in the Innoko River. Harvest is the amount of pike that are retained in the sports harvest (Scanlon 2009).

	Year	Effort	Catch	Harvest
	1,990	415	964	118
	1,991	520	1,544	118
	1,992	53	171	43
	1,993	637	1,661	151
	1,994	93	18	9
	1,995	430	1,039	90
	1,996	654	4,090	110
	1,997	445	3,024	56
	1,998	847	4,433	93
	1,999	551	3,770	145
	2,000	327	1,912	10
	2,001	1,458	12,866	28
	2,002	2,533	17,551	40
	2,003	174	1,655	12
	2,004	1,522	10,572	249
	2,005	355	9,271	59
	2,006	581	5,833	0
	2,007	600	2,464	0
	2,008	515	1,104	6
	Average 1990-1999	465	2,071	93
	Average 2000-2008	967	7,665	49

pike, a substantial increase in fishing pressure from one or both of these fisheries could result in a decrease in the abundance of older, larger northern pike (Burr 2011).

Effects of the Proposal

If FP13-03 were adopted, Federally qualified subsistence users would be limited to harvesting and possessing only three pike per day. Additionally, only one pike could be over 30 inches long. This would hold subsistence users to the same harvest limits and restrictions as sport fishers under State of Alaska regulations. This would likely adversely affect traditional winter harvest patterns and possibly make travel to traditional winter harvest sites economically unfeasible for subsistence users. Larger northern pike are targeted in the subsistence fishery. Reducing the daily harvest and possession to three pike per day, with only one pike being over 30 inches would decrease fishing pressure on the pike population allowing the larger fish a better chance to survive throughout the winter to spawn in the spring.

OSM PRELIMINARY CONCLUSION

Oppose Proposal FP13-03.

Justification

Although the proposed regulation would decrease fishing pressure on northern pike within this area, there is no documented conservation concern to warrant the proposed harvest limits on Federally qualified

subsistence users. The northern pike population of the lower Innoko River drainage is considered healthy, with access to abundant spawning, rearing, and overwintering habitat. The proposed daily harvest and possession limit would likely adversely affect traditional winter harvest patterns and possibly make travel to traditional winter harvest sites economically infeasible for subsistence users.

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Alaska Department of Fish and Game
Comments to Regional Advisory Council

Fisheries Proposal FP13-03: Revise the subsistence fishing harvest limits for northern pike in all waters of Yukon River from Holy Cross downstream to and including Paimuit Slough from no bag limit for northern pike to a bag and possession limit of three northern pike, only one of which can be over 30 inches.

Introduction: This proposal, submitted by the Grayling Anvik Shageluk Holy Cross Fish and Game Advisory Committee (AC), would establish a bag and possession limit for northern pike in all waters of the Yukon River from Holy Cross downstream to and including Paimuit Slough. The proponent believes too many pike and too many large female pike are being taken during the winter subsistence fishery. In the past several years they have observed multiple (20–40) groups of people (three to six people per group) coming up and camping for several days at a time. These groups ice fish for pike night and day with tip-up poles and when done, leave with *sled loads* of fish. Currently there is no bag limit for this subsistence pike fishery. The proponent is concerned that this targeted fishing pressure will deplete northern pike stocks in the Yukon and Innoko River drainages, and would like to limit this fishery to ensure that there are pike available for future generations and for multiple user groups.

Impact on Subsistence Users: This proposal, if adopted, will limit the northern pike harvest and provide protection to pike larger than 30 inches in length in all waters of the Yukon River from Holy Cross downstream to and including Paimuit Slough, which proponents suggest are currently subjected to excess fishing pressure by winter subsistence users. Local users report this to be an area where pike congregate and feed during the winter months. The area is relatively easy to access, and provides ample and expedient catch opportunity for pike.

The proponents acknowledge that changing the pike harvest from unlimited to this proposed daily bag and possession limit will negatively impact some subsistence users. Nonlocal subsistence users intending to harvest pike will be limited from harvesting as many fish per day or taking as many large fish on one trip. This limitation will increase the number of trips, and therefore, time, fuel, and effort per trip to harvest the same number of pike which they have previously harvested. This proposal was brought forth by local users who would be affected by a reduced daily harvest.

Impact on Other Users: This proposal may benefit sport/recreational fishermen, as well as local area subsistence fishermen. Adopting a daily bag and possession limit with a one-fish limit for those over 30 inches in length for northern pike in this part of the Yukon River drainage may provide more opportunity for sport/recreational fisherman to catch northern pike both quantity and size.

There is no commercial fishery for northern pike in this part of the Yukon River.

Opportunity Provided by State: Northern pike may be harvested under state regulations throughout the majority of the Yukon River watershed. There are no daily or annual bag limits for pike, except in the Minto Flats area (see 5 AAC 01.244. *Minto Flats Northern Pike*

ADF&G Comments on FP13-03
July 13, 2012, Page 2 of 3

Management Plan) where the bag limit is 10 fish and the possession limit is 20 fish. Gear types allowed are gillnet, beach seine, fish wheel, longline, fyke net, dip net, jigging gear, spear, a hook and line attached to a rod or pole, handline, or lead. Although all gear types are not used or allowed in all portions of the Yukon River drainage, drift and set gillnets and fish wheels harvest the majority of fish taken for subsistence uses. Under state regulations, subsistence is the priority consumptive use. Therefore, state subsistence fishing opportunity is directly linked to abundance and is not restricted unless run size is inadequate to meet escapement needs.

Conservation Issues: Currently there are no conservation concerns for northern pike in waters of the Yukon River from Holy Cross downstream to and including Paimuit Slough. However, little is known about the distribution of northern pike from this overwintering population and overwintering concentrations of northern pike can be vulnerable to high harvest rates. Local fishermen have expressed concern with the current level of harvest and the harvest of large northern pike in this fishing area. The northern pike subsistence harvest in this area is undocumented, particularly for fishermen from outside Yukon River drainage villages.

The state has adopted a management plan for northern pike in the lakes and flowing waters of the Minto Flats area of the Yukon River drainage (see 5 AAC 01.244. *Minto Flats Northern Pike Management Plan*) to provide the department with guidance to achieve the goals of managing these stocks consistent with sustained yield principles, providing a reasonable opportunity for the priority subsistence fishery, and providing a sport fishing opportunity.

Northern pike are top level predators in aquatic food chains and are highly piscivorous (fish eating) (ADF&G 2012)¹. Northern pike occur naturally in the Yukon River drainage and they are highly valued as a subsistence and sport fish. In a balanced ecosystem with many other fish (e.g., whitefish, sheefish, suckers, Alaska blackfish, stickleback, char, and juvenile Chinook, chum, coho, pink, and sockeye salmon), northern pike are simply another member of the fish community. However, an abundance of hungry Northern pike in the Yukon River drainage does not help reduce the yield concern for the Yukon River Chinook salmon stock.

Enforcement Issues: None noted at this time.

Jurisdiction Issues: The Federal Subsistence Board does not have the authority to regulate the nonfederally-qualified users participating in fisheries on waters outside of federal subsistence jurisdiction. While standing on state and private lands (including state-owned submerged lands), persons must comply with state law and cannot harvest under conflicting federal regulations.

Enforcement difficulties and user confusion -- concerning where and how federal regulations that are different than state regulations apply -- will result unless detailed maps and explanations specific to the area are provided. Requests for changes to State of Alaska fishery regulations must be submitted to the Alaska Board of Fisheries (BOF) for consideration. The Federal

¹ ADF&G (Alaska Department of Fish and Game). 2012. Invasive pike in Southcentral Alaska. <http://www.adfg.alaska.gov/index.cfm?adfg=invasivepike.main> (Accessed May 2012).

ADF&G Comments on FP13-03
July 13, 2012, Page 3 of 3

Subsistence Board does not have the authority to regulate the nonfederally-qualified users participating in fisheries on waters outside of federal subsistence jurisdiction.

Other Issues: (1) Maps are needed showing the specific boundaries and areas where federal regulations are claimed to apply, along with providing the justification for claiming those boundaries; (2) A large percentage of the lands along the Yukon River are state or private lands where federal subsistence fisheries are not authorized to occur; (3) The federal board does not have authority to supersede state commercial and subsistence fisheries regulations unless a full closure is required for conservation purpose within water of claimed federal jurisdiction; and 4) A similar fisheries regulation proposal has been submitted to the BOF, which will be considered in January 2013. Taking action following the Alaska Board of Fisheries meeting could easily be coordinated given both boards are scheduled to meet in mid to late January 2013. A greater degree of information will be available to this board at the conclusion of the state process.

Recommendation: **Defer** following BOF decision on parallel proposal..

FP13-06/07/08 Executive Summary

<p>General Description</p>	<p>Proposals FP13-06, FP13-07, and FP13-08 address customary trade regulations for Yukon River Drainage Chinook (king) salmon. FP13-06 seeks to limit customary trade of Yukon River Chinook salmon to those with a current customary and traditional use determination for Yukon River Chinook salmon. FP13-07 seeks the same limitation, but only in times of shortage when there is no Yukon River Chinook salmon commercial fishery and restrictions on subsistence fishing are in place. FP13-08 also seeks to limit customary trade of Yukon River Chinook salmon 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. <i>Submitted by the Western Interior Alaska Subsistence Regional Advisory Council (FP13-06), Eastern Interior Alaska Subsistence Regional Advisory Council (FP13-07) and Yukon-Kuskokwim Delta Subsistence Regional Advisory Council (FP13-08)</i></p>
<p>Proposed Regulation</p>	<p><u>FP13-06</u></p> <p>§ ____. 27(c)(11) <i>Transactions between rural residents. Rural residents may exchange in customary trade subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations of this part, for cash from other rural residents. The Board may recognize regional differences and regulate customary trade differently for separate regions of the State.</i></p> <p><i>(iii) Customary trade of Yukon River Chinook salmon may only occur between Federally qualified rural residents with a current customary and traditional use determination.</i></p> <p><u>FP13-07</u></p> <p>§ ____. 27(c)(11) <i>Transactions between rural residents. Rural residents may exchange in customary trade subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations of this part, for cash from other rural residents. The Board may recognize regional differences and regulate customary trade differently for separate regions of the State.</i></p> <p><i>(iii) Customary trade of Yukon River Chinook salmon may only occur between Federally qualified rural residents with a current customary and traditional use determination . This will only be in times of shortage when there is no Chinook salmon commercial fishery and restrictions on subsistence fishing are in place.</i></p>

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FP13-06/07/08 Executive Summary <i>(continued)</i>	
Proposed Regulation (Continued)	<p><u>FP13-08</u></p> <p>§ ____. 27(c)(11) <i>Transactions between rural residents. Rural residents may exchange in customary trade subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations of this part, for cash from other rural residents that are Federally qualified and have a customary and traditional use determination for salmon only in the Yukon River drainage, if the individual who purchases the fish, their parts, or their eggs uses them for personal or family consumption. If you are not a rural resident, you may not sell fish, their parts, or their eggs taken under these regulations. The Board may recognize regional differences and regulate customary trade differently for separate regions of the State.</i></p>
OSM Preliminary Conclusion	<p>Support Proposal FP13-06 with modification, and Support Proposals FP13-07 and PF13-08 with modification to make them consonant with the modified FP13-06. The modification is to add the phrase “for Yukon River Chinook salmon” at the end of the sentence “Customary trade of Yukon River Chinook salmon may only occur between Federally qualified rural residents with a current customary and traditional use determination.”</p> <p>The modified regulation should read:</p> <p>§ ____. 27(c)(11) <i>Transactions between rural residents. Rural residents may exchange in customary trade subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations of this part, for cash from other rural residents. The Board may recognize regional differences and regulate customary trade differently for separate regions of the State.</i></p> <p><i>(iii) Customary trade of Yukon River Chinook salmon may only occur between Federally qualified rural residents with a current customary and traditional use determination for Yukon River Chinook salmon.</i></p>
Yukon/Kuskokwim Delta Regional Council Recommendation	
Western Interior Regional Council Recommendation	
Seward Peninsula Regional Council Recommendation	
Eastern Interior Regional Council Recommendation	

continued on next page

FP13-06/07/08 Executive Summary (continued)

Interagency Staff Committee Comments	
ADF&G Comments	Support refining the definition of customary trade and significant commercial enterprise to provide clarity for users and enforcement. We also recommend the implementation of a permit system to help quantify customary trade and significant commercial enterprise activities.
Written Public Comments	2 Oppose (See comments following the analysis of FP11-08)

DRAFT STAFF ANALYSIS FP13-06, 07, 08

ISSUES

Proposals FP13-06, submitted by the Western Interior Alaska Subsistence Regional Advisory Council, FP13-07, submitted by the Eastern Interior Alaska Subsistence Regional Advisory Council, and FP13-08, submitted by the Yukon-Kuskokwim Delta Subsistence Regional Advisory Council address customary trade regulations for Yukon River Drainage Chinook (king) salmon. FP13-06 seeks to limit customary trade of Yukon River Chinook salmon to those with a current customary and traditional use determination for Yukon River Chinook salmon. FP13-07 seeks the same limitation, but only in times of shortage when there is no Yukon River Chinook salmon commercial fishery and restrictions on subsistence fishing are in place. FP13-08 also seeks to limit customary trade of Yukon River Chinook salmon 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. These proposals respond to recommendations made by a subcommittee composed of members from the Western Interior Regional Advisory Council, the Eastern Interior Regional Advisory Council, and the Yukon-Kuskokwim Delta Regional Advisory Council.

DISCUSSION

The proponents recognize that runs of Yukon River Chinook salmon have been in sharp decline. They suggest that limiting customary trade of Yukon River Chinook salmon to Federally qualified rural residents with current customary and traditional use determinations for Yukon River salmon would curtail large customary trade exchanges of Chinook salmon that are reported to occur in urban, that is nonrural, areas of Alaska. If these proposals are adopted, then nonrural residents, and rural residents who reside outside of the Yukon River drainage, would not be able to participate in customary trade for Yukon River Chinook salmon.

Salmon species are not identified in the Yukon-Kuskokwim Delta Council proposal (FP13-08), in which the limitation refers to all species of salmon found in the Yukon River. However, based on the Tri-Regional Advisory Council subcommittee's recommendation and on the Yukon-Kuskokwim Delta Council (2012:86 ff.) transcripts, it appears that the Yukon-Kuskokwim Delta Council meant the limitation to be for Chinook salmon, not all species of salmon. The Yukon-Kuskokwim Delta Council proposal also contains unnecessary language: "If you are not a rural resident, you may not sell fish, their parts, or their eggs taken under these regulations." A current customary and traditional use determination requires a person to be a qualified rural resident. In addition, the Yukon-Kuskokwim Delta Council proposal replicates language from § ___. 27(c)(12) and imports it into § ___. 27(c)(11), which would require that an individual who purchases fish, their parts, or their eggs use them for personal or family consumption.

The shared element of all three proposals is to limit customary trade of Yukon River Chinook salmon to those with a current customary and traditional use determination for Yukon River Chinook salmon.

Note, however, that under ANILCA, all subsistence uses are equally permissible¹. An ANILCA Section 804 analysis, which allocates scarce resources among users but does not prioritize subsistence uses, may be another mechanism to respond to low availability of Yukon River Chinook salmon.

Existing Federal Regulation

§ ____. 27(c)(11) *Transactions between rural residents. Rural residents may exchange in customary trade subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from other rural residents. The Board may recognize regional differences and regulate customary trade differently for separate regions of the State.*

§ ____. 27(c)(12) *Transactions between a rural resident and others. In customary trade, a rural resident may trade fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from individuals other than rural residents if the individual who purchases the fish, their parts, or their eggs uses them for personal or family consumption. If you are not a rural resident, you may not sell fish, their parts, or their eggs taken under the regulations in this part. The Board may recognize regional differences and regulate customary trade differently for separate regions of the State.*

Proposed Federal Regulation

Western Interior Council proposed regulation, FP13-06:

§ ____. 27(c)(11) *Transactions between rural residents. Rural residents may exchange in customary trade subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations of this part, for cash from other rural residents. The Board may recognize regional differences and regulate customary trade differently for separate regions of the State.*

(iii) Customary trade of Yukon River Chinook salmon may only occur between Federally qualified rural residents with a current customary and traditional use determination.

Eastern Interior Council proposed regulation, FP13-07:

§ ____. 27(c)(11) *Transactions between rural residents. Rural residents may exchange in customary trade subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations of this part, for cash from other rural residents. The Board may recognize regional differences and regulate customary trade differently for separate regions of the State.*

(iii) Customary trade of Yukon River Chinook salmon may only occur between Federally qualified rural residents with a current customary and traditional use determination . This will only be in times of shortage when there is no Chinook salmon commercial fishery and restrictions on subsistence fishing are in place.

Yukon-Kuskokwim Delta Council proposed regulation, FP13-08:

§ ____. 27(c)(11) *Transactions between rural residents. Rural residents may exchange in customary trade subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations*

¹The regulatory exception is found at § ____. 27(i)(3)(xxi), which requires that in the Yukon River drainage, Chinook salmon must be used primarily for human consumption and not be targeted for dog food.

of this part, for cash from other rural residents that are Federally qualified and have a customary and traditional use determination for salmon only in the Yukon River drainage, if the individual who purchases the fish, their parts, or their eggs uses them for personal or family consumption. If you are not a rural resident, you may not sell fish, their parts, or their eggs taken under these regulations. The Board may recognize regional differences and regulate customary trade differently for separate regions of the State.

Note that these proposed regulations speak to § ____. 27(c)(11), which specifies transactions between rural residents. The proposed regulations, however, would also affect § ____. 27(c)(12), which speaks to transactions between rural residents and others:

§ ____. 27(c)(12) Transactions between a rural resident and others. In customary trade, a rural resident may trade fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from individuals other than rural residents if the individual who purchases the fish, their parts, or their eggs uses them for personal or family consumption. If you are not a rural resident, you may not sell fish, their parts, or their eggs taken under the regulations in this part. The Board may recognize regional differences and regulate customary trade differently for separate regions of the State.

Extent of Federal Public Lands

Federal public waters in the Yukon River watershed include all navigable and non-navigable waters located within and adjacent to the exterior boundaries of the Innoko, Kanuti, Koyukuk, Nowitna, Tetlin, and Yukon Flats National Wildlife Refuges (NWR); Yukon-Charley Rivers National Preserve; the Steese National Conservation Area; the White Mountains National Recreation Area; and those segments of the National Wild and Scenic River system, of the Yukon River drainage, located outside the boundaries of these Federal conservation units (i.e., portions of Beaver and Birch Creeks and the Delta, and the Fortymile Rivers). Additionally, those navigable and non-navigable waters of the Yukon River drainage, within and adjacent to the exterior boundaries of the Arctic NWR, the Denali National Preserve, the 1980 additions to the Denali National Park, the Gates of the Arctic National Park and Preserve, the Wrangell-St. Elias National Park and Preserve, and the Yukon Delta NWR are within Federal jurisdiction for purposes of Federal subsistence fisheries management. Federal public waters include all Yukon commercial fishing Districts Y1–Y3; parts of Subdistricts 4A and 4C; most of Subdistrict 5D; and part of Subdistrict 6C (see **Yukon-Northern Area maps**).

Existing State Regulations

State regulations do not allow the exchange of subsistence-caught fish for cash, with the exceptions of herring roe on kelp in Southeast Alaska (5AAC 01.717) and subsistence-harvested finfish in the Norton Sound-Port Clarence area (5AAC 01.188).

Customary and Traditional Use Determinations

The customary and traditional uses of Chinook salmon from the Yukon River drainage have been recognized for all residents of the drainage and the community of Stebbins.

Regulatory History—Customary Trade

Title VIII of the 1980 Alaska National Interest Lands Conservation Act (ANILCA) recognized customary trade as a subsistence use (ANILCA Sec. 803). Although undefined in ANILCA, the term “customary

trade” was later defined in the implementing 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 regulations also included the following prohibition: “No person may buy or sell fish, their parts, or their eggs which have been taken for subsistence uses, unless, prior to the sale, the prospective buyer or seller obtains a determination from the Federal Subsistence Board that the sale constitutes customary trade” (60 FR 31589 June 15, 1995). This prohibition was removed from regulations in 1999 (64 FR January 8, 1999).

By 2000, the Federal Subsistence Board recognized that Federal regulations regarding customary trade needed further clarification. The term “significant commercial enterprise” was not defined in regulation, and had the potential to confuse subsistence users and law enforcement personnel in deciding whether a particular transaction was permissible customary trade or an impermissible commercial enterprise. Without a more specific definition of “significant commercial enterprise,” law enforcement personnel concluded that the regulation was unenforceable. Additionally, there was a concern that allowing customary trade without further regulatory clarification would create a loophole for certain subsistence resources to become commodities on the commercial market, contrary to the intent of ANILCA.

In January 2003, after extensive public comment and careful review, the Board adopted regulations which provided a more enforceable regulatory framework for this long-standing subsistence practice. The regulations took effect on May 28, 2003 (68 FR 22308 April 28, 2003). With these regulations, the Board sought to accommodate customary and traditional practices and to prevent abuses of the subsistence preference in the form of significant commercial transactions. The Board also recognized that it may be necessary to make future modifications to regulations in order to accommodate regional differences in customary trade.

In subsequent years, the Board reviewed and adopted two regional proposals defining upper limits for customary trade.² For the Bristol Bay Fishery Management Area, the Board limited the cash value per household of salmon exchanged in customary trade between rural residents to no more than \$500 annually, and limited the cash value per household of salmon exchanged in customary trade between rural residents and others to no more than \$400 annually. These limits were not additive; the overall limit was \$500 annually. For this area, the Board also imposed a recording requirement for rural-to-others customary trade, but not for rural-to-rural customary trade. These regulations, proposed by the Bristol Bay Subsistence Regional Advisory Council, took effect on March 1, 2004 (69 FR 5026 February 3, 2004).

For the Upper Copper River District, the Board limited the total number of salmon per household exchanged in customary trade between rural residents to no more than 50% of the annual household harvest of salmon. The Board limited the cash value per household of salmon exchanged in customary trade between rural residents and others to no more than \$500 annually. When taken together, customary trade to rural residents and to others may not exceed 50% of the annual household limit. Additionally, the Board imposed a recording requirement for both rural-to-rural customary trade and rural-to-others customary trade: customary trade sales must be immediately recorded on a customary traded recordkeeping form, the responsibility for which resides with the seller. These limits, proposed by Ahtna Inc., the Copper River Native Association, and the Chitina Native Corporation, took effect on April 1, 2005 (70 FR 13385 March 21, 2005).

²The Board also reviewed and rejected or deferred a number of proposals restricting customary trade of salmon. See Appendix A.

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

Recent History

In 2008 and 2009, continued low Chinook salmon runs sparked renewed concerns about customary trade. The Yukon River Panel, an international body established under the Yukon River Salmon Agreement, met in December, 2008. Anticipating poor salmon runs in 2009, members of the Panel requested clarification from the Federal Subsistence Board regarding customary trade, specifically whether Federal regulations permitted sale of processed subsistence-caught fish for human consumption, whether there was any monitoring of subsistence-taken salmon in the Yukon, and whether there was any enforcement activity in the Yukon Management Area in 2007 and 2008 (Andrews and Quinn, Jan. 26, 2009).

In a reply dated February 20, 2009, the Board noted that Federal customary trade regulations “do not preempt State of Alaska food safety and health laws,” and that such regulations “do not authorize the sale of processed fish by rural subsistence users who do not fulfill the requirements of Alaska Department of [Environmental] Conservation food safety laws” (FSB Feb. 20, 2009). Note, however, that Federal regulations do not prohibit such sales. To address the issues of monitoring and enforcement, the Board forwarded the Yukon River Panel’s request to Stanley Pruszenski, Special Agent-in-Charge of Law Enforcement of U.S. Fish and Wildlife Service Region 7, and to Gary Youngblood, Chief Ranger of the Gates of the Arctic National Park and Preserve and Yukon-Charley Rivers National Preserve.

In a letter to the Board dated March 13, 2009, Mr. Youngblood indicated that he had reviewed all of the Case Incident Reports for Yukon-Charley Rivers National Preserve for 2007 and 2008, but “was not able to locate any reference in those reports of issues or concerns dealing with customary trade.” He further indicated that, based on discussions with his staff, there appeared to be “little opportunity within our jurisdictional boundaries for much customary trade” (Youngblood, March 13, 2009). In his letter dated March 18, 2009, Mr. Pruszenski indicated that “We believe compliance with, and general support for, the management actions throughout major portions of the river are good.” He cited the 2003 Final Rule (68 FR 22311 April 28, 2003) governing customary trade, in which the Board stated that it “does not believe that this rule will create an incentive for additional harvest of the resources nor result in additional fish being sold in the commercial markets.” Mr. Pruszenski went on to note that “Service law enforcement programs have not prioritized monitoring this aspect of subsistence use” (Pruszenski, March 18, 2009).

The Fairbanks Fish and Game Advisory Committee (FFGAC) and the Eastern Interior Alaska Subsistence Regional Advisory Council were also concerned with customary trade in the context of low salmon runs. The FFGAC and the Eastern Interior Council submitted to the Federal Subsistence Board in February, 2009 similar Special Action Requests to suspend all customary trade of Chinook salmon between rural residents and others. The FFGAC requested a suspension from June 2009 to June 2010 (FSA09-01), and the Council requested suspension from June 1, 2009 to April 1, 2010 (FSA09-02). The rationale to suspend customary trade in both Special Action Requests reads in part:

Fishers in the lower Yukon, middle Yukon, and upper Yukon were supportive of limiting customary trade and believe the first priority is for rural residents to fish to feed their families. Even though customary trade may be a legal subsistence practice, many believe that selling

fish to “others,” especially when subsistence and escapement needs may not be met, should be stopped.

In its May 29, 2009 response, the Board determined that the requests did not meet the threshold for accepting a Special Action Request, and consequently denied them. The Board noted that low runs of Yukon River Chinook salmon were of longstanding conservation concern and that anticipated low 2009 runs were “being addressed through management actions that have been developed in coordination with fishers along the river.” In addition, the Board emphasized that “[t]here was no evidence to indicate that customary trade allowed under Federal regulations has either led to or augmented declines in Yukon River Chinook salmon.” The Board also pointed out that it treats all subsistence uses allowed under ANILCA as equally important, and that “there is no statutory or regulatory mechanism that expressly sets out a means for prioritizing amongst subsistence uses” (FSB May 29, 2009).

At the joint Western and Eastern Interior Alaska Subsistence Regional Advisory Council meetings on February 23–26, 2010, a number of concerns continued to be raised related to sales of subsistence-caught fish. One person noted that “more specific definition and standards and enforcement mechanisms are necessary to ensure enforceable limits on this rapidly growing trade” of subsistence-caught salmon, a statement supported by several Eastern and Western Interior Council members (WI&EIRAC 2010:148). One member of the Eastern Interior Council argued that customary trade “is completely unregulated, it’s unrecorded, it’s completely uncontrolled and in my view, it’s completely unacceptable when we are having subsistence restrictions in place on the Yukon River.” He went on to state that “This issue is going to make or break the recovery of our fisheries” (WI&EIRAC 2010:156).

Another Eastern Interior Council member, however, questioned the need for any further regulation on customary trade. “You have no commercial [fishing] anymore and now you’re digging into customary trade. And what harm has it done, did it hurt the fisheries or is it going to? I’d like to know what’s going on with that and find out from the people before we start making regulations, [and] rules” (EIRAC February 25, 2010:240).

The Chair of the Western Interior Council argued that abuses of the system need to be addressed: the problem “is when some people show up down in Anchorage with huge boxes full of smoked fish and it’s all being traded at AFN. That’s when things get out of whack.” He also noted that trading fish for cash is “how fish is disseminated throughout the region away from the river.” In addition, he said, the Western Interior Council recognizes sale of processed salmon as part of customary trade: “whether the Federal Government can tolerate it or the State can tolerate it, we consider that as customary use...it’s just the way it works” (WI&EIRAC 2010:150–51).

Another member of the Western Interior Council mentioned his participation in the Customary Trade Task Force in 2001. He recalled that “there was a member from Ketchikan who said, well, I get my fish at AFN...And a lady from Nome says, well, we’ve got our fish from the Yukon for years.” He also noted that, where he lives, “a lot of the local residents on the Upper Kuskokwim are now buying their fish either from the Yukon or from downriver for subsistence needs. And then there are a lot of people that are working now that can’t go out, but still depend on the [salmon] strips. So it really gets complicated when...the way people are getting their subsistence fish now is by paying those who are taking the time to go to camp” (WI&EIRAC 2010:151–52).

At its March, 2010 meeting, the Yukon-Kuskokwim Delta Subsistence Regional Advisory Council discussed at length the issue of customary trade. A prominent problem was enforcement of existing regulations. The Council Chair mentioned the lack of adequate enforcement and specifically raised “concerns for enforcement on the customary trade that’s developing into more of a commercial concern

in the upper portions of the Yukon River” (YKRAC 2010:280). Another Council member also remarked on abuses to the system and stated: “If there was some way that we could really restrict customary trade to mean exactly what it’s supposed to be....so we could restrict that and make it enforceable, then I’d be really, really happy and I know the other people would be too...” (YKRAC 2010:319).

At its November 9, 2010 public work session, the Federal Subsistence Board received a briefing from Stan Pruszenski, Special Agent-in-Charge of Law Enforcement of U.S. Fish and Wildlife Service Region 7, on customary trade enforcement. Mr. Pruszenski noted that USFWS had been investigating possible illegal activity associated with customary trade in 2008, 2009, and 2010. In October, 2010, the investigation shifted from a covert to an overt inquiry. The focus of the inquiry was on salmon strips from the Yukon River, but the Copper River also became a focus (FSB November 9, 2010: 26–35).

One outcome of this investigation was the indictment of a Nenana man, which alleged false identification of a fish species sold in interstate commerce (Mowry, Feb. 24, 2011). This man was convicted in January, 2012, for illegally selling chum strips as king strips for commercial resale (Mowry, Jan 27, 2012).

Tri-Regional Advisory Council Customary Trade Subcommittee

As noted above, in January 2011, the Board deferred FP11-08 in order to allow a subcommittee from the Yukon-Kuskokwim Delta Council, the Western Interior Council, and the Eastern Interior Council time to develop a recommendation on the customary trade of Yukon River Chinook salmon (76 FR 12564 March 8, 2011; Jenkins 2011). The Tri-Regional Advisory Council subcommittee, composed of three members from each Regional Advisory Council, met on May 18–19, 2011, in Anchorage and again on August 23–24, 2011, in Fairbanks. At both meetings, subcommittee members agreed that low runs of Chinook salmon require conservation efforts to extend to customary trade practices. If Chinook salmon runs return to prior levels, limits to customary trade may no longer be warranted.

At its May meeting, the subcommittee discussed three potential customary trade regulatory changes, which would only apply to Yukon River Chinook salmon. These included precluding all customary trade of Yukon River Chinook salmon between rural residents and others; allowing customary trade only between rural residents within the Yukon River drainage, with a \$750 limit per household; and requiring a permit and recordkeeping form. The subcommittee’s ideas for proposed regulatory changes were sent out for public review and comment.

At its August meeting, the subcommittee discussed the public response to the proposed regulatory changes. Based on those discussions, the subcommittee developed two new recommendations, which were later presented to the Regional Advisory 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 for Yukon River Chinook salmon.
- 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.

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 at a lower level, recognizing the need for conservation. This was the intent of the subcommittee's preferred recommendation.

The Yukon-Kuskokwim Delta Council met on September 29–30, 2011 in Bethel. Council members supported the first recommendation, but some members felt that if a dollar limit was imposed, the \$750 limit was appropriate. Council members were generally pleased with the subcommittee's recommendations and supportive of its efforts. The Council did not vote on which recommendation to support (YKRAC 2011).

The Western Interior Council met on October 4–6, 2011 in Aniak. The Council voted unanimously to support the first recommendation and not the second (WIRAC 2011: 139). Council members pointed out that sharing and barter, also protected subsistence uses under ANILCA, have no limits and may substitute for some cash exchanges under customary trade. Council members emphasized that the Federal Subsistence Board should explicitly recognize traditional processing practices, such as the preparation of strips, as part of customary trade. As one council member noted, there are “hardly any traditional or customary trade practices dealing with unprocessed fish on the Yukon” (WIRAC 2011: 134).

The Eastern Interior Council met on October 11–13, 2011 in Fairbanks. The Council received public comment on customary trade and on the subcommittee's recommendations. Much of the public commentary pointed out the cultural differences of customary trade practices along the Yukon River, and emphasized that more research was needed to understand those practices. Without more information, it may be difficult to craft meaningful regulations which accurately reflect local cultural practices. As one person testified about the sale of strips versus the sale of unprocessed fish under customary trade, “The sale of whole fish is not customary in our area” (EIRAC 2011:419–420). The Council voted in favor of the subcommittee's first recommendation. It voted against the second recommendation (EIRAC 2011:477 ff.).

The Tri-Regional Advisory Council customary trade subcommittee was a subcommittee of the Regional Advisory Councils and not of the Board. Although none of the Councils voted to forward the findings of the subcommittee to the Board, all of the Councils considered the subcommittee's recommendations in the development of their own proposals on customary trade.

The current proposals, FP13-06, FP13-07, and FP13-08, all came out of the winter 2012 Regional Advisory Council meeting cycle, and were based on the Tri-Regional Advisory Council subcommittee's recommendations.³

Effects of the Proposals

The proposals seek to limit customary trade of Yukon River Chinook (king) salmon under §____. 27(c) (11), which refers to customary trade between rural residents. The proposals would limit customary trade of Yukon River Chinook salmon to those with a current customary and traditional use determination for salmon in the Yukon River drainage. The proposals would thereby limit customary trade under §____. 27(c)(12), which refers to customary trade between rural residents and others.

³See Appendix B for a summary of research on customary trade.

The Western Interior Council proposal FP13-06 seeks to limit customary trade of Yukon River Chinook salmon to those with a current customary and traditional use determination for Yukon River Chinook salmon. FP13-06 contains no other provisions.

The Yukon-Kuskokwim Delta Council proposal and the Eastern Interior Council proposal have additional elements.

The Eastern Interior Council proposal FP13-07 would prohibit customary trade of Yukon River Chinook salmon “only in times of shortage when there is no Chinook salmon commercial fishery and restrictions on subsistence fishing are in place.” In the event Chinook salmon runs return to levels that allow managers to lift subsistence restrictions and allow a commercial fishery, then limitations on customary trade would no longer be warranted. The Eastern Interior Council proposal explicitly recognizes the importance of customary trade and provides a threshold for reinstating customary trade of Chinook salmon beyond the confines of the Yukon River drainage. If low runs result in a closing of the Yukon River Chinook salmon commercial fishery and if subsistence fishing for Yukon River Chinook salmon is restricted, then customary trade of Chinook salmon will be limited to those with a customary and traditional use determination for Yukon River Chinook salmon. If higher runs result in an opening of the Yukon River Chinook salmon commercial fishery and no subsistence restrictions, then the limitation on customary trades would be lifted.

The Yukon-Kuskokwim Delta Council proposal FP13-08 does not identify salmon species, but for this analysis it is assumed, based on reasons stated above, that FP13-08 refers to Yukon River Chinook salmon. The Council’s proposal contains unnecessary language, as noted above, in that it would limit uses to personal or family consumption.

If adopted, the proposals would limit customary trade of Yukon River Chinook salmon to those with a current customary and traditional use determination for Yukon River Drainage Chinook salmon. The cash from customary trades of Chinook salmon with those outside of the Yukon River Drainage would be eliminated. This may have the unintended consequence of limiting some subsistence activities that depend on cash generated from customary trades of Chinook salmon, such as the purchase of gasoline to fuel ATVs and boats. It may also shift customary trade to barter, or increase customary trade within the Yukon River drainage, or both.

The number of Yukon River Chinook salmon harvested by Federally qualified users on federal lands that are used for customary trade is unknown. It is therefore impossible to measure any biological impacts that restrictions on customary trade of Chinook salmon may have. It is also impossible to quantify, based on available research, the numbers of Chinook salmon that enter into customary trade.

OSM PRELIMINARY CONCLUSION

Support Proposal FP13-06 **with modification**, and **Support** Proposals FP13-07 and PF13-08 **with modification** to make them consonant with the modified FP13-06. The modification is to add the phrase “for Yukon River Chinook salmon” at the end of the sentence “Customary trade of Yukon River Chinook salmon may only occur between Federally qualified rural residents with a current customary and traditional use determination.”

The modified regulation should read:

§ _____. 27(c)(11) Transactions between rural residents. Rural residents may exchange in customary trade subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations of

this part, for cash from other rural residents. The Board may recognize regional differences and regulate customary trade differently for separate regions of the State.

(iii) Customary trade of Yukon River Chinook salmon may only occur between Federally qualified rural residents with a current customary and traditional use determination for Yukon River Chinook salmon.

Justification

The shared element of all three proposals is to limit customary trade of Yukon River Chinook salmon to those with a current customary and traditional use determination for Yukon River Chinook salmon. Much of the Yukon-Kuskokwim Delta, Western Interior, and Eastern Interior Regional Advisory Council discussion about customary trade was set in the context of declining Chinook runs. A limitation to customary trade was perceived as an additional tool to help improve those runs.

Although there is little quantifiable information on the numbers of Chinook salmon that enter customary trade, it seems prudent, given the current Yukon River Chinook salmon declines, to follow the recommendations of the three Regional Advisory Councils in this matter. Limiting customary trade of Yukon River Chinook salmon only to those with a current customary and traditional use determination for Yukon River Chinook salmon will keep such trade within the drainage. This would allow subsistence users to receive cash in exchange for subsistence-caught Chinook, which, more likely than not, would be used to support other subsistence activities.

If runs of Yukon River Chinook salmon increase to the point where there is a lessened conservation concern, as evidenced by the lifting of restrictions to subsistence harvesting and the resumption of a commercial fishery, then a future regulatory proposal could be adopted to eliminate this proposed customary trade limitation.

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APPENDIX A

Federal Subsistence Board Action

The Board has reviewed, adopted, and rejected or deferred a number of proposals restricting customary trade of salmon (see also Pappas 2012 for a general overview).

The Board rejected Proposal FP04-02 to prohibit the customary sale of salmon from the Yukon when there is a designation of “stock of concern” (FSB 2003a:88). The Board reasoned that there was insufficient evidence about customary trade to warrant a restriction, that ANILCA provides for customary trade, that the proposal failed to recognize regional differences in customary trade, and that salmon run strength, which changes year to year, was not addressed.

The Board rejected Proposal FP04-03 to remove reference to salmon eggs as permissible under customary trade (FSB 2003a:95). The Board reasoned that removing reference to salmon eggs would not clarify regulatory language, contrary to the proponent’s assertion that it would so clarify.

The Board deferred Proposal FP04-04 to prohibit the sale between rural residents and others of subsistence-caught salmon from Yukon River Districts 1, 2, and 3 and Kuskokwim River salmon (FSB 2003a:43). The proposal was on the consensus agenda, and the Board provided no commentary on it.

The Board rejected Proposal FP04-18 to prohibit the customary trade of subsistence-caught fish taken from Federal public waters on the Kenai Peninsula (FSB 2003b:15). The Board reasoned that ANILCA provides for customary trade, and that there was no evidence that such trade constituted a problem.

The Board rejected Proposal FP05-10 to establish limits on customary trade of salmon in the Cook Inlet Fishery Management Area (FSB January 2005). The proposal was on the consensus agenda, and the Board provided no commentary on it. However, the Southcentral Subsistence Regional Advisory Council recommended opposing the proposal because of low participation and harvest in the fishery. The Interagency Staff Committee and Alaska Department of Fish and Game concurred, which then put this proposal on the consensus agenda.

APPENDIX B

Research on Customary Trade

In Alaska, subsistence foods and other wild resources are exchanged through barter, for cash, and, most commonly, through sharing between households. Wolfe et al. (2000) prepared a bibliography of some 121 studies of the distribution and exchange of wild resources in Alaska. Based on these studies, Wolfe et al. note that quantitative information on between-household sharing is reasonably robust, whereas quantitative information on barter and customary trade is mostly lacking. Community ethnographies often contain qualitative information about barter and customary trade, “but systematic information on

frequency, volume, and prices is rarely provided” (Wolfe et al. 2000:3). An exception is Fienup-Riordan (1986), who provides both qualitative and quantitative information on customary trade in the Yukon Delta region.

Fienup-Riordan (1986) describes cash sales of subsistence-caught salmon occurring in the early 1980s in the communities of Alakanuk, Sheldon’s Point and Scammon Bay. In 1982, six gallons of subsistence-caught dried chum salmon sold for between \$100 and \$150. The purpose for such sales, however, was not to make a profit. The purpose was to circulate food through networks of kin.

In all of these cases, although the transaction was consummated with cash, the primary motive in the harvest of the resource was not strict economic gain. Only a handful of households in each village produce extra salmon or harvest extra seals specifically for sale. The majority of households sold or traded irregularly, only in the case of an unusually large harvest...In fact, in the event of an abundant supply, what happens in the majority of the cases is not the conversion of the excess to economic value, but the extension of the effective kin group through the distribution of the catch (Fienup-Riordan 1986:188).

Fienup-Riordan emphasizes that it is a mistake to interpret sales of subsistence-caught foods as commercial in nature and to impose a set of Western economic values on transactions that have other cultural logics. The “social justification for what might otherwise be interpreted as an activity undertaken for profit brings us back to the original goal of the exchange system, that is: to accumulate within the extended family for distribution beyond it, both within the village and between villages, at whatever level the individual household or extended family group can maintain” (1986:188).

Several more recent studies of customary trade have been funded by the Federal Subsistence Board. These include Krieg et al. (2007), which describes sharing, barter, and customary trade in the Bristol Bay area; Magdanz et al. (2007), which describes customary trade and barter in the Seward Peninsula area; and Moncrieff (2007), which describes customary trade of salmon in three communities on the Yukon River—Alakanuk, Holy Cross, and Tanana.

Moncrieff (2007) interviewed 28 active fishers and elders from three communities on the Yukon River with knowledge of customary trade practices. Her results are relevant to the current proposals and are briefly summarized below.

In Alakanuk in 2004, Moncrieff and local research assistants interviewed seven study participants, three of whom had never sold subsistence-caught salmon. Interviewees indicated that a few Alakanuk villagers sold subsistence-caught salmon in limited quantities, which ranged from quart-sized bags of smoked salmon strips for \$20.00 each to 5-gallon buckets of dried chum salmon for \$200.00 each. One study participant noted that he had sold subsistence-caught salmon for 20 years, provided he had the extra fish, but in larger, albeit unspecified, quantities. Another participant mentioned that he traded with or sold salmon to people in a number of communities, including Hooper Bay, Chevak, Scammon Bay, Stebbins, and Anchorage. Only one of the seven study participants had bought subsistence-caught salmon within the past several years: a box of dried chum salmon for \$40.00. The reasons Alakanuk study participants engaged in customary trade included the following: to help others who couldn’t fish, to avoid wasting fish, and to raise cash to purchase household and subsistence supplies. In Alakanuk, customary trade appears to constitute a modest but important component of the local subsistence economy (Moncrieff 2007: 16–17).

In Holy Cross in 2004, Moncrieff and local research assistants interviewed eight study participants, seven of whom engaged in customary trade. Unlike Alakanuk villagers, people in Holy Cross often

sold subsistence-caught salmon, including Chinook salmon strips and chum salmon split and half-dried. Quantities of subsistence-caught salmon sold in customary trade varied year by year. One interviewee sold 18 salmon processed into six cases of pint jars. Other interviewees sold an average 30 to 40 pounds of salmon. Prices depended on species and quantity. Chinook salmon strips sold for \$20.00 per quart bag or \$16.00 to \$20.00 per pound. Half-dried salmon bellies sold for \$75.00 per case. Moncrieff notes that information about total yearly sales was difficult to obtain, but from the information gathered it appeared that study participants sold an average of \$1,360 worth of salmon in customary trade. Cash from these sales was used to purchase gas and supplies for subsistence activities, household items, children's clothing, and to pay for utility bills. Moncrieff concludes that cash obtained through customary trade of salmon made further subsistence fishing possible, and provided small amounts of money for other expenses (Moncrieff 2007: 21–24).

In Tanana in 2005, Moncrieff and local research assistants interviewed 13 study participants, most of whom were active subsistence fishers. Of the 13 participants, six currently sold subsistence-caught salmon through customary trade and seven currently either did not sell or sold very small amounts of subsistence-caught salmon through customary trade. Among the seven less active participants in customary trade, only one had never sold fish. The others sold salmon in the past in amounts ranging from a few fish to 100 Chinook salmon. One interviewee had sold an average of 600 pounds for \$6,000 annually, but in 2005 reserved most of his harvest to share with a large network of family and friends (Moncrieff 2007: 27–29).

The six active participants in customary trade each year sold fish to family and friends in Tanana, Manley Hot Springs, or Nenana. They also sold small amounts to people in Fairbanks, Salcha, Sitka, Minto, Minchumina, Ruby, Point Hope, and elsewhere. Most of the salmon were sold as strips or as dried fish, but were available in a variety of processed forms. Prices were fairly consistent for all fishers, and included the following:

Whole fish:	\$1/pound
Fillets:	\$2/pound
Half-dried:	\$5/pound
Strips:	\$15–\$18/pound
Eating or dried fish:	\$12–\$18/pound
Canned strips:	\$12–\$15/tall can
Canned fresh fish:	\$6/short can, \$15/tall can, \$8/jar

Moncrieff (2007: 28) did not report the salmon species associated with these sales nor the amounts earned from them, but noted that project participants used the income from customary trade to fund subsistence fishing activities.

Fishers interviewed in Moncrieff's study reported that they engaged in customary trade only if they first harvested sufficient fish for their own family's use and satisfied obligations to share fish with a network of extended family and friends. They did not subsistence fish primarily to sell fresh or processed salmon. Cash raised through customary trade appears to support other subsistence activities, and is used to pay for various household and other expenses.

Commercial or market-level transactions were not addressed in Moncrieff's report.

Based on Moncrieff's study, it is worth emphasizing that customary trade of subsistence-caught salmon takes a variety of forms, involves different kinds of social networks, and changes year-by-year, depending upon a number of cultural, economic, and environmental factors. In general, customary trade of subsistence-caught salmon appears to increase the further upriver one travels on the Yukon (Moncrieff 2007). However, Moncrieff's study did not include the upper-most reaches of the Yukon River. Whether the pattern of increasing customary trade obtains further upriver is not known.

Two other studies of customary trade report results similar to Moncrieff (2007). Although focused on different regions, these reports, in conjunction with Moncrieff (2007) and Fienup-Riordan (1986), indicate similar patterns of customary trade. Some of the key findings from these studies include the following (Kreig et al. 2007; Magdanz et al. 2007):

- Customary trade is common but infrequent.
- Cash sales under customary trade are for relatively small sums of money, with a few exceptions.
- Customary trade is not part of the market economy. For example, prices for subsistence-caught fish and other resources exchanged under customary trade are determined by tradition, not by market forces (Krieg et al. 2007:90).

Draft Comments FP13-06, 07, 08
 July 12, 2012 Page 1 of 3

Alaska Department of Fish and Game
Comments to the Regional Advisory Council

Fisheries Proposals FP13-06, 07, 08: This group of proposals seeks to refine definitions of Customary Trade of Yukon River Chinook Salmon.

Introduction:

FP13-06, submitted by the Western Interior Subsistence Regional Advisory Council (WI-RAC), seeks to limit customary trade of Yukon River Chinook salmon to that occurring between federally qualified rural residents with a current customary and traditional use determination (C&T). While the proposer does not qualify the customary and traditional use determination it may be it is assumed both the trader and recipient are to have C&T for Yukon River salmon.

FP13-07, submitted by the Eastern Interior Subsistence Regional Advisory Council (EI-RAC), seeks to limit customary trade of Yukon River Chinook salmon to that occurring between federally qualified rural residents with a current C&T and qualifies application to times of shortage when no Chinook salmon commercial fishery or restrictions on subsistence fishing are in place.

FP13-08, submitted by the Yukon-Kuskokwim Delta Subsistence Regional Advisory Council (YKD-RAC), seeks to limit customary trade of Yukon River Chinook salmon to that occurring between federally qualified rural residents with a current C&T for salmon only in the Yukon River drainage.

Impact on Subsistence Users: Defining customary trade would provide greater understanding of what is allowable under this practice. Limiting the scope of customary trade to the specific users mentioned in the proposals would provide for those users and exclude other users. Some rural residents without C&T for Yukon River Chinook salmon who may have purchased these salmon in trade would suffer a loss of purchased salmon obtained through cash transactions. Without the addition of a definition of “significant commercial enterprise”, there will be continued confusion and enforcement issues will remain.

Impact on Other Users: None noted at this time.

Opportunity Provided by State: State subsistence users are allowed to engage in the customary trade of subsistence-caught fish; however, 5 AAC 01.010 prohibits the sale of subsistence-caught fish, their parts, or their eggs¹ unless otherwise specified in state regulation. Currently, there are only two exceptions listed in Chapter 5 of state regulations; they are for the

¹ 5 ACC 01.010 METHODS, MEANS, AND GENERAL PROVISIONS

(d) Unless otherwise specified in this chapter, it is unlawful to buy or sell subsistence-taken fish, their parts, or their eggs, except that it is lawful to buy or sell a handicraft made out of the skin or nonedible by-products of fish taken for personal or family consumption.

Draft Comments FP13-06, 07, 08
July 12, 2012 Page 2 of 3

Norton Sound-Port Clarence Area and for Southeast Alaska.² Currently, no sale of subsistence-caught fish is allowed in the Yukon River drainage.

Conservation Issues: The Yukon River Chinook salmon stock is currently classified as a yield concern. Since 2001, subsistence fishing time in the Yukon Area has been limited by the windows schedule and then further restricted in 2008, 2009, and 2011 because of conservation concerns for Chinook salmon. Subsistence harvest levels for Chinook salmon have not met the amounts reasonably necessary for subsistence (ANS) range the last four years (2008–2011). A majority of the Yukon River drainage escapement goals have been met or exceeded since 2000, including the Chena and Salcha rivers, which are the largest producers of Chinook salmon in the U.S. portion of the drainage. The escapement objective for the Canadian mainstem was met every year from 2001 through 2006, with 2001, 2003, and 2005 being the three highest spawning escapement estimates on record. The escapement objective for the Canadian mainstem was not met in 2007, 2008, and 2010. Exploitation rate on the Canadian-origin stock by Alaskan fishermen has changed from an average of about 55% (1989–1998) to an average of about 44% from 2004–2008 (Howard et al. 2009). Although the subsistence harvest was stable at nearly 50,000 Chinook salmon annually through 2006, the recent five-year average (2007–2011) was 43,900. Commercial harvests have decreased over 90% from an average of 100,000 annually (1989–1998) to the recent five-year average (2005–2009) of nearly 9,700 fish.

Enforcement Issues: A refined federal definition for customary trade would reasonably be expected to reduce enforcement complications provided the definition adopted is specific and easily interpreted. Information outreach will be necessary to adequately inform the public of any adopted changes to the definition. Without the addition of a definition of “significant commercial enterprise”, confusion and enforcement issues will remain.

Jurisdiction Issues: While standing on state and private lands (including state-owned submerged lands and shorelands), persons must comply with state laws and regulations and cannot sell subsistence-caught fish with two exceptions, as specified above. Federal subsistence regulations, particularly customary trade regulations, pertain only to fishing on and use of fish caught on federal public lands and those waters where federal subsistence jurisdiction is claimed. The sale of subsistence fish caught on all lands and waters (federal, state, or private) is limited by state regulations, except to the extent superseded by federal law on federal lands. The State of Alaska maintains jurisdiction of food safety and food processing regulations based upon DEC regulations.

Violation of existing customary trade rules is largely an enforcement problem. What is needed is more education and an enforceable definition on what constitutes a significant commercial enterprise. We also suggest implementing a monitoring program to produce actual data, and clarifying the roles and responsibilities of federal and state enforcement agencies.

Other Issues: Adoption of this proposal may provide enforceable customary trade regulations, including limits and reporting requirements. Currently, the extent of customary trade in the Yukon River under federal regulations is unknown; an enforceable monitoring program would

² 5 AAC 01.188 and 5 AAC 01.717

Draft Comments FP13-06, 07, 08
July 12, 2012 Page 3 of 3

provide data useful for management purposes. A permit system is more readily enforceable than one without permits being required.

Recommendation: Support refining the definition of customary trade and significant commercial enterprise to provide clarity for users and enforcement. We also recommend the implementation of a permit system to help quantify customary trade and significant commercial enterprise activities.

FP13-09/10 Executive Summary

<p>General Description</p>	<p>Proposal FP13-09 requests 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. <i>Submitted by the Eastern Interior Subsistence Regional Advisory Council</i></p> <p>Proposal FP13-10 requests that the 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. <i>Submitted by the Yukon-Kuskokwin Delta Subsistence Regional Advisory Council</i></p>
<p>Proposed Regulation</p>	<p><u>FP13-09:</u></p> <p>§ ____. 27(e)(3) <i>Fishery management area restrictions—Yukon-Northern Area</i></p> <p>(xxii) Yukon River Chinook salmon are to be used primarily for subsistence use for human food and personal family consumption.</p> <p><u>FP13-10:</u></p> <p>§ ____. 27(c)(11) <i>Transactions between rural residents. Rural residents may exchange in customary trade subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from other rural residents. The Board may recognize regional differences and regulate customary trade differently for separate regions of the State.</i></p> <p>(iii) Whenever the Yukon River Chinook salmon returns are below average; are a conservation concern by management authorities, and subsistence restrictions are being considered or implemented, subsistence take of Chinook salmon for family consumption shall be priority over uses such as Customary Trade of salmon pursuant to section 804(1) of ANILCA as amended.</p> <p>§ ____. 27(c)(12) <i>Transactions between a rural resident and others. In customary trade, a rural resident may trade fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from individuals other than rural residents if the individual who purchases the fish, their parts, or their eggs uses them for personal or family consumption. If you are not a rural resident, you may not sell fish, their parts, or their eggs taken under the regulations in this part. The Board may recognize regional differences and regulate customary trade differently for separate regions of the State.</i></p>

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FP13-09/10 Executive Summary (continued)	
Proposed Regulation (Continued)	<i>(iii) Whenever the Yukon River Chinook salmon returns are below average; are a conservation concern by management authorities, and subsistence restrictions are being considered or implemented, subsistence take of Chinook salmon for family consumption shall be priority over uses such as Customary Trade of salmon pursuant to section 804(1) of ANILCA as amended.</i>
OSM Preliminary Conclusion	Oppose
Yukon/Kuskokwim Delta Regional Council Recommendation	
Western Interior Regional Council Recommendation	
Seward Peninsula Regional Council Recommendation	
Eastern Interior Regional Council Recommendation	
Interagency Staff Committee Comments	
ADF&G Comments	Neutral
Written Public Comments	2 Oppose (See comments following the analysis of FP11-08)

DRAFT STAFF ANALYSIS FP13-09/10

ISSUES

Proposal FP13-09, submitted by the Eastern Interior Subsistence Regional Advisory Council, requests 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, submitted by the Yukon-Kuskokwin Delta Subsistence Regional Advisory Council, requests that the 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.

DISCUSSION

Both proponents seek to limit exchanges for cash of subsistence-caught Yukon River Chinook salmon in an attempt to prioritize other uses, that is, to ensure that direct personal or family consumption of Yukon River Chinook salmon comes before customary trade. Proposal FP13-10 indicates that such prioritization should take place when subsistence restrictions are enacted, and that “the use of Chinook as a primary food source and related food security issue, takes precedence over any activities that involve monetary or material gain such as Customary Trade.”

Section 803 of the Alaska National Interest Lands Claim Act (ANILCA) defines “subsistence uses” to mean “the 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 byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade.”

Under ANILCA, all subsistence uses are equally permissible. There are no unimportant subsistence uses.

The single regulatory exception is found at § ___. 27(i)(3)(xxi), which requires that in the Yukon River drainage, Chinook salmon must be used *primarily* for human consumption and not be targeted for dog food.

Both proponents seek another regulatory exception to the Board’s practice that finds all subsistence uses defined in ANILCA to be equally permissible, and equally important. The proponents seek to prioritize one use (human consumption) over another use (customary trade).

Note that an ANILCA Section 804 analysis, which allocates scarce resources among users but does not prioritize subsistence uses, may be another mechanism to respond to low availability of Yukon River Chinook salmon. Under conditions which require restricting subsistence taking of fish and wildlife on public lands in order to protect the viability of fish and wildlife populations, or continue subsistence uses, the Board shall establish a priority as follows:

(b) The priority shall be implemented through appropriate limitations based on the application of the following criteria to each area, community, or individual determined to have customary and traditional use, as necessary:

(1) Customary and direct dependence upon the populations as the mainstay of livelihood;

(2) Local residency; and

(3) The availability of alternative resources.

(c) If allocation on an area or community basis is not achievable, then the Board shall allocate subsistence opportunity on an individual basis through application of the criteria in paragraphs (b)(1) through (3) of this section.

(d) In addressing a situation where prioritized allocation becomes necessary, the Board shall solicit recommendations from the Regional Council in the area affected.

Existing Federal Regulation

§ ____. 27(c)(11) Transactions between rural residents. Rural residents may exchange in customary trade subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from other rural residents. The Board may recognize regional differences and regulate customary trade differently for separate regions of the State.

§ ____. 27(c)(12) Transactions between a rural resident and others. In customary trade, a rural resident may trade fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from individuals other than rural residents if the individual who purchases the fish, their parts, or their eggs uses them for personal or family consumption. If you are not a rural resident, you may not sell fish, their parts, or their eggs taken under the regulations in this part. The Board may recognize regional differences and regulate customary trade differently for separate regions of the State.

§ ____. 27(e)(3) Fishery management area restrictions—Yukon–Northern Area

(xxi) In the Yukon River drainage, Chinook salmon must be used primarily for human consumption and may not be targeted for dog food. Dried Chinook salmon may not be used for dog food anywhere in the Yukon River drainage. Whole fish unfit for human consumption (due to disease, deterioration, deformities), scraps, and small fish (16 inches or less) may be fed to dogs. Also, whole Chinook salmon caught incidentally during a subsistence chum salmon fishery in the following time periods and locations may be fed to dogs:

(A) After July 10 in the Koyukuk River drainage;

(B) After August 10, in Subdistrict 5D, upstream of Circle City.

Proposed Federal Regulation

FP13-09:

§ ____. 27(e)(3) Fishery management area restrictions—Yukon-Northern Area

(xxii) Yukon River Chinook salmon are to be used primarily for subsistence use for human food and personal family consumption.

FP13-10:

§____. 27(c)(11) *Transactions between rural residents. Rural residents may exchange in customary trade subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from other rural residents. The Board may recognize regional differences and regulate customary trade differently for separate regions of the State.*

(iii) Whenever the Yukon River Chinook salmon returns are below average; are a conservation concern by management authorities, and subsistence restrictions are being considered or implemented, subsistence take of Chinook salmon for family consumption shall be priority over uses such as Customary Trade of salmon pursuant to section 804(1) of ANILCA as amended.

§____. 27(c)(12) *Transactions between a rural resident and others. In customary trade, a rural resident may trade fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from individuals other than rural residents if the individual who purchases the fish, their parts, or their eggs uses them for personal or family consumption. If you are not a rural resident, you may not sell fish, their parts, or their eggs taken under the regulations in this part. The Board may recognize regional differences and regulate customary trade differently for separate regions of the State.*

(iii) Whenever the Yukon River Chinook salmon returns are below average; are a conservation concern by management authorities, and subsistence restrictions are being considered or implemented, subsistence take of Chinook salmon for family consumption shall be priority over uses such as Customary Trade of salmon pursuant to section 804(1) of ANILCA as amended.

Extent of Federal Public Lands

Federal public waters in the Yukon River watershed include all navigable and non-navigable waters located within and adjacent to the exterior boundaries of the Innoko, Kanuti, Koyukuk, Nowitna, Tetlin, and Yukon Flats National Wildlife Refuges (NWR); Yukon-Charley Rivers National Preserve; the Steese National Conservation Area; the White Mountains National Recreation Area; and those segments of the National Wild and Scenic River system, of the Yukon River drainage, located outside the boundaries of these Federal conservation units (i.e., portions of Beaver and Birch Creeks and the Delta, and the Fortymile Rivers). Additionally, those navigable and non-navigable waters of the Yukon River drainage, within and adjacent to the exterior boundaries of the Arctic NWR, the Denali National Preserve, the 1980 additions to the Denali National Park, the Gates of the Arctic National Park and Preserve, the Wrangell-St. Elias National Park and Preserve, and the Yukon Delta NWR are within Federal jurisdiction for purposes of Federal subsistence fisheries management. Federal public waters include all Yukon commercial fishing Districts Y1-Y3; parts of Subdistricts 4A and 4C; most of Subdistrict 5D; and part of Subdistrict 6C (**see Yukon-Northern Area maps**).

Existing State Regulations

State regulations do not allow the exchange of subsistence-caught fish for cash, with the exceptions of herring roe on kelp in Southeast Alaska (5AAC 01.717) and subsistence-harvested finfish in the Norton Sound-Port Clarence area (5AAC 01.188).

Customary and Traditional Use Determinations

The customary and traditional uses of Chinook salmon from the Yukon River drainage have been recognized for all residents of the drainage and the community of Stebbins.

Regulatory History

ANILCA does not prioritize one subsistence use over another. Each use is considered equal for the purposes of subsistence management. The one exception concerns the use of Chinook salmon from the Yukon River drainage to feed dogs. Since the proponent for Proposal FP13-09 appears to base this proposal on the precedent set with the prioritization of one use (human consumption of Chinook salmon) over another use (Chinook salmon used as dog food), it is useful to briefly summarize the history of and reasons for that prioritization.

In 2000, the Yukon River Drainage Fisheries Association (YRDFA) submitted Proposal FP01-11 (FWS 2000). The proposal requested that the Board restrict the use of Chinook salmon from the Yukon River drainage for dog food. The proposal included two exceptions to the proposed regulation, when Chinook salmon were harvested incidentally during chum directed fishing from: (1) the Koyukuk River drainage after July 10 and (2) the Tanana River drainage after July 20. At the same time, YRDFA submitted its proposal to the State of Alaska Board of Fisheries. The proponent stated it was concerned with,

the increase in the harvest of king salmon taken to feed dogs primarily in the Eagle area in 1998 and 1999 and the lack of regulations to discourage such non-customary and non-traditional use of king salmon. The person or persons near Eagle, deliberately engaging in the harvest of king salmon for use as dried dog food, may very well continue this practice ignoring both customary and traditional use patterns of king salmon. Others may choose to follow their example so that in another decade or two this socially and culturally aberrant practice might be recognized as customary and traditional by either the Alaska Board of Fisheries or the Federal Subsistence Board (FWS 2010:32).

Subsequently, all three Councils representing the Yukon River drainage—Yukon-Kuskokwim Delta, Easter Interior, and Western Interior—supported the proposal. The last two supported the proposal with modification removing the two exceptions. The Board adopted the proposal with the modification to remove the two exceptions (66 FR 10153 February 13, 2001).

The following year, YRDFA submitted Proposal FP02-09 requesting three exceptions to allow Chinook salmon for dog food (FWS 2001). The proponent's intent was to align the Federal regulation with the new State regulation. All three Councils supported the proposal with modification to include only two of the exceptions. The exceptions are in the existing Federal regulation (see above, § __. 27(e)(3)(xxi)(A) and (B)) that the Board adopted. These exceptions allow Chinook salmon incidentally caught during the chum fishery to be used for dog food (1) after July 10 in the Koyukuk River drainage and (2) after August 10 upstream of Circle City (67 FR 5899 February 7, 2002). The Tanana River was removed because the portions of the drainage under Federal subsistence management lacked a Chinook salmon run.

Recent History of Customary Trade

See the analysis for Proposal FP13-06/07/08.

Tri-Regional Advisory Council Customary Trade Subcommittee

See the analysis for Proposal FP13-06/07/08.

Customary Trade Research

See the analysis for Proposal FP13-06/07/08, Appendix B.

Current Events

Proposal FP13-09 was discussed at the Eastern Interior Council meeting on March 1, 2012. The proposal was part of a broader discussion about customary trade. One Eastern Interior Council member offered justification to support the proposal:

The reason why I'm making this proposal is that it will hopefully allow the Federal Subsistence Board to have the authority or feel more comfortable in granting a special action request if ever, due to low abundance, a need to prioritize the use of Chinook salmon. And if you recall in the past we have put—this RAC has voted unanimously to put forth special action requests regarding Chinook salmon use and the answer from the Federal Subsistence Board back to us was that they were not permitted to prioritize use of customary trade or any other use of subsistence resources. This would allow them to prioritize the use of Chinook salmon on the Yukon River (EIRAC 2012:352).

Members of the YRDFA board, at its annual meeting in Galena in February 2012, passed a resolution that said that Chinook salmon uses shall be prioritized in times of low abundance, and that “personal and family human consumption” shall be a higher priority than customary trade (YRDFA 2012). Subsequently, the Yukon-Kuskokwim Delta Council crafted Proposal FP13-10 using the language from YRDFA’s resolution (YKDRAC 2012:76).

The Eastern Interior Council’s intent was to submit the same proposal as the Yukon-Kuskokwim Delta Council (EIRAC 2012:352). However, the language concerning “in times of low abundance” was inadvertently left off the Eastern Interior Council’s written proposal that was submitted.

Other Relevant Proposals

Action on other fish proposals currently under consideration may affect decisions on this proposal. Proposals FP13-06/07/08, and FP13-11 concern limiting customary trade of Chinook salmon in the Yukon River drainage.

Effects of the Proposal

If these proposals are adopted, all rural residents of the Yukon River drainage and residents of Stebbins would not be allowed to trade for cash Chinook salmon harvested from the Federal public waters of the Yukon River. Thus, a priority would be established between subsistence uses, with human consumption given higher priority over customary trade. However, with one exception noted above, the Board has determined that all subsistence uses are equally important; there are no unimportant subsistence uses.

It is unknown at this time how many people would be affected because the amount of customary trade under Federal regulations is not known. However, both harvesters and recipients, rural and nonrural, would be affected. In addition, subsistence users who depend on cash from customary trade to harvest wild resources may find their ability to engage in subsistence activities lessened. Cash from customary trade is used to buy equipment, gas, and transportation for other subsistence activities (see Research on Customary Trade, Appendix B, Proposals FP13-06, 07, 08). Those who rely on customary trade to receive Chinook salmon that they themselves cannot harvest may find their supply of Chinook salmon diminished. In addition, while the proposed language was intended to preclude customary trade only, it could also inadvertently preclude barter or sharing salmon by emphasizing personal and family consumption.

Since the level of customary trade of Yukon River Chinook salmon is unknown, it is difficult to predict the effect of the proposal on Chinook salmon populations in the Yukon River.

OSM PRELIMINARY CONCLUSION

Oppose Proposals FP13-09 and FP13-10.

Justification

The Tri-Regional Advisory Council Customary Trade Subcommittee submitted specific recommendations to limit customary trade of Yukon River Chinook salmon. These proposals go beyond the recommendations of the subcommittee by attempting to preclude all customary trade of Yukon River Chinook salmon by prioritizing its use below direct personal or family consumption, barter, and sharing. Additionally, the limitations established by the proposals may have negative effects on subsistence users. Subsistence users who rely on small amounts of cash generated through customary trades in order to participate in subsistence activities may find they have to curtail those subsistence activities. In addition, the distribution of Chinook salmon to other subsistence users who may not be able to harvest for themselves may be limited. Finally, by limiting use to “personal family consumption,” other uses such as barter and sharing may be eliminated.

As defined in ANILCA, all subsistence uses are equally permissible and all are equally important. Under conditions of scarce resources and the potential of limiting subsistence uses, an ANILCA Section 804 analysis may be a more appropriate mechanism for allocating those resources among subsistence users.

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- EIRAC. 2012. Transcripts of the Eastern Interior Alaska Subsistence Regional Advisory Council meeting, March 1, 2012 in Fairbanks, Alaska. Office of Subsistence Management, FWS. Anchorage.
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- FWS. 2000. Federal Subsistence Board materials for its meeting December 5-7, 2000, in Anchorage. Pages 27-56.
- YKRAC 2012. Transcripts of the Yukon-Kuskokwim Delta Subsistence Regional Advisory Council Meeting, February 23, 2012 in Bethel, Alaska. Office of Subsistence Management, FWS. Anchorage.
- YRDFA (Yukon River Drainage Fisheries Association). 2012. www.yukonsalmon.org/news/ENews/ResolutionSummary.3-12.pdf. Anchorage.

Alaska Department of Fish and Game
Comments to the Regional Advisory Council

Fisheries Proposals FP13-09, 10: Both proposals seek to prioritize the use of Yukon River Chinook salmon for subsistence consumption.

Introduction:

FP13-09, submitted by the Eastern Interior Subsistence Regional Advisory Council (EI-RAC) seeks to reserve Yukon River Chinook salmon primarily for subsistence use for human food and personal family consumption.

FP13-10, submitted by the Yukon-Kuskokwim Delta Subsistence Regional Advisory Council (YKD-RAC) seeks to reserve Yukon River Chinook salmon primarily for subsistence use for human food and personal family consumption over all other uses, and notes customary trade among other uses, whenever returns are below average; are a conservation concern by management authorities, and subsistence restrictions are being considered or implemented.

Impact on Subsistence Users: Both of these proposals ask for prioritizing subsistence use of Chinook salmon for human food and personal family consumption. Subsistence uses of Yukon River Chinook salmon for domestic consumption and food will not be affected. However, FP13-10 directly suggests that customary trade and exchange of wild resources for money should be lower priorities when Yukon River Chinook salmon are a conservation concern by management authorities, and subsistence restrictions are being considered or implemented.

Impact on Other Users: None noted at this time.

Opportunity Provided by State: State subsistence users are allowed to engage in the customary trade of subsistence-caught fish; however, 5 AAC 01.010 prohibits the sale of subsistence-caught fish, their parts, or their eggs¹ unless otherwise specified in state regulation. Currently, there are only two exceptions listed in Chapter 5 of state regulations; they are for the Norton Sound-Port Clarence Area and for Southeast Alaska². Currently, no sale of subsistence-caught fish is allowed in the Yukon River drainage.

Conservation Issues: The Yukon River Chinook salmon stock is currently classified as a yield concern. Since 2001, subsistence fishing time in the Yukon Area has been limited by the windows schedule and then further restricted in 2008, 2009, and 2011 because of conservation concerns for Chinook salmon. Subsistence harvest levels for Chinook salmon have not met the amounts reasonably necessary for subsistence (ANS) range the last four years (2008–2011). A

¹ 5 ACC 01.010 METHODS, MEANS, AND GENERAL PROVISIONS

(d) Unless otherwise specified in this chapter, it is unlawful to buy or sell subsistence-taken fish, their parts, or their eggs, except that it is lawful to buy or sell a handicraft made out of the skin or nonedible by-products of fish taken for personal or family consumption.

² 5 AAC 01.188 and 5 AAC 01.717

Draft Comments FP13-09, 10
July 12, 2012 Page 2 of 2

majority of the Yukon River drainage escapement goals have been met since 2000, including the Chena and Salcha rivers, which are the largest producers of Chinook salmon in the U.S. portion of the drainage. The escapement objective for the Canadian mainstem was met every year from 2001 through 2006, with 2001, 2003, and 2005 being the three highest spawning escapement estimates on record. The escapement objective for the Canadian mainstem was not met in 2007, 2008, and 2010. Exploitation rate on the Canadian-origin stock by Alaskan fishermen has changed from an average of about 55% (1989–1998) to an average of about 44% from 2004–2008 (Howard et al. 2009). Although the subsistence harvest was stable at nearly 50,000 Chinook salmon annually through 2006, the recent five-year average (2007–2011) was 43,900. Commercial harvests have decreased over 90% from an average of 100,000 annually (1989–1998) to the recent five-year average (2007–2011) of nearly 9,700 fish.

Enforcement Issues: Enforcement issues may be alleviated by providing the greatest clarity to all definitions regarding subsistence uses.

Jurisdiction Issues: While standing on state and private lands (including state-owned submerged lands and shore lands), persons must comply with state laws and regulations and cannot sell subsistence-caught fish, with two exceptions as specified above. Federal subsistence regulations, particularly customary trade regulations, pertain only to fishing on and use of fish caught on federal public lands and those waters where federal subsistence jurisdiction is claimed. The sale of subsistence fish caught on all lands and waters (federal, state, or private) is limited by state regulations, except to the extent superseded by federal law on federal lands. The State of Alaska maintains jurisdiction of food safety and food processing regulations based upon DEC regulations.

Violation of existing customary trade rules is largely an enforcement problem. What is needed is more education and an enforceable definition on what constitutes a significant commercial enterprise. We also request implementation of a monitoring program to produce actual data, and clarifying the roles and responsibilities of federal and state enforcement agencies. A permit system is more readily enforceable than one without permits required.

Other Issues: While subsistence uses are presently prioritized under both state and federal law, the Federal Subsistence Board (Board) is afforded purview to prioritize among those uses, including distinguishing between human consumption and that of animals, or family consumption versus trade as noted by the Solicitor before the Board January 19, 2011³. Other proposals before the Board address such issues as refining the definition of customary trade and significant commercial enterprise.

Recommendation: Neutral. Subsistence is already granted priority under state and federal law. The department recognizes the value in providing the greatest clarity in all definitions regarding subsistence uses to the users, managers, and enforcement personnel.

³ Page 169: “The statute lists a whole series of things that are called subsistence uses. Among those are domestic consumption, food, and customary trade, exchange of wild resources for money. I believe the court is going to presume that since there's no mechanism for weighing those that they're all equal. Now I think we probably can overcome that presumption, but we have to do it on the record. It may seem obvious to us that food resources are the highest in that priority, but we have to explain that.”

FP13-11 Executive Summary	
General Description	Proposal FP13-11 requests that the harvest of Chinook salmon from the Yukon River drainage used for customary trade be limited to a cash value of \$750 per household. <i>Submitted by the Yukon-Kuskokwim Delta Subsistence Regional Advisory Council</i>
Proposed Regulation	<p>§ __. 27(b) Subsistence taking of fish—Method, means, and general restrictions</p> <p><i>(11) Transactions between rural residents. Rural residents may exchange in customary trade subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from other rural residents. The Board may recognize regional differences and regulate customary trade differently for separate regions of the State.</i></p> <p style="padding-left: 40px;"><i>(iii). Yukon River Drainage—The total cash value per household of salmon taken within Federal jurisdiction in the Yukon River drainage and exchanged in customary trade may not exceed \$750.00 annually. Exceeding the \$750.00 limit per household would constitute a significant commercial enterprise for Yukon River Chinook salmon.</i></p> <p><i>(12) Transactions between a rural resident and others. In customary trade, a rural resident may trade fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from individuals other than rural residents if the individual who purchases the fish, their parts, or their eggs uses them for personal or family consumption. If you are not a rural resident, you may not sell fish, their parts, or their eggs taken under the regulations in this part. The Board may recognize regional differences and regulate customary trade differently for separate regions of the State.</i></p> <p style="padding-left: 40px;"><i>(iii). Yukon River Drainage—The total cash value per household of salmon taken within Federal jurisdiction in the Yukon River drainage and exchanged in customary trade may not exceed \$750.00 annually. Exceeding the \$750.00 limit per household would constitute a significant commercial enterprise for Yukon River Chinook salmon.</i></p>
Yukon/Kuskokwim Delta Regional Council Recommendation	
Western Interior Regional Council Recommendation	
Seward Peninsula Regional Council Recommendation	

continued on next page

FP13-11 Executive Summary (continued)

Eastern Interior Regional Council Recommendation	
Interagency Staff Committee Comments	
ADF&G Comments	
Written Public Comments	2 Oppose (See comments following the analysis of FP11-08)

**DRAFT STAFF ANALYSIS
FP13-11**

ISSUES

Proposal FP13-11, submitted by the Yukon-Kuskokwim Delta Subsistence Regional Advisory Council, requests that the harvest of Chinook salmon from the Yukon River drainage used for customary trade be limited to a cash value of \$750 per household.

DISCUSSION

The proponent's concern is that customary trade in Chinook salmon from the Yukon River drainage has been abused by some subsistence users. The proponent believes that high levels of customary trade will continue unless limits are placed on the customary trade of Chinook salmon. The proponent further states that the proposed changes to customary trade regulations would help increase future escapement and run sizes of Chinook salmon, and as a result, subsistence, sport, and recreational opportunities could increase.

Existing Federal Regulation

§ __. 27(b) Subsistence taking of fish—Method, means, and general restrictions

(11) Transactions between rural residents. Rural residents may exchange in customary trade subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from other rural residents. The Board may recognize regional differences and regulate customary trade differently for separate regions of the State.

(12) Transactions between a rural resident and others. In customary trade, a rural resident may trade fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from individuals other than rural residents if the individual who purchases the fish, their parts, or their eggs uses them for personal or family consumption. If you are not a rural resident, you may not sell fish, their parts, or their eggs taken under the regulations in this part. The Board may recognize regional differences and regulate customary trade differently for separate regions of the State.

Proposed Federal Regulation

§ __. 27(b) Subsistence taking of fish—Method, means, and general restrictions

(11) Transactions between rural residents. Rural residents may exchange in customary trade subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from other rural residents. The Board may recognize regional differences and regulate customary trade differently for separate regions of the State.

(iii). Yukon River Drainage—The total cash value per household of salmon taken within Federal jurisdiction in the Yukon River drainage and exchanged in customary trade may not exceed \$750.00 annually. Exceeding the \$750.00 limit per household would constitute a significant commercial enterprise for Yukon River Chinook salmon.

(12) Transactions between a rural resident and others. In customary trade, a rural resident may trade fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from individuals other than rural residents if the individual who purchases the fish, their parts, or their eggs uses them for personal or family consumption. If you are not a rural resident, you may not sell fish, their parts, or their eggs taken under the regulations in this part. The Board may recognize regional differences and regulate customary trade differently for separate regions of the State.

(iii). Yukon River Drainage—The total cash value per household of salmon taken within Federal jurisdiction in the Yukon River drainage and exchanged in customary trade may not exceed \$750.00 annually. Exceeding the \$750.00 limit per household would constitute a significant commercial enterprise for Yukon River Chinook salmon.

Existing State Regulations

State regulations do not allow the exchange of subsistence-caught fish for cash, with the exceptions of herring roe on kelp in Southeast Alaska (5AAC 01.717) and subsistence-harvested finfish in the Norton Sound-Port Clarence area (5AAC 01.188).

Extent of Federal Public Lands

Federal public waters in the Yukon River watershed include all navigable and non-navigable waters located within and adjacent to the exterior boundaries of the Innoko, Kanuti, Koyukuk, Nowitna, Tetlin, and Yukon Flats National Wildlife Refuges (NWR); Yukon-Charley Rivers National Preserve; the Steese National Conservation Area; the White Mountains National Recreation Area; and those segments of the National Wild and Scenic River system, of the Yukon River drainage, located outside the boundaries of these Federal conservation units (i.e., portions of Beaver and Birch Creeks and the Delta, and the Fortymile Rivers). Additionally, those navigable and non-navigable waters of the Yukon River drainage, within and adjacent to the exterior boundaries of the Arctic NWR, the Denali National Preserve, the 1980 additions to the Denali National Park, the Gates of the Arctic National Park and Preserve, the Wrangell-St. Elias National Park and Preserve, and the Yukon Delta NWR are within Federal jurisdiction for purposes of Federal subsistence fisheries management. Federal public waters include all Yukon commercial fishing Districts Y1-Y3; parts of Subdistricts 4A and 4C; most of Subdistrict 5D; and part of Subdistrict 6C (see **Yukon Northern Area maps**).

Customary and Traditional Use Determinations

The customary and traditional uses of Chinook salmon from the Yukon River drainage have been recognized for all residents of the drainage and the community of Stebbins.

Regulatory History—Customary Trade

See the analysis for Proposal FP13-06/07/08 for a complete regulatory history of customary trade. In pertinent part, that history includes limitations on cash value of customary trade of salmon in two regions.

For the Bristol Bay Fishery Management Area, the Board limited the cash value per household of salmon exchanged in customary trade between rural residents to no more \$500 annually, and limited the cash value per household of salmon exchanged in customary trade between rural residents and others to no more than \$400 annually. The Board also imposed a recording requirement for rural-to-others customary

trade, but not for rural-to-rural customary trade. These regulations, proposed by the Bristol Bay Subsistence Regional Advisory Council, took effect on March 1, 2004 (69 FR 5026 February 3, 2004).

For the Upper Copper River District, the Board limited the total number of salmon per household exchanged in customary trade between rural residents to no more than 50% of the annual household harvest of salmon. The Board limited the cash value per household of salmon exchanged in customary trade between rural residents and others to no more than \$500 annually. When taken together, customary trade to rural residents and to others may not exceed 50% of the annual household limit. Additionally, the Board imposed a recording requirement for both rural-to-rural customary trade and rural-to-others customary trade: customary trade sales must be immediately recorded on a customary traded recordkeeping form, the responsibility for which resides with the seller. These limits, proposed by Ahtna Inc., the Copper River Native Association, and the Chitina Native Corporation, took effect on April 1, 2005 (70 FR 13385 March 21, 2005).

Recent History

See the analysis for Proposal FP13-06/07/08.

Tri-Regional Advisory Council Customary Trade Subcommittee

See the analysis for Proposal FP13-06/07/08. As noted in that analysis, the subcommittee strongly preferred its first recommendation, but developed a second to address the issue of a “significant commercial enterprise.” The two recommendations are as follows:

- 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.

Not all Regional Advisory Councils supported the second recommendation. The Western Interior Regional Advisory Council voted unanimously to support the first, and not the second, recommendation (WIRAC 2011:139). The Eastern Interior Regional Advisory Council voted in favor of the first recommendation and against the second (EIRAC 2011:419-134).

Customary Trade Research

See the analysis for Proposal FP13-06/07/08, Appendix B.

Other Relevant Proposals

Action on other fish proposals currently under consideration may affect decisions on this proposal. Proposals FP13-06/07/08, FP13-09, and FP13-10 concern limiting customary trade of Chinook salmon in all or portions of the Yukon River drainage.

Effects of the Proposal

If adopted, this proposal would limit the amount of cash a Federally qualified subsistence user's household could accumulate in one year through customary trade of Chinook salmon. The limit would apply to Chinook salmon harvested from Federal public waters of the Yukon River drainage only. The number of households affected by this proposal is unknown; however, customary trades exceeding \$750 per household is assumed to occur. Both the harvesters and the recipients, that is, rural and nonrural residents, would be affected.

If this proposal is adopted, Federally qualified subsistence users could continue harvesting Chinook salmon to be used for direct personal or family consumption, barter, and sharing. With limits to customary trade, there may be additional Chinook salmon available for these other uses. However, it is not possible to estimate how many more fish would be available.

Subsistence users often depend on cash from customary trade to support other subsistence activities (see Appendix B, FP13-06/07/08). Cash from customary trade of Chinook salmon is used to buy equipment, gas, and transportation for other subsistence activities. With limits to customary trade, they may find their ability to harvest wild resources lessened.

Limits to customary trade in the Bristol Bay Fisheries Management Area and the Upper Copper River District were local initiatives that set limits on local practices. By contrast, this proposal seeks to impose limits on the entirety of the Yukon River drainage.

If this proposal is not adopted, Federally qualified subsistence users could continue to accumulate more than \$750 per household through customary trades of Chinook salmon. Any effect customary trade is having on the number of fish available for other subsistence uses would continue. However, it is impossible to estimate the level of that effect.

OSM PRELIMINARY CONCLUSION

Oppose Proposal FP13-11.

Justification

In the Federal Subsistence Management Program, the regulation of customary trade is accomplished by the imposition of monetary limits on how much cash a Federally qualified subsistence user can accumulate in a year. The Tri-Regional Advisory Council Customary Trade Subcommittee recommended setting a monetary limit of \$750 per household per year on the customary trade of Chinook salmon with nonrural residents of the state only (See Proposal FP13-06/07/08 for a discussion of the subcommittee's recommendations). This was the subcommittee's second recommendation. It was not the subcommittee's preferred recommendation. Under the subcommittee's second recommendation, customary trade of Chinook salmon between rural residents would not be limited. That is, rural residents of the Yukon River drainage, and residents of Stebbins, trading Chinook salmon for cash with another rural resident of the state, would not be limited. Only customary trade with nonrural residents of the state would be limited.

In contrast, Proposal FP13-11 requests that customary trade with all residents, rural and nonrural, be limited to \$750 per household per year. This would limit the amount of cash a Federally qualified subsistence user could accumulate, cash that might otherwise pay for equipment, gas, and transportation for other subsistence activities. The result of customary trade among rural residents is the distribution of Chinook salmon to other subsistence users who may not be able to harvest them.

Not all Regional Advisory Councils supported the recommendation to impose cash limits on customary trade. The Western Interior Regional Advisory Council voted against such limits. The Eastern Interior Regional Advisory Council also voted against such limits.

For these reasons, and because the proposal is not what the Tri-Regional Advisory Council Subcommittee proposed, the recommendation is to oppose this proposal.

FP11-08 Executive Summary

<p>General Description</p>	<p>Proposal FP11-08 requests that customary trade in the Yukon River Fisheries Management Area be prohibited in any year when Chinook salmon runs are insufficient to fully satisfy subsistence harvest needs and subsistence fisheries are restricted. As submitted, the prohibition would only affect customary trade between rural residents. <i>Submitted by the Yukon-Kuskokwim Delta Subsistence Regional Advisory Council</i></p> <p>Proposal FP11-08 was deferred by the Federal Subsistence Board to allow a Tri-RAC subcommittee to meet and consider a Yukon River-wide solution to the issue of customary trade (FSB 2011:180). The Tri-RAC subcommittee met and developed two recommendations, which were the basis of FP13-06, 07, and 08. See the analysis of Proposals FP13-06, 07 and 08 for the Tri-RAC recommendations and Regional Advisory Council proposals.</p>
<p>Proposed Regulation</p>	<p>§ __. 27(c)(11) <i>Transactions between rural residents. Rural residents may exchange in customary trade subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations of this part, for cash from other rural residents. The Board may recognize regional differences and regulate customary trade differently for separate regions of the State.</i></p> <p><i>(i) Bristol Bay Fishery Management Area—The total cash value per household of salmon taken within Federal jurisdiction in the Bristol Bay Fishery Management Area and exchanged in customary trade to rural residents may not exceed \$500.00 annually.</i></p> <p><i>(ii) Upper Copper River District—The total number of salmon per household taken within the Upper Copper River District and exchanged in customary trade to rural residents may not exceed 50% of the annual harvest of salmon by the household. No more than 50% of the annual household limit may be sold under paragraphs __. 27(c)(11) and (12) when taken together. These customary trade sales must be immediately recorded on a customary trade recordkeeping form. The recording requirement and the responsibility to ensure the household limit is not exceeded rests with the seller.</i></p> <p><i>(iii) If in any given year in the Yukon River Fisheries Management Area Chinook runs are insufficient to fully satisfy subsistence harvest needs and subsistence fisheries are restricted; customary trade will be prohibited.</i></p>

continued on next page

FP11-08 Executive Summary (continued)	
OSM Conclusion	Oppose
Yukon/Kuskokwim Delta Regional Council Recommendation	
Western Interior Regional Council Recommendation	
Seward Peninsula Regional Council Recommendation	
Eastern Interior Regional Council Recommendation	
Interagency Staff Committee Comments	
ADF&G Comments	Support with modification. The department supports the modification recommended by Yukon Kuskokwim Delta Regional Advisory Council to establish a \$750 limit of sales between “Federally qualified and others” and to require a permit and reporting of this customary trade between “Federally qualified and others” as a first step. The department recommends that limits be established by numbers of salmon.
Written Public Comments	1 Support 4 Oppose

DRAFT STAFF ANALYSIS
FP11-08

Proposal FP11-08, submitted by the Yukon-Kuskokwim Delta Subsistence Regional Advisory Council, was deferred by the Federal Subsistence Board to allow a Tri-RAC subcommittee to meet and consider a Yukon River-wide solution to the issue of customary trade (FSB 2011:180). The Tri-RAC subcommittee met and developed two recommendations. These recommendations formed the basis of FP13-06, 07, & 08. See the analysis of Proposals FP13-06, 07 and 08 for the Tri-RAC recommendations and Regional Advisory Council proposals. The original analysis of FP11-08 as published for the 2011 Federal Subsistence Board meeting is presented on the following pages. Please note that the Regulatory History, Customary Trade and Recent Concerns sections in the FP11-08 analysis, which refer the reader to FP11-05, have been updated in the staff analysis of FP13-06, 07, 08. The OSM Conclusion remains oppose.

Board action on FP13-06, -07, -08, -09, -10 and -11 may lead the Board to take no action on FP11-08.

STAFF ANALYSIS FP11-08

ISSUES

Proposal FP11-08, submitted by the Yukon-Kuskokwim Delta Subsistence Regional Advisory Council, requests that customary trade in the Yukon River Fisheries Management Area be prohibited in any year when Chinook salmon runs are insufficient to fully satisfy subsistence harvest needs and subsistence fisheries are restricted. As submitted, the prohibition would only affect customary trade between rural residents.

DISCUSSION

The proponent states that prohibiting customary trade in years of poor Chinook salmon runs “would have significant positive effects on fish populations as well as [on] the lawful subsistence fishers.” The proponent also states that, under current regulations, when Chinook runs are low subsistence users are restricted but not subsistence uses. In the case of customary trade, the emphasis should be reversed and customary trade should be restricted before subsistence users are restricted. The proponent is particularly concerned with “numerous reports of Yukon River rural residents selling large numbers of Yukon Chinook salmon in the urban areas of our state.”

Note that the proposal seeks to limit customary trade under § ___. 27(c)(11), which refers to customary trade between rural residents. The proponent, however, is also concerned with customary trade between rural residents and others, which is governed under § ___. 27(c)(12). The latter regulation reads in part: “In customary trade, a rural resident may trade fish, their parts, or their eggs...for cash from individuals other than rural residents if the individual who purchases the fish, their parts, or their eggs uses them for personal or family consumption.” As it stands, the current proposal does not target all of the relevant regulations.

Existing Federal Regulation

§ ___. 27(c)(11) Transactions between rural residents. Rural residents may exchange in customary trade subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from other rural residents. The Board may recognize regional differences and regulate customary trade differently for separate regions of the State.

(i) Bristol Bay Fishery Management Area—The total cash value per household of salmon taken within Federal jurisdiction in the Bristol Bay Fishery Management Area and exchanged in customary trade to rural residents may not exceed \$500.00 annually.

(ii) Upper Copper River District—The total number of salmon per household taken within the Upper Copper River District and exchanged in customary trade to rural residents may not exceed 50% of the annual harvest of salmon by the household. No more than 50% of the annual household limit may be sold under paragraphs ___. 27(c)(11) and (12) when taken together. These customary trade sales must be immediately recorded on a customary trade recordkeeping form. The recording requirement and the responsibility to ensure the household limit is not exceeded rests with the seller.

Proposed Federal Regulation

§ ____. 27(c)(11) *Transactions between rural residents. Rural residents may exchange in customary trade subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations of this part, for cash from other rural residents. The Board may recognize regional differences and regulate customary trade differently for separate regions of the State.*

(i) *Bristol Bay Fishery Management Area—The total cash value per household of salmon taken within Federal jurisdiction in the Bristol Bay Fishery Management Area and exchanged in customary trade to rural residents may not exceed \$500.00 annually.*

(ii) *Upper Copper River District—The total number of salmon per household taken within the Upper Copper River District and exchanged in customary trade to rural residents may not exceed 50% of the annual harvest of salmon by the household. No more than 50% of the annual household limit may be sold under paragraphs ____. 27(c)(11) and (12) when taken together. These customary trade sales must be immediately recorded on a customary trade recordkeeping form. The recording requirement and the responsibility to ensure the household limit is not exceeded rests with the seller.*

(iii) *If in any given year in the Yukon River Fisheries Management Area Chinook runs are insufficient to fully satisfy subsistence harvest needs and subsistence fisheries are restricted; customary trade will be prohibited.*

Regulatory History

See Staff Analysis FP11-05.

Customary Trade

See Staff Analysis FP11-05.

Recent Concerns

See Staff Analysis FP11-05.

Effects of the Proposal

The proposal seeks to limit customary trade under § ____. 27(c)(11), which refers to customary trade between rural residents. However, in supporting statements, the proponent raises concerns about sales to those other than rural residents, which are governed under § ____. 27(c)(12). If adopted as submitted, customary trade between rural residents and others would not be affected. In order to align the proposal with the apparent concern over the conduct of customary trade in urban centers of Alaska, the Subsistence Regional Advisory Council may choose to support this proposal with modification, the modification being the addition of § ____. 27(c)(12), which addresses customary trade between rural residents and others.

If adopted, the proposal would prohibit *all* customary trade of *any* subsistence-caught fish between rural residents under the following condition: “If in any given year in the Yukon River Fisheries Management Area Chinook runs are insufficient to fully satisfy subsistence harvest needs and subsistence fisheries are restricted.” The amount of cash exchanged in customary trade would thereby be diminished.

If this proposal is adopted, then a definition of when Chinook salmon runs are “insufficient to fully satisfy subsistence harvest needs,” would need to be created. Although State subsistence regulations include amounts needed for subsistence, Federal subsistence regulations do not.

If adopted, the proposal would limit the ability of Federally qualified subsistence users to engage in customary trade under the conditions specified above. Presumably, non-Federally qualified subsistence users, as recipients, would also find their engagement in customary trade curtailed.

The total number of fish exchanged in customary trade is unknown; therefore, the effect of this proposal on fish populations is unknown.

If limitations based on conservation concerns are necessary, it may be appropriate to conduct an analysis under ANILCA Section 804, which requires the Board to select amongst subsistence users, not uses, based on the premise that all subsistence uses equally qualify for the subsistence preference.

This section reads as follows:

Except as otherwise provided in this Act and other Federal laws, the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes. Whenever it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses, such priority shall be implemented through appropriate limitations based on the application of the following criteria:

- (1) customary and direct dependence upon the populations as the mainstay of livelihood;*
- (2) local residency; and*
- (3) the availability of alternative resources.*

Alternative Considered

Federal subsistence fisheries regulations on customary trade are found in subsections dealing with sales between rural residents [c(11)], and between rural residents and others [c(12)]. Proposal FP11-08 would prohibit customary trade of Yukon River Chinook salmon when runs were very low, but would only apply to the rural-to-rural sales. Proposal FP11-09 would limit customary trade of Yukon River Chinook salmon to within the Yukon River Fishery Management Area, and stipulates provisions for limiting amounts and requiring reporting, but would only apply to the rural-to-others sales.

The common concern across both proposals appears to be better limiting sales of subsistence-caught Yukon River Chinook salmon that rise to the level of significant commercial enterprise. One alternative is to more closely parallel the approach adopted in regulation for the Bristol Bay Fishery Management Area, and for the Upper Copper River District, by stipulating a dollar limit on customary trade of Chinook salmon that more directly addresses significant commercial enterprise in the Yukon River. This would need to be specified in both c(11) and c(12), thereby addressing both rural-to-rural and rural-to-others sales.

Proposals FP11-08 and FP11-09 were submitted by one of the three Councils on the Yukon River, and would address the entire drainage. While it is within the purview of any of these Councils to propose river-wide limits, each Council is best able to characterize customary trade practices and traditions in its own portion of the large and diverse Yukon River drainage. Therefore, it may be more helpful for the Federal Subsistence Board to receive recommendations on appropriate limits from each of the three Councils for their areas of representation. The Board might find that the limits recommended for each

area are similar, and a single amount could be specified throughout the drainage, simplifying regulations and aiding enforcement. A reporting system, if enacted, would likely need to be river-wide to be effective, and in this case each Council could recommend whether, and how, a river-wide reporting system should be instituted.

The regulatory framework for such recommendations would be as follows:

§ ____. 27(c)(11) Transactions between rural residents. Rural residents may exchange in customary trade subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations of this part, for cash from other rural residents. The Board may recognize regional differences and regulate customary trade differently for separate regions of the State.

(iii) Yukon River Fishery Management Area – Customary trade of Yukon River Chinook salmon between rural residents is limited as follows:

(A) In Districts 1, 2, and 3 below Holy Cross, (YKDRAC)

(B) In District 3 from Holy Cross upriver, and in District 4, ... (WIRAC)

(C) In Districts 5 and 6, ... (EIRAC)

These customary trade sales must be recorded as follows: ... (or not – Each Council to address for the entire river)

§ ____.27(c)(12) Transactions between a rural resident and others. In customary trade, a rural resident may trade fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from individuals other than rural residents if the individual who purchases the fish, their parts, or their eggs uses them for personal or family consumption. If you are not a rural resident, you may not sell fish, their parts, or their eggs taken under the regulations in this part. The Board may recognize regional differences and regulate customary trade differently for separate regions of the State.

(iii) Yukon River Fishery Management Area – Customary trade of Yukon River Chinook salmon between rural residents and others is limited as follows:

(A) In Districts 1, 2, and 3 below Holy Cross, (YKDRAC)

(B) In District 3 from Holy Cross upriver, and in District 4, ... (WIRAC)

(C) In Districts 5 and 6, ... (EIRAC)

These customary trade sales must be recorded as follows: ... (or not – Each Council to address for the entire river)

This alternative provides a regulatory framework that would address both rural-to-rural and rural-to-others customary trade for the overall drainage, with recognition of variation in traditional patterns along the river, and addresses whether or not a river-wide reporting system is needed.

OSM CONCLUSION

Oppose Proposal FP11-08.

Justification

Customary trade is recognized as a subsistence use in ANILCA. As defined by Federal subsistence management regulation, customary trade refers only to subsistence-caught fish or wildlife exchanged for cash, provided such exchanges do not constitute a “significant commercial enterprise.” Any exchanges of subsistence-caught fish for cash that rise to the level of significant commercial transactions are not customary trades; such commercial-level transactions are prohibited under current regulation. Recent studies (Krieg et al. 2007; Magdanz et al. 2007; Moncreiff 2007) indicate that customary trade constitutes a small but vital component of a variety of local cultural and economic relations. These studies suggest that customary trade is infrequent and transacted for relatively small sums of money, which is often used to support other subsistence activities. Enacting regulations to further govern such trades appears unnecessary and intrusive.

There are, however, increasing reports of sales of subsistence-caught salmon that may not fit the definition of customary trade. Such sales appear to be the target of the 2009 Special Action Requests submitted by the Fairbanks Fish and Game Advisory Committee and the Eastern Interior Alaska Subsistence Regional Advisory Council. These sales also provided a topic for discussion at the February, 2010 Eastern and Western Interior Council meetings, as well as for the March, 2010 Yukon-Kuskokwim Delta Subsistence Regional Advisory Council meeting. The threshold for a significant commercial enterprise, however, has not been determined. Enforcement of the prohibition remains problematic without a threshold determination.

In its argument for prohibiting customary trade in any year when Chinook salmon runs are insufficient to fully provide for subsistence harvest uses and fisheries are restricted, the proponent notes that “there were numerous reports of Yukon River rural residents selling large numbers of Yukon Chinook salmon in the urban areas of our state.” Such sales may be between rural residents. More likely, however, such sales are between rural residents and others, which are governed under § ___. 27(c)(12). As written, the proposal would prohibit customary trade between rural residents under certain conditions, but not between rural residents and others. Sales of Chinook salmon between rural residents and others may well form the higher percentage of sales about which the proponent expresses concern. The proposal does not address such sales.

The proposal does not explicitly target customary trade of subsistence-caught Chinook salmon. As written, it would preclude *all* customary trade of *any* subsistence-caught fish between rural residents “[i]n any given year in the Yukon River Fisheries Management Area Chinook runs are insufficient to fully satisfy subsistence harvest needs and subsistence fisheries are restricted.”

In order to align the proposal with the apparent concern over the conduct of customary trade in urban centers of Alaska, the Federal Subsistence Board may choose to support this proposal with modification, the modification being the addition of § ___. 27(c)(12), which addresses customary trade between rural residents and others.

Customary trade is included as a subsistence use in ANILCA. If limitations based on conservation concerns are necessary, it may be appropriate to conduct an analysis under ANILCA Section 804, which requires the Board to select amongst subsistence users, not uses, based on the premise that all subsistence uses equally qualify for the subsistence preference.

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ADF&G Comments on FP11-08
August 13, 2012, Page 1 of 3

Alaska Department of Fish and Game
Updated 11/30/2010 Comments to Federal Subsistence Board¹

Fisheries Proposal FP11-08: Prohibit customary trade of Chinook salmon harvest in the Yukon River Fisheries Management Area during years of insufficient Chinook salmon returns.

Introduction: The Yukon-Delta Regional Advisory Council submitted this proposal to prohibit customary trade² of Chinook salmon harvested in federal subsistence fisheries on the Yukon River during years when returns are insufficient to satisfy subsistence user needs and subsistence fishing restrictions are implemented. The intent was to curb sales of subsistence harvested Chinook salmon made into strips while other subsistence fisheries were closed due to insufficient returns. State regulations expressly prohibit sale of subsistence harvested fish³ while federal regulations allow for cash sales. Under current state regulations at 18 AAC 34.005, all fish processed for commerce must be processed at a facility approved by Alaska Department of Environmental Conservation.⁴

Sales of subsistence harvested fish, primarily processed, are occurring in both urban and rural communities in Alaska, contrary to existing state and federal regulations. A U.S. Fish and Wildlife Service law enforcement officer provided information at the November 2010 Federal Subsistence Board meeting regarding a federal investigation. Discrepancies in state and federal regulations and state requirements regarding processing of fish to protect health and safety of the public may leave some people vulnerable to citation under state and federal regulations. This is a significant issue for state resources managers, law enforcement agencies, and federal agencies that provide for the subsistence priority of federal lands and those waters where federal subsistence jurisdiction is claimed. In considering FP-08, the Federal Subsistence Board has the opportunity to adopt enforceable customary trade regulations for the Yukon region that are based on the history and patterns of this use for this region of the state.

Impact on Subsistence Users: This proposal, if enforced, will reduce harvest of Chinook salmon for cash sale. It is not possible, however, to accurately predict how much this proposal will reduce subsistence harvest because federal agencies lack information and data regarding existing levels of harvest and actual sales of subsistence harvested Chinook salmon. Existing federal customary trade is limited to whole fish, unless processed fish are produced in compliance with Alaska Department of Environmental Conservation food safety rules. Because state and federal regulations differ, subsistence fishermen are vulnerable to prosecution when

¹ Source: USFWS (U. S. Fish and Wildlife Service). 2011. Federal Subsistence Board meeting: review of fisheries proposals January 18-20, 2011, discussion and develop approach to tribal consultation January 21, 2011. Office of Subsistence Management, Anchorage, AK, pp.41-43.

² **50 CFR 100.4 Definitions.** *Customary trade* means exchange for cash of fish and wildlife resources regulated in this part, not otherwise prohibited by Federal law or regulation, to support personal and family needs; and does not include trade which constitutes a significant commercial enterprise.

³ **5 AAC 01.010 Methods, means, and general provisions (d)** Unless otherwise specified in this chapter, it is unlawful to buy or sell subsistence-taken fish, their parts, or their eggs, except that it is lawful to buy or sell a handcraft made out of the skin or nonedible byproduct of fish taken for personal or family consumption.

⁴ **18 AAC 34.005. Purpose and applicability (a)** The purpose of this chapter is to provide for consumer protection and to protect public health by ensuring the processing, sale, and distribution of safe, wholesome, and properly labeled seafood products. **(b)** The requirements of this chapter apply to (1) persons who process seafood products to be sold as part of commerce and intended for human consumption;

ADF&G Comments on FP11-08
August 13, 2012, Page 2 of 3

selling subsistence harvested salmon on lands and waters outside the boundaries where federal subsistence jurisdiction is claimed. Adoption of limitations on cash sales of subsistence harvested salmon that define “significant commercial enterprise,” specify fish weight or number limits, clarify where subsistence harvested fish may be sold under federal regulations, and establish reporting requirements for cash sales of subsistence harvested salmon would clarify federal subsistence law, facilitate enforcement against unlawful sales of subsistence harvested salmon, and reduce the risk of citation of law-abiding subsistence fishermen in the Yukon River drainage.

Opportunity Provided by State: The department supports subsistence harvest and use of salmon consistent with existing state laws and regulations including customary trade of this resource. However, 5 AAC 01.010 prohibits sale of subsistence caught fish, their parts, or their eggs unless otherwise specified in state regulation. Currently, there are only two exceptions listed in Chapter 5 of state regulations: Norton Sound-Port Clarence Area for salmon and Sitka Sound herring roe on kelp in Southeast Alaska.⁵

Conservation Issues:

The Yukon River Chinook salmon stock is currently classified as a yield concern. Subsistence harvest levels have not reached the ANS for subsistence the last four years 2008—2011. A majority of the Yukon River drainage escapement goals have been met since 2000, including the Chena and Salcha rivers, which are the largest producers of Chinook salmon in the U.S. portion of the drainage. The agreed-to escapement objective for the Canadian mainstem was met every year from 2001 through 2006, with 2001, 2003, and 2005 being the three highest spawning escapement estimates on record. However, the escapement objective for the Canadian mainstem was not met in 2007, 2008, and 2010. Exploitation rate on the Canadian-origin stock by Alaskan fishermen has changed from an average of about 55% (1989–1998) to an average of about 44% from 2004–2008 (Howard et al. 2009)⁶. Although the subsistence harvest was stable at nearly 50,000 Chinook salmon annually through 2006, the recent five-year average (2007–2011) was 43,900. Commercial harvests have decreased over 90%, from an average of 100,000 annually (1989–1998), to the recent five-year average (2007–2011) of nearly 9,700 fish.

Enforcement Issues: Enforcement of existing state regulations is difficult because of differences between federal and state regulations regarding customary trade. Currently, sale of processed fish without DEC permits is difficult to enforce because the formal federal rules lack clarity on this specific subject.

Jurisdiction Issues: While standing on state and private land (including state-owned submerged lands and shorelands), persons must comply with state laws and regulations and cannot sell subsistence harvested fish, with two exceptions as specified above. Federal subsistence regulations, particularly customary trade regulations, pertain only to fishing on and use of fish harvested on federal public lands and those waters where federal subsistence jurisdiction is

⁵ 5 AAC 01.188 and 5 AAC 01.717

⁶ Howard, K. G., S. J. Hayes, and D. F. Evenson. 2009. Yukon River Chinook salmon stock status and action plan 2010; a report to the Alaska Board of Fisheries. Alaska Department of Fish and Game, Special Publication No. 09-26, Anchorage.

ADF&G Comments on FP11-08
August 13, 2012, Page 3 of 3

claimed. Sale of subsistence fish harvested on all lands and waters (federal, state, or private) is limited by state regulations except to extent superseded by federal law on federal lands. The State of Alaska maintains jurisdiction of food safety and food processing regulations based upon DEC rules, regardless of where fish are harvested.

Other Issues: The Alaska Department of Fish and Game supports adoption of enforceable federal customary trade regulations that specify limits on numbers of fish sold and cash sales and establish reporting requirements. However, restrictions or regulations that specify limits and reporting requirements should be applied drainage-wide.

Violation of existing federal customary trade and state fish processing regulations is an enforcement problem that has significant implications for subsistence users and the public. More clarity and education on state and federal regulations and an enforceable definition on what constitutes a significant commercial enterprise are needed.

Recommendation: Support. The department supports prohibiting customary trade of Chinook salmon harvest in the Yukon River Fisheries Management Area during years of insufficient Chinook salmon returns. For example, when there are subsistence fishing closure/restrictions across the drainage to reduce subsistence harvest of Chinook salmon to achieve escapement goals, customary trade of Chinook salmon would be prohibited.

WRITTEN PUBLIC COMMENTS

Support Proposal FP11-08. It really does not make sense to allow selling salmon strips while other users are not meeting their traditional and customary harvest needs.

The situation we see in villages and what residents are facing today is very troublesome. How they provide for their families and navigate the system that is in place to regulate the fisheries? To ensure we have the same opportunity to fish in our traditional and customary ways as others in the lower river enjoy, we must understand that this river and the people who live along this great river are one and the same. Everyone on this river will need to make sacrifices to ensure the salmon stock stays healthy and our traditional and customary salmon harvest is enjoyed by future generations. As we consider the sacrifices we will make, we must understand the changes we see around us today: climate changes, water temperatures increasing, and changes in the quality of fish. This is being discussed more openly by people who count on these resources to see them through the winter months, way after fishing is over.

It is better to start making small sacrifices now than wait until it is too late. A full salmon season closure may be the only option to protect the salmon stock and allow a good number for escapement into the spawning grounds. I encourage the Federal Subsistence Board to look at the good that came when people along the Yukon River worked together, set aside their differences, and sought a common goal. Maintaining a healthy salmon stock in the Yukon River rests with us as the primary users of the valuable resource and nothing short of working together will enable us to see the long term benefits.

Council of Athabaskan Tribal Governments (James Kelly, Acting Natural Resource Director)

Oppose Proposal FP11-08. You need to do a better job at looking at the big picture. The subsistence fisherman is only one small part of that picture. Why is the river warmer than in the past? Why do the returning numbers still decline? What is happening to the fish out in the ocean? What is happening to the ocean? And why is the commercial fish industry allowed to have so much waste.

The fishing season of 2009 was made very difficult with the restrictions that were cast upon the subsistence fisherman. We had to work really hard to get any fish. We were told that the numbers were low and Canada needed to have a certain number of fish reach their waters. We had to watch the first pulse go by before we could fish. You restricted the amount of time we were allowed to have our nets in the water. When the fish reached Canada they had more than expected. Between the strong arm of Canada and the loud and strong lobby of the commercial fish industry the subsistence fisherman is being endangered. Why are you proposing to put more restrictions on the lowly subsistence fisherman if last year's restrictions allowed more than enough fish to make it to Canada? Thank you for the opportunity to speak out.

Alyson Esmailka, Galena

Oppose Proposal 11-08. This proposal is another based on unfounded hearsay reports. The facts are plain and simple. The Yukon-Kuskokwim Delta Subsistence Regional Advisory Council states these accusations based on reports of questionable origin. It states that the Yukon River is becoming the king salmon strip capital of the world. Where else on earth can people get this vital cultural food? Cabela's sells fish in the catalog but not of the quality that indigenous people need and want. These rights are granted in ANILCA and that is the law; congress gave these rights. The problem we are having here is too much commercial fish and depletion of salmon stocks. This also states that this is an expanding trade, but the fact is fewer people fish than before. Everyone is hunting on the river, not just one group of people, all groups of people are having a hard time. Some groups are lucky enough to sell whole fish and are trying to blame the fish shortage on less fortunate fishermen who cannot sell whole fish. Marshall isn't

the only village hurting by these salmon shortages, all villages are hurt by this. It states that thousands are being prepared while people are starving in one village. Look at the quotas in each district and then say who is getting the biggest share of resource. Blaming up river fishermen for the lack of fish in Marshall is just plain misguided. The fact is districts are open at different times and the folks cutting fish are just getting some for the first time. Everyone is fishing subsistence in Y-5 to state the fact correctly. There are no commercial openings, just subsistence. Y-1 and Y-2 are just trying to sell all the fish and blame other groups. What makes this group more special than others is that they can spread rumors for their own lack of conservation. If they want to openly violate the rules, then that shows ignorance on many fronts. This also states that this will have more positive effects than gear restrictions. The gear restrictions are put in place because a species is being wiped out by specialized double-deep nets and larger mesh. These are the nets that are killing off the large Chinook of Canadian origin. When there are no more large kings to catch then the restriction nets will kill off the smaller kings. Too much commercial fish has been sold for money. Monetary goods or a sustainable yield for the future is the real question. We all have to adapt, adjust, or improvise; blaming others isn't going to get us anywhere and we just have to be conservative or we will really have something to cry about.

James E. Roberts, Tanana Tribal Council

Oppose Proposal FP11-08. This proposal is unreasonable for customary trade as some villages have no fish and will trade us for red game meat. A tracking system would be complicated and unenforceable.

*1st Chief Pat McCarty, 2nd Chief Don Honea Jr., and
Traditional Chief William McCarty Jr.,
Ruby Tribal Council, and Eight Residents of Ruby*

Oppose Proposal FP11-08. This proposal should read "if in any given year that the number of fish is insufficient to fully satisfy the subsistence harvest, commercial fishing will not be allowed. Commercial fishing should be cut off for at least two years to bring the fish population back to where it should be.

Letter Signed by Thirty-seven Residents of Galena

TANANA CHIEFS CONFERENCE

Written Comments to the Federal Subsistence Board on Fisheries Proposals

June 15, 2012

Tanana Chiefs Conference, the traditional tribal consortium of the 42 villages of Interior Alaska is based on a belief in tribal self-determination and the need for regional Native unity. Our role is to advocate for our communities, tribal governments, and tribal members.

Tanana Chiefs Conference offers the following comments to the Federal Subsistence Board in response to Fisheries Proposals 2013-2015. We have organized our responses into tables to make it easier to review our position on each specific proposal. At Tanana Chiefs Conference we are committed to protecting and maintaining our subsistence fishing and hunting harvests. The Tribes we represent depend on subsistence fishing and hunting for their nutritional and cultural survival.

We appreciate your review of our comments and we are available to answer any questions.

Proposal	Species	Description	Sponsor	TCC Position
FP 13-01	Chinook Salmon	Rescind requirement for fishing permit	USFWS	Strongly Support
FP 13-02	Chinook Salmon	Revise the marking of Chinook salmon	Fairbanks F&W Office	Support
FP 13-03	Pike	Revise harvest limit	GASH RAC	Support
FP 13-04	Salmon	Revise weekly fishing schedule	Eastern interior RAC	Holy Cross opposes their inclusion in this proposal
FP 13-05	Salmon	Remove waiting periods	Eastern interior RAC	Neutral - need some clarification
FP 13-06	Chinook Salmon	Customary trade (only rural residents)	Western interior RAC	Oppose

TANANA CHIEFS CONFERENCE

FP 13-07	Chinook Salmon	Only between rural residents during times of shortage	Eastern interior RAC	Oppose
FP 13-08	All Fish	Customary trade to users with traditional use determination	Y-K Delta RAC	Oppose
FP 13-09	Chinook Salmon	Prioritize use of Chinook Salmon	Eastern Interior RAC	Oppose
FP 13-10	Chinook Salmon	Prioritize use of Chinook Salmon	Y-K Delta RAC	Oppose
FP 13-11	Chinook Salmon	Customary Trade \$750 limit	Y-K Delta RAC	Oppose

Village Feedback Results

Proposal Number	Issue	Area Impacted Contact/Village	Comments
FP 13-01	Remove requirement of Chinook fishing permit	Impacts 4B and 4C Pat Sweetsir, Ruby Jeremy Havener- FWS Subsistence Specialist in Galena	Pat Sweetsir (Ruby Tribal Administrator) says "It's a good idea. It removes another obstacle to getting food." This proposal was presented at the area advisory committee and RAC meetings – at meetings there was significant support from communities
FP 13-02	Revise marking of Chinook Salmon	Districts 1,2,3 Holy Cross Chief Eugene Paul	Holy Cross Tribe supports this change.

TANANA CHIEFS CONFERENCE

<p><i>FP 13-03</i></p>	<p>Pike bag limits</p>	<p>GASH Advisory Committee</p> <p>Holy Cross Chief Eugene Paul</p>	<p>Holy Cross supports this in order to protect the pike population.</p>
<p><i>FP 13-04</i></p>	<p>Revise weekly fishing schedule</p>	<p>Districts 1,2 3</p> <p>Holy Cross Chief Eugene Paul</p>	<p>Holy Cross does not support this because it will cut their fishing opportunities by 36 hours per week.</p> <p>Holy Cross leadership feels they should not be included in this proposal and they should be removed from Y-3.</p>
<p><i>FP 13-05</i></p>	<p>Remove waiting periods</p>	<p>Districts 1,2,3</p> <p>Holy Cross Chief Eugene Paul</p>	<p>Need clarification/more information. Melinda Hernandez and Joy Huntington have been in contact about this proposal.</p> <p>Holy Cross leadership feels they should not be included in this proposal and they should be removed from Y-3.</p>
<p><i>FP 13-06 – FP 13-11</i></p>	<p>Customary Trade of Chinook Salmon</p>	<p>Yukon River communities</p> <p>Orville Huntington, Huslia</p> <p>Natasha Singh, TCC General Council</p>	<p>Tanana Chiefs Conference villages oppose any customary trade proposals that do not have adequate socio-economic and historic research to substantiate the proposed regulation.</p> <p>Please review the August 15, 2011 comments to the Federal Subsistence Board submitted by Tanana Chiefs Conference and Doyon, Limited (attached).</p>

Compiled by Joy Huntington Consulting, LLC (907) 378-1523 mjjoyhuntington@gmail.com



Tanana Chiefs Conference



DOYON
Limited

COMMENTS TO THE FEDERAL SUBSISTENCE BOARD
by
DOYON, LIMITED AND TANANA CHIEFS CONFERENCE
August 15, 2011

Doyon, Limited (“Doyon”) and Tanana Chiefs Conference (“TCC”) write to the Federal Subsistence Board today in opposition to the Yukon River Chinook Customary Trade Proposal as presented by the Tri-RAC Customary Trade Subcommittee (the “Proposal”). The Proposal would limit the customary trade of Yukon River Chinook salmon between rural residents within the Yukon River drainage to seven hundred and fifty (750) dollars per household. Further, the Proposal would preclude *any* customary trade of Yukon River Chinook salmon between rural residents and others. Doyon and TCC, like many other regional Native organizations, are greatly concerned about the effect that the Proposal would have on subsistence fishing and fish camps in the Yukon River Management Area. Customary trade does not exist in a vacuum; it is connected to every aspect of subsistence in our communities. Further, customary trade is not done for profit, as our communities depend on customary trade to maintain our fishing tradition and subsistence ways of life, which includes a strong spiritual and religious component to sharing fish. In short, the Proposal and its drastic limits on customary trade would destroy our communities.

It is the position of Doyon and TCC that the 750 dollar limitation on customary trade between rural residents and the preclusion of trade with non-rural residents are both inadequate and inconsistent with customary trade practices that have existed and continue

to exist in the Yukon River Management Area. Further, any action by the Federal Subsistence Board to cap customary trade between rural residents at 750 dollars per household or to preclude customary trade with non-rural residents would be arbitrary and capricious without further research. Doyon and TCC respectfully request that the Federal Subsistence Board reject the Proposal, and in its stead, commission tribes to administer further research on subsistence harvests and actual sales of subsistence-harvested Chinook salmon before setting a specific dollar limitation or precluding customary trade with non-rural residents.

In its comments to the Federal Subsistence Board on FP11-09, the precursor to the Proposal, the Alaska Department of Fish and Game explained that

[t]his proposal may reduce subsistence harvest of Chinook salmon intended for cash sale of whole (unprocessed) Chinook salmon. It is not possible, however, to accurately predict how [a 750 dollar limitation on customary trade] will affect changes in subsistence harvest patterns because federal and state agencies lack information and data regarding existing levels of harvest and actual sales of subsistence-harvested Chinook salmon.¹

As the Department points out, information on current levels of subsistence harvests and sales of such harvests are unavailable at this time. Therefore, a dollar limitation of customary trade between rural residents and the complete preclusion of customary trade with non-rural residents are inappropriate, capricious, and arbitrary until that information is available.

Although the Department continues its comments by suggesting that the permitting and recordkeeping process would “result in monitoring the customary trade of subsistence-harvested Chinook salmon in the Yukon River area such that the actual

¹ Alaska Department of Fish and Game Comments to Federal Subsistence Board in support of FP11-09 with modification, Meeting of the Federal Subsistence Board 58 (Nov. 30, 2010), available at <http://alaska.fws.gov/asm/pdf/meetingbooks/eifall10/FP11-09.pdf>.

effects of customary trade can begin to be measured,”² further studies should be commissioned *before* action is taken. Without information on current subsistence harvests and sales from such harvests, any regulations promulgated by the Federal Subsistence Board that establish a cap on customary trade between rural residents at 750 dollars per household or preclude trade with non-rural residents would be arbitrary and capricious, and any such regulation would certainly not be based on the best available science.³ Conversely, regulations based on reliable and up-to-date studies would simultaneously prevent exploitation of customary trade in the commercial market and honor the cultural and traditional importance of fishing and fish camps in the Interior, most of which can only be sustained with the support of customary trade on the Yukon River.

The central issue initiating the Proposal is the concern over the need to define and to resolve ambiguity around the term “significant commercial enterprise” as used in the Alaska National Interest Lands Conservation Act (“ANILCA”) to limit what constitutes customary trade.⁴ The Yukon-Kuskokwim Delta Subsistence Regional Advisory Council expressed concern when first proposing a 750 dollar limitation that allowing customary trade without further regulatory clarification would allow subsistence resources to become commodities on the commercial market “under the guise of subsistence

² *Id.*

³ Actions by the Federal Subsistence Board are held to the standard of review as established by the Administrative Procedure Act (“APA”), and said actions will not be upheld if they are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” *Ninilchik Traditional Council v. United States*, 227 F.3d 1186, 1192 (9th Cir. 2000) (quoting Administrative Procedure Act, 5 U.S.C. § 706(2)(A) (1996)) (internal quotation marks omitted) (holding a reviewing court analyzes Federal Subsistence Board actions under APA standards).

⁴ 50 C.F.R. § 100.4 (“Customary trade means exchange for chase of fish and wildlife resources regulated in this part, not otherwise prohibited by Federal law or regulation, to support personal and family needs, and does not include trade which constitutes a significant commercial enterprise.”).

customary trade.”⁵

While Doyon and TCC, too, wish to clarify the ambiguity, to prevent exploitation on the commercial market, and to ensure the continued viability of Chinook populations, the 750 dollar threshold limitation on customary trade between rural residents and the complete preclusion of customary trade with others are inconsistent with the most recent anthropological study of customary trade of Chinook salmon on the Yukon River available. To demonstrate this point, Doyon and TCC (1) outline the vital role of customary trade in Native communities along the Yukon River; (2) highlight differences in customary trade between the lower and upper Yukon River communities; (3) explain the inadequacy of 750 dollar as a cap on customary trade when compared with customary trade practices; and (4) describe the customary trade between rural residents and others that has long been a part of trade in the Yukon River Management Area.

THE ROLE OF CUSTOMARY TRADE IN NATIVE COMMUNITIES ALONG THE YUKON RIVER

Ms. Catherine Moncrieff of the Yukon River Drainage Fisheries Association studied and detailed practices surrounding customary trade of fish in three communities from each of the tri-RAC districts of the Yukon River: Alakanuk; Holy Cross; and Tanana.⁶ By examining customary trade from pre-contact and Russian eras to modern

⁵ *Yukon/Kuskokwim Delta Regional Council Recommendation in support of Proposal FP11-09 with modification, Regional Advisory Council Recommendations, Meeting of the Federal Subsistence Board 55* (Nov. 2010), available at <http://alaska.fws.gov/asm/pdf/meetingbooks/eifall10/FP11-09.pdf>.

⁶ CATHERINE F. MONCRIEFF, YUKON RIVER DRAINAGE FISHERIES ASS'N, *TRADITIONAL ECOLOGICAL KNOWLEDGE OF CUSTOMARY TRADE OF SUBSISTENCE HARVESTED SALMON ON THE YUKON RIVER* (2007). Ms. Moncrieff's study is the only anthropological study of subsistence fishers and the role of customary trade on the Yukon River to date. Although it is the position of Doyon and TCC that further studies of customary trade in the Yukon River drainage are required to form merited regulations, Ms. Moncrieff's study provides the most recent data available. The study has also been recognized and relied on by the U.S. Fish and Wildlife Service's Office of Subsistence Management. See, e.g., *Staff Analysis FP11-05, Meeting of the Federal Subsistence Board 13* (Nov. 2010), available at <http://alaska.fws.gov/asm/pdf/meetingbooks/wifall10/FP11-05.pdf>.

society, Ms. Moncrieff found that “the traditional practice has continued, evolving and adapting just as the people of the Yukon River have evolved and adapted to adjust to the modern or changing world.”⁷ Thus, the prevalence of customary trade today is a direct response to changes in the modern economy that make it more efficient for fishers to exchange fish for cash than to barter. Nevertheless, despite this shift in trade, “the purpose of the exchange has not changed.”⁸

Customary trade has traditionally had two major functions within rural Native villages, and these vital roles continue to exist today. First, customary trade is the means by which subsistence fishers are able to purchase the items needed to sustain a subsistence lifestyle and support fish camps. Second, customary trade allows fishers to provide fish to non-fishers, the elderly, the disabled, and the needy in Native communities.

Customary Trade as a Means to Sustain a Subsistence Lifestyle and Support Fish Camps

In the modern world, subsistence fishing comes with staggering costs. For example, fishers in Tanana were asked in Ms. Moncrieff’s study about the cost of subsistence fishing, and they identified the following items and prices: gas (ranging from \$245 to \$1,500; also noted as the highest cost by all fishers interviewed); supplies for keeping the fish wheel running (netting \$400, replacement parts \$750 to \$1,000, roll of wire \$600, and labor); food or groceries (as much as \$1,500 per month); electric bill for the freezers (\$50 to \$60 per month); replacement set gillnets (150 feet for \$750); knives (\$80 to \$200); knife sharpeners; chainsaws; guns and ammunition; sleeping bags; tents;

⁷ *Id.* at 30.

⁸ *Id.*

mosquito repellent; boat maintenance (\$1,000 annually); rock salt; jars; rope; and tarps.⁹

Given the incredible cost of subsistence fishing, most fishers cited a need to earn cash to be able to continue a fishing lifestyle. Because the practice of bartering is no longer viable, cash has become the means in which fishers are able to obtain these items. As described by Ms. Moncrieff,

[a]lthough a minimal amount of barter was reported, Tanana participants explained that in today's modern world, exchanging salmon for cash and then purchasing the items needed was simpler than arranging an item-for-item exchange (i.e., barter). Participants felt that their exchanges were traditional, but had adapted to the modern economy. Their incomes come from extensive hard work, as much as four months at fish camp, and usually the sacrifice of the opportunity for a regular job.¹⁰

Thus, although fishers now purchase items with cash rather than barter, modern fish camps and cash-based exchanges maintain time-honored traditions and the spirit of a subsistence way of life.

Given the increasing presence of cash in our subsistence-based economies, customary trade plays a vital role in our ability to survive. The median household income in Yukon River communities is far below that of the national average, and there are few other cash-earning opportunities available to subsidize the high cost of a fishing lifestyle.¹¹ This is especially true as one travels upriver where there are fewer commercial fishing opportunities.¹² Therefore, although a few fishers have jobs or have

⁹ *Id.* at 26-27.

¹⁰ *Id.* at 31.

¹¹ *Id.*; see also *Census 2000 Demographic Profile Highlights*, U.S. CENSUS BUREAU, <http://factfinder.census.gov> (search "Tanana, Alaska" and "Holy Cross, Alaska"; turn to 2000 Census tab) (the median household income in 1999 in the United States was \$41,994, while the median household income in Holy Cross was \$21,875 and the median household income in Tanana was \$29,750). Median income statistics of the 2010 Census are not finalized at the time of this Comment's submission.

¹² MONCRIEFF, *supra* note 6, at 32 ("Commercial fishing is another way to obtain cash in a Yukon River community[,] but the opportunity depends on location on the river. Most of Yukon River commercial fishing takes place in the lower river and there is little to no opportunity for commercial fishing in the upper river.").

established other means to earn cash income, customary trade provides an “opportunity for income [that] allows the fish camps to stay active.”¹³ Ms. Moncrieff explained that,

[t]he income earned through customary trade is important because there are few other cash-earning opportunities in these communities and the costs of subsistence fishing are high Participants in all three communities reported that the money they earned through customary trade was used to sustain fish camp and their fishing lifestyle. It was repeatedly stated that, “no one is getting rich through customary trade.”¹⁴

Thus, customary trade is not viewed in our communities as a means to generate huge profits or “significant commercial enterprise.” It is simply an adaptive practice to sustain traditional ways of life.

In reality, fishers today are only able to support their fishing lifestyle because they are able to exchange fish for cash to purchase the gas and other items needed to support a subsistence lifestyle.¹⁵ Without the money earned from customary trade, many fishers would not be able to sustain their fish camps. As explained by Stan Zuray, a subsistence fisher in the Rapids, “Customary trade is the lifeblood of fishing on the [Yukon R]iver.”¹⁶

Customary Trade Provides for Non-fishers, the Elderly, the Disabled, and the

Needy Ms. Moncrieff also found that customary trade is necessary to account for the fact that fewer Native people are fishing. Notwithstanding the fact that fewer Native people are fishing, their desire for and consumption of salmon has not decreased.

Therefore, given that there is sustained need yet fewer fishers, customary trade has become a necessary means of providing salmon to Native people who no longer fish.¹⁷

¹³ *Id.* at 27.

¹⁴ *Id.* at 31 (emphasis added).

¹⁵ *Id.* at 30-31.

¹⁶ *Id.* (internal quotation marks omitted).

¹⁷ *Id.* at 29 (“People who used to fish were no longer fishing but they still wanted to eat salmon. They said that today there were more people who needed salmon because of this change.”).

Customary trade allows a smaller number of fishers to provide salmon for a growing number of non-fishers in the villages and those who moved to other areas. For example, fishers in Tanana reported selling salmon to friends and acquaintances in Fairbanks, Salcha, Sitka, Minto, Minchumina, Ruby, Point Hope, and communities along the Koyukuk River.¹⁸ As explained by Ms. Moncrieff, “most of these fishers described the recipients of their fish as dependent on them to get fish.”¹⁹ Further, customary trade is the means by which Native communities are able to provide for the elderly, the disabled, and the needy.²⁰ In the words of Lester Erhart, a subsistence fisher in the Rapids, “[a] lot of old people *depend* on it.”²¹

In sum, the opportunity for income that customary trade provides allows fish camps to remain active and traditions to remain alive. In the villages, cash is viewed as “just another resource like moose or salmon[,] and thus trading salmon for cash and then trading cash for gas is really no different than barter.”²² Ms. Moncrieff explains that “the ability to exploit this resource (cash), is an adaptive strategy providing access to technology such as boats, motors, and nets and thus maximizing effective fishing techniques.”²³ Furthermore, “cash is the resource that allows people in the villages to obtain gasoline, heating fuel, clothing, and food.”²⁴

Without the money earned from customary trade, Native villages would not be

¹⁸ *Id.* at 28.

¹⁹ *Id.*

²⁰ *Id.* at 33-34.

²¹ *Id.* at 28 (emphasis added).

²² *Id.* at 32 (citing P.C. Wheeler, *The Role of Cash in Northern Economies: A Case Study of Four Alaskan Athabaskan Villages* 269 (1998) (unpublished Ph.D. dissertation, University of Alberta)).

²³ *Id.* at 32.

²⁴ *Id.*

able to sustain their fish camps and Native fishing traditions would cease to exist. As

Steve O'Brien, a Rapids fisher, explained:

So this fishery I don't think is prone to abuse, it's too hard work, and there's not enough money, people aren't, nobody's in it for the money, let me put it that way. It's a wonderful place for kids and old people, and, of course, the traditional thing, and I really fear that for some reason we are not allowed for our customary sales it's going to shut every fish camp down up here and that'll be the end of it. And I just don't see where that's going to benefit anybody.²⁵

As Mr. O'Brien suggests, customary trade is much more than a means to an end.

It is yet another adaptive practice that our Native communities have implemented to survive and adapt to changing times, while maintaining traditional values and lifestyles. Thus, the Proposal, by drastically limiting customary trade, threatens our fishers' ability to afford the high cost of subsistence fishing in the modern world. It would devastate very livelihood and sustainability of our communities.

DIFFERENCES IN CUSTOMARY TRADE ON THE LOWER AND UPPER YUKON RIVER

Commercial fishing is another cash-earning opportunity along the Yukon River. However, the majority of commercial fishing along the Yukon takes place in the lower river, while there are few commercial fishing opportunities in the upper river.²⁶ Although Ms. Moncrieff found that the number of study participants with commercial fishing licenses in Tanana (located on the north bank of the Yukon River at its confluence with the Tanana River) and Alakanuk (located on the south mouth of the Yukon River) were relatively similar, possessing a commercial fishing permit alone does not ensure a fisher's ability to

²⁵ *Id.* at 29.

²⁶ *Id.* at 32.

earn income through commercial fishing.²⁷ The viability of commercial fishing depends, primarily, on two factors: (1) the availability of a buyer in their region; and (2) open commercial fishing periods.²⁸ As noted by Ms. Moncrieff, “with these variables to consider, the middle and upper river have much less opportunity for earned income through commercial fishing as compared to the lower river.”²⁹

For instance, while customary trade exists in the lower Yukon in areas such as Alakanuk, it occurs at a lower rate than in the upriver communities.³⁰ Ms. Moncrieff noted that the lower rate of customary trade in Alakanuk “may be due to the greater opportunity to earn income through commercial fishing in the lower river.”³¹ Whereas customary trade is more prevalent and consistent in the upper Yukon, customary trade in Alakanuk was practiced by very few fishers and was described by fishers as “opportunistic—as people asked, or when the opportunity arose.”³² Further, “[i]n Alakanuk, customary trade of fish is not a preplanned activity, but one that takes place along subsistence rules with small transactions”³³ In addition, “the average quantities of fish sold today in Alakanuk appear to be significantly reduced from those in the distant past.”³⁴

Conversely, customary trade in Holy Cross was significantly higher, as

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 30.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.* (“Average quantities reported during the study period (2004) were quart-sized Ziploc bags, although larger quantities were also reportedly sold periodically.”).

seven out of eight fishers in the study participated in customary trade.³⁵ Ms. Moncrieff explained that this may be attributed to existing demand and the lack of alternative cash-earning opportunities in the area such as commercial fishing.³⁶ Similarly, roughly half of the fishers interviewed in Tanana reported participating in customary trade of fish at some level.³⁷ In these communities, customary trade serves a vital role as a cash-earning opportunity as few other opportunities exist and the costs of subsistence fishing are incredibly high.³⁸ In this context, trading salmon is seen as “just another means or the simplest way to obtain gasoline or another resource they need to complete their annual cycle.”³⁹

In sum, communities in the upper Yukon have fewer cash-earning opportunities than lower River communities, and they thus depend on subsistence fishing and customary trade to sustain their way of life and cultural traditions. A “one size fits all” approach to capping customary trade does not align with the variations that exist across the Yukon and the greater dependence on customary trade that exists upriver.

A \$750 LIMITATION IS INADEQUATE TO SUSTAIN SUBSISTENCE WAYS OF LIFE

A cap on customary trade at \$750 between rural residents as the Proposal suggests is insufficient to sustain Yukon River fish camps, fishing lifestyles, and Native traditions. Based on Ms. Moncrieff’s study, income generated from

³⁵ *Id.* at 31.

³⁶ *Id.*

³⁷ *Id.* (“In Tanana 6 of the 13 participants actively sold their salmon whereas 7 either did not sell salmon or sold very small amounts.”).

³⁸ *Id.*

³⁹ *Id.* at 32.

customary trade is much higher than that allotted by the Proposal. To begin, the average annual earnings from customary trade of fish in Holy Cross were \$1,360.⁴⁰ Similarly, one fisher in Tanana reported trading as much as 600 pounds annually through his family fish camp as at a value of \$6,000, and he described the balance achieved through customary trade to continue a fishing lifestyle in the modern world.⁴¹

These reports are entirely consistent with Ms. Moncrieff’s finding that “customary trade is not conducted for profit, nor is it conducted in isolation from other subsistence activities.”⁴² The money earned from customary trade not only offsets what are described as the “unavoidable costs” of subsistence fishing, but also allows fishers to pay for essential household expenses such as groceries, heating fuel, school clothes for children, and medical care.⁴³ In short, customary trade “continues today as an active form of resource exchange and support for subsistence economies needing cash.”⁴⁴

THE PRECLUSION OF CUSTOMARY TRADE WITH OTHERS IS INCONSISTENT WITH TRADITIONAL TRADE NETWORKS AND PRACTICES

Customary trade plays a vital role in ensuring the viability of a subsistence lifestyle, and trade of fish has existed in Alaska Native communities since time immemorial. “Prior to Russian contact in the mid-1800s trade of fish within the Yukon-Kuskokwim Delta occurred within a village, between villages, and outside of

⁴⁰ *Id.* at 35.

⁴¹ *Id.* at 27.

⁴² *Id.* at 34.

⁴³ *Id.* at 21.

⁴⁴ *Id.* at 34.

the region with others.”⁴⁵ Further, after Russians migrated into eastern Siberia, trade continued to expand and Alaska Native trade networks reached international markets, “with Alaskan furs destined for the Chinese or European market and Siberian reindeer skin, iron, tobacco, tea, and some manufactured items headed for Alaskan villages.”⁴⁶ By the time the Russians made contact, Alaska Native trade networks linked the regions as vast as the Yukon Territory, British Columbia, Alaska, and Siberia.⁴⁷

In the Yukon River drainage specifically, both the Holy Cross and the Tanana areas were active in trade within their areas and beyond long before western contact.⁴⁸ Although the majority was originally bartered, “by the mid-1880s[,] it appeared that the Anvik-Shageluk Deg Hit’an [of the Holy Cross area] were beginning to demand cash payments[, and b]y the spring of 1889, Indians hired to work on missions buildings in Anvik were paid with cash instead of barter.”⁴⁹ Similarly, as missionaries began visiting Native camps and trading posts in Tanana, “Native fishers received credit or cash from the stores for baled, dried salmon which was then sold to dog mushers.”⁵⁰ Although the rise of air transportation decreased the need for dried salmon for dog mushers and forced many stores to close, Native

⁴⁵ *Id.* at 2 (citing R. F. SCHROEDER ET AL., ALASKA DEPARTMENT OF FISH AND GAME, DIVISION OF SUBSISTENCE, TECHNICAL PAPER #150, SUBSISTENCE IN ALASKA: ARCTIC, INTERIOR, SOUTH CENTRAL, SOUTHWEST, AND WESTERN REGIONAL SUMMARIES 221 (1987)).

⁴⁶ *Id.* at 2 (citing SCHROEDER, *supra* note 45, at 222).

⁴⁷ *Id.* at 7 (citing F. DE LAGUNA, TRAVELS AMONG THE DENA: EXPLORING ALASKA’S YUKON VALLEY 35 (2000)).

⁴⁸ *Id.* at 8-9.

⁴⁹ *Id.* at 9 (citing J. Vanstone, *Ingalik contact ecology: an ethnohistory of the lower-middle Yukon, 1790-1935*, *Fieldiana Anthropology* 71, at 124 (1979)).

⁵⁰ *Id.* at 11 (citing W. J. Loyens, *The changing culture of the Nulato Koyukon Indians* 149 (1966) (unpublished Ph.D. dissertation, University of Wisconsin)).

fishers were still exporting their salmon “from Tanana to Fort Yukon as dog food for trappers as late as 1949.”⁵¹

Today, in communities like Holy Cross and Tanana, customary trade takes place both within and beyond the village. In Holy Cross, for example, “[m]ost people said they sold fish only to friends, or to the same people every year.”⁵² Nevertheless, fishers in Ms. Moncrieff’s study reported that customary trade reached non-rural areas such as Anchorage as well. Such trade is important to the viability of subsistence lifestyles, because “when salmon is sold in Anchorage[,] the cash received in trade is used to fund travel expenses, hotel, groceries, and school clothes.”⁵³ As Ms. Moncrieff explains, “this type of customary trade [with residents of urban areas such as Anchorage] can help those who have few other cash-earning opportunities.”⁵⁴ Further, customary trade, including its networks beyond rural villages, is “an important tradition and in some cases brings a family together that is usually spread around Alaska.”⁵⁵

Similar to those in Holy Cross, fishers in Tanana also reported selling fish beyond the confines of the rural village. For example, one fisher reported that he “sent fish for resale to his brother for resale in another location and sold small amounts of fish (4-5 fish) to an acquaintance in Fairbanks.”⁵⁶ Likewise, although the active fishers sold the majority of their fish to their home communities in Tanana,

⁵¹ *Id.* (citing M. CASE AND L. HALPIN, ALASKA DEPARTMENT OF FISH AND GAME, TECHNICAL PAPER NO. 178, CONTEMPORARY WILD RESOURCE USE PATTERNS IN TANANA, ALASKA, 1987 16 (1990)).

⁵² *Id.* at 21.

⁵³ *Id.* at 22.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 27.

Manley Hot Springs, or Nenana, they also reported selling fish “to friends or acquaintances in Fairbanks, Salcha, Sitka, Minto, Minchumina, Ruby, Point Hope, and communities along the Koyukuk River.”⁵⁷ Thus, customary trade expands beyond the rural communities in both Holy Cross and Tanana, and such expansive trade is historically consistent with pre-contact trade networks. As explained before, trade with non-rural communities plays a vital role in sustaining subsistence lifestyles. Further, as demonstrated above, customary trade with non-rural residents not only provides a cash-generating opportunity, but also a means for our fishers to connect with their family and friends in urban areas.

By precluding customary trade with others, the Proposal threatens the sustainability of subsistence ways of life throughout the Yukon River drainage and the ability of rural fishers to be able to afford to travel to visit friends and family in urban centers. As explained in the study, “[w]ithout the money earned from customary trade, [fishers on the Yukon River] would not be able to sustain their fish camps.”⁵⁸ Many fishers “described their fear of the end of customary trade and what that would do to the continuing practice of fish camp.”⁵⁹ The Proposal is certainly a step in that direction, particularly considering its preclusion of customary trade with others, which has existed for generation upon generation.

As Ms. Moncrieff explains, customary trade includes and is understood by fishers “as trade that occurs within the villages, as well as between villages, and between the residents of the village and the larger urban communities.”⁶⁰ Although

⁵⁷ *Id.* at 28.

⁵⁸ *Id.* at 29.

⁵⁹ *Id.* at 33.

⁶⁰ *Id.* at 34.

“survival of fish camps on the Yukon River may depend on the flexibility, innovation, and adaptive change of the people,”⁶¹ it is the hope of Doyon and TCC that the Federal Subsistence Board refuses to adopt the Proposal and the burden it would place on villages that depend on customary trade for their survival. The Proposal’s limit of 750 dollars between rural residents is insufficient to support fishing camps, and the preclusion of trade with others is entirely unwarranted.

CONCLUSION

For these reasons and evidence provided above, Doyon and TCC respectfully request that the Federal Subsistence Board reject the Proposal in favor of a more equitable approach consistent with the needs of our Native communities. We ask that the Federal Subsistence Board support customary trade and its vital role in sustaining fishing traditions and the healthy lifestyle they provide by commissioning tribes to carry out further studies of current harvests and customary trade of Chinook salmon in the Yukon River drainage *before* new regulations are adopted. To limit customary trade to 750 dollars and to preclude customary trade with non-rural residents at this point in time would be both arbitrary and capricious. Furthermore, given the variations along the Yukon River, a “one size fits all” approach is entirely inappropriate. Further research is required to make well-reasoned and merited regulations that support the traditions and lifestyle of Native communities.

⁶¹ *Id.* at 33.

Briefing for Regional Advisory Councils – Fall Cycle, 2012

on

Draft Memorandum of Understanding for Coordinated Interagency Fish and Wildlife Management for Subsistence Uses on Federal Public Lands in Alaska

ACTION: Please develop and provide to the Board and Working Group your Regional Advisory Council comments concerning this DRAFT revised MOU. If the public, Tribes, or ANCSA Corporations wish to provide comments for your consideration, please allow for that during the time on your agenda for this topic. Thank you!

One of the action items resulting from the 2009 Federal Subsistence Program review initiated by Secretary of the Interior, Ken Salazar, was to “Review, with Regional Advisory Council (RAC) input, the December 2008 Memorandum of Understanding (MOU) with the State to determine either the need for the MOU or the need for potential changes to clarify federal authorities in regard to the subsistence program.”

The 2008 MOU was distributed to the RACs during the winter 2011 meetings with a request for their comment. A summary document of all comments received is attached. The Federal Subsistence Board requested that a State/Federal Working Group be formed to review the comments and provide recommendations for changes to the MOU.

State and Federal MOU working group members¹ met twice over the winter 2012 to review the Regional Advisory Council (RAC) and other comments received, and develop proposed modifications to the 2008 MOU.

A revised version has been prepared for review which includes notes providing rationale for each recommended change (attached). On July 18, 2012, the Federal Subsistence Board approved the draft MOU for comment by Regional Advisory Councils, State Advisory Committees and the public, and for consultation with Tribes and ANCSA Corporations.

Some of the noteworthy modifications to this document are discussed here:

GENERAL CHANGES

1. *Plain language:* Several Councils requested that plain language be used wherever possible. A few changes were made in response as indicated in the document. We would appreciate if Councils can suggest additional such changes.

¹ Working Group Members: State: Jennifer Yuhas – ADF&G; Federal: Pete Probasco – OSM, Sandy Rabinowitch – NPS, Jerry Berg – FWS, and Steve Kessler – USFS.

2. *Reordering:* The MOU is reformatted to consistently place Federal language before State language as this MOU focuses on the Federal Subsistence Program and Federal public lands. This partially addresses multiple Councils' concerns about the tone of the MOU.
3. *Glossary and definition of terms:* Rather than creating a glossary or defining terms we have spelled out text fully and tried to use plain language.

SOME SPECIFIC CHANGES

4. *Traditional Ecological Knowledge (TEK):* Multiple Councils wanted TEK added wherever "scientific information" was used. We have responded by adopting the ANILCA terminology knowledge of "customary and traditional uses" in a number of areas because it provides clarity and is consistent with ANILCA.
5. *Predator management:* There were a number of comments specific to active management and its application to the Federal program. We interpreted this as a desire by some RACs to have the Federal program involved in predator management. We added to the MOU a section that quotes from the Board's Predator Management Policy (III, #2).
6. *State Management Plans:* The current MOU states that State fish and wildlife management plans will be used as the initial basis for management actions. This has been changed as shown in IV, #11, to use Federal, State and cooperative plans.
7. *Evaluate MOU:* The Southeast RAC requested a way to evaluate whether the MOU is accomplishing its goals. Language has been added specifically recognizing an annual opportunity for RACs and ACs to comment on how the MOU is working and for those comments to be provided to and be considered by the signatories. (See V, #8.) (Note commitment for future action)
8. *Protocol Review:* Multiple Councils asked that existing protocols be reviewed and updated. The intent is to follow up with review of these protocols after adoption of this updated MOU. (Note commitment for future action)

The following schedule is proposed to complete and sign the revised MOU

Proposed Schedule

June-July 2012	Revised version is provided to the Federal Subsistence Board and State for review/approval to move forward with RAC and AC review. FSB approval occurred on July 18, 2012.
August-October 2012	RACs and ACs review and provide comments. Tribes / ANCSA Corporations are invited to consult on the revised version at Council meetings or by special request to OSM. At least one Federal MOU working group member participates in each RAC meeting to dialogue about the revised draft. Attendance is in-person if possible and otherwise by conference call.

Memorandum of Understanding

- | | |
|---------------------|--|
| November 2012 | Federal & State MOU working group addresses comments received. MOU working group develops list of remaining issues. |
| November-December | Signatories (FSB / State) each meet with their respective agency staff to discuss the revised version and issues, if any; sends comments to the MOU working group. |
| November-December | MOU working group meets to resolve signatories' issues, if any, based on direction from their signatories. |
| January 22-24, 2013 | Federal Subsistence Board public meeting and final Tribal/ANCSA Corporation consultation. Signatories (FSB, BOG, BOF, and ADF&G) meet to work out final details and agree to sign revised MOU. This meeting also serves as the annual MOU meeting. |

SUMMARY OF WINTER 2011 COUNCIL COMMENTS ON THE MEMORANDUM OF UNDERSTANDING

The **Seward Peninsula Council** supported the current wording of the MOU. Consistent with the MOU, the Council voted to send a letter to ADF&G asking that a check-box be added on the State harvest tag/registration permit report forms for hunters to specify if they were hunting under Federal subsistence regulations.

The **Western Interior Council** supported the MOU in concept, and also recommended that the following language be incorporated into the preamble of an amended MOU:

ANILCA, Title VIII requires the Federal land managers to adhere fish and wildlife management consistent with sound management principles, and the conservation of healthy populations of fish and wildlife in accordance with recognized scientific principles and the purposes for each unit established. The Federal managers shall scientifically delineate and maintain healthy populations. If state management Boards actions jeopardize fish or wildlife population health, Federal managers shall preempt State regulations to assure population health in accordance with ANILCA to protect subsistence uses.

The **Eastern Interior Council** supported the MOU in concept. Several members expressed frustration regarding the lack of sharing of data between agencies. The Council asked that this concern be expressed to the Federal Board.

The **North Slope Council** was supportive of the MOU and felt that it is a valuable document. It also recommended the following changes:

Section I, paragraph 2: Change “such as” to “*especially.*”

Wording needs to be added throughout the MOU wherever it says who is involved in the MOU to include “*knowledgeable subsistence uses and/or tribal representatives.*” For example, the following edit should be made:

Section IV, number 9: To designate liaisons for policy communications and, as appropriate, to identify *tribal and/or* local agency representatives who are knowledgeable about subsistence uses....

The **Yukon Kuskokwim Delta Council** requested that the MOU be written in plain language so that people who speak English as a second language can understand it better. The specific guidance for edits was as follows:

Section III. Guiding principle, number 5: After the end of the principle, after “and,” add: “*through active management where conservation of the resource or continuation of subsistence uses is of immediate concern, reviews shall not delay timely management action.*”

Section IV, number 9, addition in italics: “To designate liaisons for policy communications and, as appropriate, to identify *tribal and/or* local agency representatives...”. The point the Council wanted to make was that tribes should be communicated with and not city offices. Several commenters said that tribal governments are more active in fish and wildlife management issues than the village corporations or city governments. Tribal governments have more influence on the Federal process than city governments. City governments know what the State wants them to do and are reluctant to be involved in Tribal affairs.

Section IV, number 10: The Council focused some discussion on this portion: “...*provide advance notice to Council and/or State Advisory Committee representatives. . . before issuing special actions or emergency orders.*” Council members noted that they do not hear about changes to regulations. They would like to make sure that Council members and State Advisory Committee members are told when there are special actions or emergency orders. No change in the MOU was suggested. This had to do with informing after special actions and emergency orders were implemented.

Section IV, number 12: “...reporting systems”. Council members noted there is a problem with relying on locals reporting harvests using the harvest ticket system. They always run out of harvest tickets and don’t receive enough. It was suggested that harvest tickets should be distributed through the Tribal council or city office and not the store. Chairman Lester Wilde reminded people that harvest tickets are good until June of the next year; harvest tickets are good all throughout the fall and winter seasons.

The **Bristol Bay Council** is pleased with the MOU and asked that the State and Federal governments work together whenever there are subsistence concerns. The Council supported the MOU with the following edits and additions:

III. Guiding Principles

- (1) ... other entities. *This includes keeping an open mind to the possibility of and implementation of predator control when the conservation of a particular species is in peril;*
- (2) Use best available ...and local traditional *and ecological* knowledge (*TEK*) for decisions...for subsistence use on *harvests* on Federal Public Lands.

IV. The FSB and State of Alaska Mutually agree:

- (2) To recognize that State and Federal...data and information and cultural *TEK* information are important...
- (9) To designate.to identify *Tribal and/or* local agency...

The **Southcentral Council** supported the MOU in principle, but had a number of comments. The Council agreed that the two programs (ADF&G, and FSMP) need to coordinate because both have different mandates. Additional revisions recommended by the Council included strengthening the Tribal consultation component, ensuring that the third paragraph in Section IV is clear that it only references the State Program (and not that the Federal Program is agreeing to that mandate) and suggesting that *TEK* be added as an important source of information whenever biological information is mentioned. The Council also suggested that Federal terms AND State terms be included in the MOU (i.e., harvestable surplus is a State term). The Council is interested in getting feedback once the MOU is revised.

The **Northwest Arctic Council** generally supported the concept of the MOU. Several members expressed concerns about what is actually stated in the MOU. The Council would like to see the MOU written in plain language so it can be easily understood. Some of the members expressed concerns that the MOU was not vetted through the Councils and there was no consultation with the affected users. There was only one specific comment on language found in the MOU. One member felt that the second paragraph in the Preamble was misleading:

WHEREAS, ...”subject to preferences among beneficial uses, such as providing a priority for subsistence harvest and use of fish and wildlife...”.

The Council member felt that the State manages resources providing for equal access to everyone, not any one group and especially not subsistence users.

Kodiak Aleutians Council supports the idea of the MOU, as it reduces redundancy and includes local input as possible. The MOU basically states that the State and Federal Programs will try and work things out and cause the least adverse impact possible to subsistence users, which the Council supports. One Council member stated that she wasn't sure how the MOU addresses the Unimak issue, but that overall it is a good idea to continue to work together.

The **Southeast Council** drafted a letter to the Board concerning this issue. The Council agrees that an agreement describing communication and coordination protocols between Federal and State governments and supporting agencies is required for effective management of fish and wildlife resources. The Council had the following general comments and concerns: that the MOU is unnecessarily difficult to understand and should be rewritten in plain language; that there has been testimony that the information sharing protocol has not been working as intended and that document should also be reviewed; that information vital for management of fish and wildlife is more than scientific data- the role of traditional ecological knowledge needs to be emphasized; that the wording and tone of the agreement appears to highlight the role of the State in how the Board manages subsistence and minimize the role of the Councils; that there needs to be a process to evaluate and monitor whether the "Purposes" and Guiding Principles" of cooperation are working to the advantage of subsistence users and that there needs to be a process to monitor and evaluate how the information sharing protocol is working.

The Council had the following specific recommendations:

Section IV, Paragraph 3: Delete the reference to Alaska Statute 16.05.258 in the last sentence. The Federal program is concerned with providing a priority for rural residents. That is the paramount distinction between the State and Federal management programs and should be made clear in this section. The Council rejects the reasonable opportunity standard specified in the State statute.

Section IV, Paragraph 11: delete the second sentence that begins "Consider State fish..." There is no need to incorporate State rules unnecessarily into the Federal program. If there is need to adopt a management plan or policy, it should be considered rulemaking and be subject to our regular public process. The standards for addressing subsistence needs and priority are different under State and Federal rules so it is impossible for the Board to commit to providing for subsistence priority under both Federal and State law.

MOU draft for comment, approved for distribution by FSB on 7-18-12

MEMORANDUM OF UNDERSTANDING

For

Coordinated Interagency Fish and Wildlife Management for Subsistence Uses on Federal Public Lands in Alaska

between the

Federal Subsistence Board

(U.S. Fish and Wildlife Service, U.S. Forest Service, National Park Service, Bureau of Land Management, Bureau of Indian Affairs, and Secretarial ~~appointed Chair~~Appointees)

and

State of Alaska

(Alaska Department of Fish and Game (ADF&G) and Alaska Board of Fisheries and Alaska Board of Game (State Boards))

I. PREAMBLE

This Memorandum of Understanding (MOU) between the Federal Subsistence Board and the State of Alaska establishes guidelines to coordinate ~~in managing~~management of subsistence uses of fish and wildlife resources on Federal public lands in Alaska.

~~WHEREAS, the State of Alaska, under its laws and regulations, is responsible for the management, protection, maintenance, enhancement, rehabilitation, and extension of the fish and wildlife resources of the State of Alaska on the sustained yield principle, subject to preferences among beneficial uses, such as providing a priority for subsistence harvest and use of fish and wildlife (where such uses are customary and traditional), and implements its program through the State Boards and the ADF&G, providing for public participation through Advisory Committees authorized in the State's laws and regulations (Alaska Statutes Title 16; Alaska Administrative Code Title 5) and through Alaska Administrative Procedure Act;~~

WHEREAS, the Secretaries of Agriculture and the Interior (Secretaries), by authority of the Alaska National Interest Lands Conservation Act (ANILCA) and other laws of Congress, regulations, and policies, are responsible for ensuring that the taking on Federal public lands of fish and wildlife for nonwasteful subsistence uses, as defined in ANILCA §803, shall be accorded priority over the taking on such lands of fish and wildlife for other purposes as provided for in ANILCA §804; and that the Secretaries are responsible for protecting and providing the opportunity for rural residents of Alaska to engage in a subsistence way of life on Federal public lands in Alaska, consistent with the conservation of healthy populations of fish and wildlife ~~and~~ recognized scientific principles; and that these lands are defined in ANILCA §102 and Federal regulation (36 CFR Part 242 and 50 CFR Part 100); and that the

Comment [SPR1]: Two members added.

Comment [SPR2]: Plain English, consistent with Southeast, Yukon- Kuskokwim Delta and Northwest Arctic Regional Advisory Councils comments.

Comment [SPR3]: MOU reformatted to consistently place federal language before state language. Thus this section is moved to just below the next paragraph. This change (along with others) is responsive to the Southeast Regional Advisory Council's concern that wording and tone of the MOU appears to highlight the role of the State.

Comment [SK4]: Addition responds to Western Interior Regional Advisory Council's recommendation to recognize use of scientific principles of management

MOU draft for comment, approved for distribution by FSB on 7-18-12

Secretaries primarily implement this priority through the Federal Subsistence Board, providing for public participation through Regional Advisory Councils authorized by ANILCA §805 and Federal regulations (above); and,

Comment [SPR5]: Addition to clarify that all implementation is not accomplished by Federal Board. (For example, designation of NPS resident zone communities.)

WHEREAS, the State of Alaska, under its laws and regulations, is responsible for the management, protection, maintenance, enhancement, rehabilitation, and extension of the fish and wildlife resources of the State of Alaska on the sustained yield principle, subject to preferences among beneficial uses, such as providing a priority for subsistence harvest and use of fish and wildlife (where such uses are customary and traditional), and implements its program through the State Boards and the ADF&G, providing for public participation through Advisory Committees authorized in the State's laws and regulations (Alaska Statutes Title 16: Alaska Administrative Code Title 5) and through Alaska Administrative Procedure Act; and,

Comment [SPR6]: Paragraph relocated from above.

Comment [SPR7]: North Slope Regional Advisory Council requested the 'such as' be replaced with "especially". No change made.

Comment [SPR8]: Northwest Arctic Regional Council felt this phrase was misleading and that the State manages resources providing for equal access to everyone, not any one group, and especially not subsistence users. No change made.

WHEREAS, ANILCA, Title VIII, authorizes the Secretaries to enter into cooperative agreements in order to accomplish the purposes and policies of Title VIII, and the ~~State of Alaska and the~~ Federal Subsistence Board and the State of Alaska believe it is in the best interests of the fish and wildlife resources and the public to enter into this Memorandum of Understanding;

THEREFORE, the signatories endorse coordination of ~~State and Federal~~ and State regulatory processes and the collection and exchange of data and information relative to fish and wildlife populations and their use necessary for subsistence management on Federal public lands. This MOU forms the basis for such cooperation and coordination among the parties with regard to subsistence management of fish and wildlife resources on Federal public lands.

II. PURPOSES

The purpose of this MOU is to provide a foundation and direction for coordinated interagency fish and wildlife management for subsistence uses on Federal public lands, consistent with specific ~~State and Federal~~ and State authorities as stated above, that will protect and promote the sustained health of fish and wildlife populations, ensure conservation of healthy populations and stability in fish and wildlife management, and include meaningful public involvement. The signatories hereby enter this MOU to accomplish this purpose and to establish guidelines for subsequent agreements and protocols to implement coordinated management of fish and wildlife resources used for subsistence purposes on Federal public lands in Alaska.

Comment [SPR9]: Clarifies that federal management under Title VIII differs from state mandates. – This addition is made in part to respond to Southeast Regional Advisory Council's concern regarding the relationship between the Federal and State programs.

Comment [SPR10]: Plain language and a clarifying addition.

III. GUIDING PRINCIPLES

1) Ensure conservation of fish and wildlife resources while providing for continued uses of fish and wildlife, including a priority for subsistence uses, through interagency subsistence management and regulatory programs that promote coordination,

MOU draft for comment, approved for distribution by FSB on 7-18-12

cooperation, and exchange of information between ~~State and~~ Federal ~~and State~~ agencies, regulatory bodies, Regional Advisory Councils and/or State Advisory Committees, state and local organizations, tribes and/or other Alaska Native organizations, and other entities;

~~22)~~ Recognize that “wildlife management activities on Federal public lands, other than the subsistence take and use of fish and wildlife, such as predator control and habitat management, are the responsibility of and remain within the authority of the individual land management agencies.” (See *Predator Management Policy Federal Subsistence Board, May 20, 2004.*)

Comment [SPR11]: In response to Bristol Bay Regional Advisory Council comment; however this addition does not adopt their recommendation.

3) Use the best available scientific and cultural information and ~~local~~ knowledge of customary and traditional ~~knowledge~~ uses for decisions regarding fish and wildlife management for subsistence uses on Federal public lands;

Comment [SPR12]: In response to Southeast and Bristol Bay Regional Advisory Council comments seeking addition of Traditional Environmental Knowledge (TEK) language.

~~34)~~ Avoid duplication in research, monitoring, and management;

~~45)~~ Involve subsistence and other users in the fisheries and wildlife management planning processes;

~~56)~~ Promote stability in fish and wildlife management and minimize unnecessary disruption to subsistence and other uses of fish and wildlife resources; and

Comment [SPR13]: Yukon-Kuskokwim Regional Advisory Council wanted to add a comment that “active management” should not be delayed for conservation purposes or to continue subsistence uses.” No change was made in this section as it was interpreted to mean implementation of some level of predator control. Predator control is now addressed in #2 above. The federal program does manage for conservation and to continue subsistence uses consistent with Title VIII of ANILCA.

~~67)~~ Promote clear and enforceable hunting, fishing, and trapping regulations.

IV. THE FEDERAL SUBSISTENCE BOARD AND STATE OF ALASKA MUTUALLY AGREE:

1) To cooperate and coordinate their respective research, monitoring, regulatory, and management actions to help ensure the conservation of fish and wildlife populations for subsistence use on ~~federal~~ Federal public lands.

2) To recognize that ~~State and~~ Federal ~~and State~~ historical and current harvest and population data and ~~information~~ local knowledge of customary and ~~cultural information~~ traditional uses are important components of successful implementation of Federal responsibilities under ANILCA Title VIII.

Comment [SPR14]: In response to Southeast and Bristol Bay Regional Advisory Council comments seeking addition of TEK language.

~~3)~~ To ~~provide~~ recognize a Federal priority for rural residents on Federal public lands for subsistence uses of fish and wildlife resources ~~and~~ Additionally, to allow for other uses of fish and wildlife resources when harvestable surpluses are sufficient, consistent with ANILCA and Alaska Statute 16.05 ~~258~~.

Comment [SPR15]: In response to the Southeast and Southcentral Regional Advisory Councils concerns about interpretation of this paragraph. This was re-written to emphasize the federal priority on federal lands while also recognizing other uses consistent with ANILCA mandates. The Alaska Statute refers to other uses allowed by ANILCA when resources are sufficient for all users.

4) To recognize that cooperative funding agreements implementing the provisions of this MOU may be negotiated when necessary and as authorized by ANILCA §809 and other appropriate statutory authorities. Federal funding agreements for cooperative research and monitoring studies of subsistence resources with organizations representing local subsistence

MOU draft for comment, approved for distribution by FSB on 7-18-12

users and others will be an important component of information gathering and management programs.

5) To recognize that ~~State and Federal~~ and State scientific standards for conservation of fish and wildlife populations are generally compatible. When differences interpreting data are identified, the involved agencies should appoint representatives to seek resolution of the differences.

6) To cooperatively pursue the development of information to clarify ~~state~~Federal and federal~~State~~ regulations for the public.

7) To recognize that the signatories may establish protocols or other procedures that address data collection and information management, data analysis and review, in-season fisheries and wildlife management, and other key activities and issues jointly agreed upon that affect subsistence uses on Federal public lands. (See Appendix)

~~8) To provide an opportunity, through interagency Federal State technical committees, for appropriate scientific staff, along with Regional Advisory Council and/or State Advisory Committee representatives, subsistence users, and other members of the public to discuss and work cooperatively between Federal and State staff and other groups, such as RACs, Regional Advisory Councils, ACs, State Advisory Committees, and tribes, as appropriate to review data analyses associated with proposal analyses and resource and harvest assessment and monitoring.~~

Comment [SPR16]: Clarify current practices and use of plain language.

~~9) To designate liaisons for policy and program communications and, as appropriate, to identify local agency representatives for efficient day-to-day communication, field operations, and data retrieval/coordination between the State and Federal and State programs.~~

Comment [SPR17]: The North Slope Regional Advisory Council wanted representatives that were knowledgeable about subsistence uses. Additionally the North Slope, Bristol Bay and Yukon-Kuskokwim Regional Advisory Councils requested addition of tribal representatives. These were not added because Tribes are not signatories to this MOU and it is meant to facilitate communication and coordination.

10) To provide adequate opportunity for the appropriate Federal and State agencies to review analyses and justifications associated with special actions and emergency orders affecting subsistence uses on Federal public lands, prior to implementing such actions. Where possible and as required, ~~State and Federal~~ and State agencies will provide advance notice to Regional Advisory Council and/or State Advisory Committee representatives, tribes and other interested members of the public before issuing special actions or emergency orders. Where conservation of the resource or continuation of subsistence uses is of immediate concern, the review shall not delay timely management action.

Comment [SPR18]: The Yukon-Kuskokwim Regional Advisory Council is concerned that they do not received advanced notice about special actions. The Board will direct the Office of Subsistence Management and request that the local field staff to increase their effort at notifying the Council.

11) To cooperatively review and endorse existing, and ~~proposed develop as needed,~~ Federal subsistence management plans and State fish and wildlife ~~management plans and~~ Federal subsistence management plans that affect subsistence uses on Federal public lands, providing an opportunity for Regional Advisory Council and/or State Advisory Committee representatives, tribes and other public to participate in the review. -Consider Federal, State and cooperative fish and wildlife management plans as the initial basis for any management actions so long as they provide for subsistence priorities ~~under State and Federal law~~. Procedures for management plan reviews and revisions will be developed by the respective Federal and State Boards in a protocol.

Comment [SPR19]: This paragraph was rewritten in response the Southeast Regional Advisory Council's comment regarding using State management plans. The re-written text seeks to respond to this concern by now having a more balanced approach to use of management plans. Tribes were added to reflect the Federal Subsistence Board Tribal Consultation Policy.

MOU draft for comment, approved for distribution by FSB on 7-18-12

12) To use the State's harvest reporting and assessment systems supplemented by information from other sources to monitor subsistence uses of fish and wildlife resources on Federal public lands. In some cases, Federal subsistence seasons, harvest limits, or data needs ~~may~~ necessitate separate Federal subsistence permits and harvest reports.

Comment [SPR20]: The Yukon-Kuskokwim Regional Advisory Council noted their problem of using the State's harvest tickets as they are not always available. A new harvest reporting system has not been developed. We have clarified that federal permits are needed in specific circumstances.

13) To ensure that local residents, ~~tribes~~ and other users will have meaningful involvement in subsistence wildlife and fisheries regulatory processes that affect subsistence uses on Federal public lands.

Comment [SPR21]: Tribes were added to reflect the Federal Subsistence Board Tribal Consultation Policy.

V. GENERAL PROVISIONS

1) No member of, or Delegate to, Congress shall be admitted to any share or part of this document, or to any benefit that may arise ~~therefrom~~ ~~from it~~.

Comment [SPR22]: Plain language.

2) This MOU is complementary to and is not intended to replace, except as specifically regards Federal responsibility for subsistence uses of fish and wildlife on Federal public lands, the Master Memoranda of Understanding between the individual Federal agencies and ADF&G. Supplemental protocols to this document may be developed to promote further interaction and coordination among the parties.

Comment [SPR23]: The Eastern Interior Regional Advisory Council asked that supplemental protocols be reviewed and updated. The Southeast Regional Advisory Council also felt the Information Sharing Protocol was not working well. The intent is to follow up with review of these protocols after adoption of this updated MOU. (Note commitment for future action)

3) Nothing herein is intended to conflict with Federal, State, or local laws or regulations.

4) Policy and position statements relating specifically to this MOU may be made only by mutual consent of the parties.

5) Nothing in this MOU ~~is intended to enlarge enlarges~~ or ~~diminish diminishes~~ each party's existing responsibilities and authorities, ~~if any, for management of fish and wildlife.~~

Comment [SPR24]: Clarifies responsibilities and uses plainer language.

6) Upon signing, the parties shall each designate an individual and an alternate to serve as the principal contact or liaison for implementation of this MOU.

7) This MOU becomes effective upon signing by all signatories and will remain in force until such time as the Secretary of the Interior determines that the State of Alaska has implemented a subsistence management program in compliance with Title VIII of ANILCA, or, signatories terminate their participation in this MOU by providing 60 days written notice. Termination of participation by one signatory has no impact on this MOU's effectiveness between the remaining signatories.

8) Regional Advisory Councils and State Advisory Committees will be asked annually to provide comments to the signatories concerning Federal/State coordination of this MOU. The signatories will meet annually, or more frequently if necessary, to review coordinated programs established under this MOU, to consider Regional Advisory

Comment [SPR25]: This added text responds to the Southeast Regional Council's comments which requested a way to evaluate whether the MOU is accomplishing its goals.

MOU draft for comment, approved for distribution by FSB on 7-18-12

[Council and State Advisory Committee comments](#), and to consider modifications to this MOU that would further improve interagency working relationships. Documentation of the review and consideration of any modifications within the scope of this understanding shall be made by mutual consent of the signatories, in writing, signed and dated by all parties. If no review is conducted, this MOU will expire 5 years after the most recent review was conducted.

9) Nothing in this document shall be construed as obligating the signatories to expend funds or involving the United States or the State of Alaska in any contract or other obligations for the future payment of money, except as may be negotiated in future cooperative funding agreements.

10) This MOU establishes guidelines and mutual management goals by which the signatories shall coordinate, but does not create legally enforceable obligations or rights.

11) This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement, contribution of funds, or transfer of anything of value between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures.

12) This MOU does not restrict the signatories from participating in similar agreements with other public or private agencies, [Tribes](#), organizations, and individuals.

Comment [SPR26]: Tribes were added to reflect the Federal Subsistence Board Tribal Consultation Policy.

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SIGNATORIES

In WITNESS THEREOF, the parties hereto have executed this MOU as of the last date written below.

Commissioner
Alaska Department of Fish and Game
Date:

Chair of the Federal Subsistence Board
Date:

Chair
Alaska Board of Fisheries
Date:

Regional Director
U.S. Fish and Wildlife Service
Date:

Chair
Alaska Board of Game
Date:

Regional Forester
U.S. Forest Service
Date:

Regional Director
National Park Service
Date:

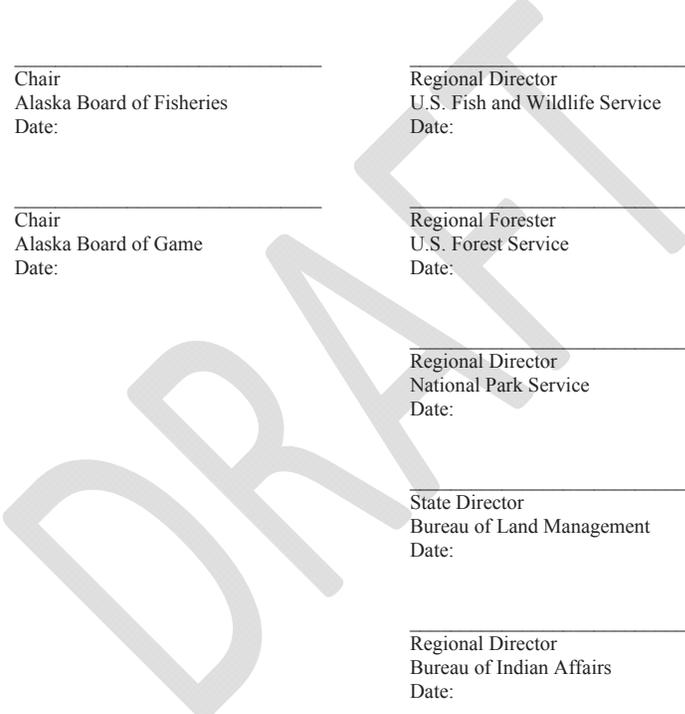
State Director
Bureau of Land Management
Date:

Regional Director
Bureau of Indian Affairs
Date:

Member of the Federal Subsistence Board
Date:

Member of the Federal Subsistence Board
Date:

Comment [SK27]: This page has been reformatted to correct titles and add two members to the Federal Subsistence Board.



MOU draft for comment, approved for distribution by FSB on 7-18-12

APPENDIX

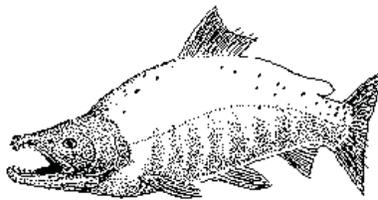
SCOPE FOR PROTOCOLS AND/OR PROCEDURES

- 1) Joint technical committees or workgroups may be appointed to develop protocols and/or procedures.
- 2) Individual protocols and/or procedures should:
 - a. Be developed by an interagency committee. The committee shall involve, as appropriate, Regional Advisory Council and/or State Advisory Committee representatives and other ~~State~~/Federal/~~State~~ regional or technical experts.
 - b. Identify the subject or topic of the protocol and provide justification.
 - c. Identify the parties to the protocol.
 - d. Identify the process to be used for implementing the protocol.
 - e. Provide for appropriate involvement of Regional Advisory Council and/or State Advisory Committees, tribes and/or other Alaska Native organizations, governmental organizations, and other affected members of the public when implementing protocols.
 - f. Specify technical committee or workgroup memberships.
 - g. Develop a timeline to complete tasks.
 - h. Identify funding obligations of the parties.
 - i. Define the mechanism to be used for review and evaluation.
- 3) Protocols or procedures require concurrence by the signatories of this MOU prior to implementation.

DRAFT

PRIORITY INFORMATION NEEDS

FEDERAL SUBSISTENCE FISHERIES



2014 Fisheries Resource Monitoring Program

Office of Subsistence Management
U.S. Fish and Wildlife Service
1011 E. Tudor Road
Anchorage, Alaska 99503-6199

1-800-478-1456 or 907-786-3888 Voice
907-786-3612 Fax

The Office of Subsistence Management (OSM) invites the submission of proposals for fisheries investigation studies to be initiated under the 2014 Fisheries Resource Monitoring Program (Monitoring Program). Taking into account funding commitments for ongoing projects, and contingent upon Congressional funding, we anticipate approximately \$4.8 million available in 2014 to fund new monitoring and research projects that provide information needed to manage subsistence fisheries for rural Alaskans on Federal public lands. Funding may be requested for up to four years duration.

Although all proposals addressing subsistence fisheries on Federal public lands will be considered, the 2014 Request for Proposals is focused on priority information needs. The Monitoring Program is administered by region, those being the Northern, Yukon, Kuskokwim, Southwest, Southcentral, and Southeast regions. Strategic plans developed by workgroups of Federal and State fisheries managers, researchers, Regional Advisory Council members and other stakeholders, have been completed for three of the six regions: Southeast, Southcentral (excluding Cook Inlet Area), and Southwest Alaska. These plans identify prioritized information needs for each major subsistence fishery and can be viewed on or downloaded from OSM's website: <http://alaska.fws.gov/asm/index.cfm>. Independent strategic plans were completed for the Yukon and Kuskokwim regions for salmon in 2005, and jointly for whitefish in 2012. For the Northern Region and the Cook Inlet Area, priority information needs were developed with input from Regional Advisory Councils, the Technical Review Committee, Federal and State managers and staff from OSM.

This document summarizes priority information needs for 2014 for all six regions and a multi-regional category that addresses priorities that extend over two or more regions. Investigators preparing proposals for the 2014 Monitoring Program should use this document and relevant strategic plans, and the Request for Proposals, which provides foundational information about the Monitoring Program, to guide proposal development. While Monitoring Program project selections may not be limited to priority information needs identified in this document, proposals addressing other information needs must include compelling justification with respect to strategic importance.

Monitoring Program funding is not intended to duplicate existing programs. Agencies are discouraged from shifting existing projects to the Monitoring Program. Where long-term projects can no longer be funded by agencies, and the project provides direct information for Federal subsistence fisheries management, a request to the Monitoring Program of up to 50% of the project cost may be submitted for consideration. For Monitoring Program projects for which additional years of funding is being requested, investigators should justify continuation by placing the proposed work in context with the ongoing work being accomplished.

Because cumulative effects of climate change are likely to fundamentally affect the availability of subsistence fishery resources, as well as their uses, and how they are managed, investigators are requested to consider examining or discussing climate change effects as a component of their project. Investigators conducting long-term stock status projects will be required to participate in a standardized air and water temperature monitoring program. Calibrated temperature loggers and associated equipment, analysis and reporting services, and access to a temperature database will be provided. Finally, proposals that focus on the effects of climate change on subsistence fishery resources and uses, and that describe implications for subsistence management, are specifically requested. Such proposals must include a clear description of how the project would measure or assess climate change impacts on subsistence fishery resources, uses, and management.

Projects with an interdisciplinary emphasis are encouraged. The Monitoring Program seeks to combine ethnographic, harvest monitoring, traditional ecological knowledge, and biological data to aid in

management. Investigators are encouraged to combine interdisciplinary methods to address information needs, and to consider the cultural context of these information needs.

Collaboration and cooperation with rural communities is encouraged at all stages of research planning and implementation of projects that directly affect those communities. The Request for Proposals describes the collaborative process in community-based research and in building partnerships with rural communities.

The following sections provide specific regional and multi-regional priority information needs for the 2014 Monitoring Program. They are not listed in priority order.

Northern Region Priority Information Needs

The Northern Region is divided into three areas which reflect the geographic areas of the three northern Regional Advisory Councils (Seward Peninsula, Northwest Arctic, and North Slope). Together, the three areas comprise most of northern Alaska, and contain substantial Federal public lands. Since 2001, the three northern Regional Advisory Councils have identified important fisheries issues and information needs for their respective areas. The Seward Peninsula and Northwest Arctic Councils have identified salmon and char fisheries as being the most important fisheries for their areas. The North Slope Council identified Arctic char, Dolly Varden, whitefish, lake trout, and Arctic grayling fisheries as most important for its area. In addition, these Councils have expressed concern about the effects of climate change on subsistence fishery resources. The Multi-regional priority information needs section at the end of this document includes climate change research needs.

For the Northern Region, the 2014 Request for Proposals is focused on the following priority information needs:

- Baseline harvest assessment and monitoring of subsistence fisheries in the Northwest Arctic and North Slope regions.
- Historic trends and variability in harvest locations, harvests and uses of non-salmon fish.
- Iñupiaq taxonomy of fish species, Iñupiaq natural history of fish, land use, place name mapping, species distribution, and methods for and timing of harvests. Species of interest include sheefish, northern pike, or other subsistence non-salmon fish in the Northwest Arctic region.
- Harvest and use of fish species by residents of Shishmaref.

Yukon Region Priority Information Needs

Since its inception, the Monitoring Plan for the Yukon Region has been directed at information needs identified by the three Yukon River Regional Advisory Councils (Yukon-Kuskokwim Delta, Western Interior, and Eastern Interior) with input from subsistence users, the public, Alaska Native organizations, Federal and State agencies, and partner agencies and organizations. The U.S./Canada Yukon River Salmon Joint Technical Committee Plan has been used to prioritize salmon monitoring projects in the Alaskan portion of the Yukon River drainage. Additionally, a research plan for whitefish has identified priority information needs for whitefish species in the Yukon and Kuskokwim river drainages.

For the Yukon Region, the 2014 Request for Proposals is focused on the following priority information needs:

- Reliable estimates of Chinook and chum salmon escapements (e.g., weir and sonar projects).
- Effects on salmon stocks (e.g., gillnet dropout mortality) and subsistence users of fishery management practices implemented to conserve Chinook salmon (e.g., gillnet mesh size, gillnet depth, and windowed openings).
- Methods for including “quality of escapement” measures (e.g., egg deposition, size composition, habitat utilization) in establishing Chinook salmon spawning goals and determining the reproductive potential of spawning escapements.
- Contemporary economic strategies and practices in the context of diminished salmon runs. Topics may include an evaluation of barter, sharing, and exchange of salmon for cash, as well as other economic strategies and practices that augment and support subsistence activities. Of particular interest are distribution networks, decision making, and the social and cultural aspects of salmon harvest and use.
- Description of changes through time in gillnet use (set versus drift, and by mesh size) for Chinook salmon subsistence harvest in the mainstem Yukon River, in context with harvest and escapement levels.
- Complete genetic baseline sampling and population marker development for sheefish spawning populations in the Yukon River drainage.
- Harvest, use, and associated contextual information for whitefish by species in lower Yukon River drainage communities.
- Retrospective analyses concerning effects of natural disasters (e.g. floods, fires) on salmon rearing and spawning habitat and subsistence activities.
- Arctic lamprey population assessment, including abundance, migration patterns, and habitat needs.

Kuskokwim Region Priority Information Needs

Since 2001, the Yukon-Kuskokwim Delta and Western Interior Regional Advisory Councils, with guidance provided by the Kuskokwim Fisheries Resource Coalition, have identified a broad category of issues and information needs in the Kuskokwim Region. These include collection and analysis of traditional ecological knowledge; harvest assessment and monitoring; salmon run and escapement monitoring; non-salmon fish population monitoring; and marine/coastal salmon ecology. Additionally, a research plan for salmon and a research plan for whitefish have been used to prioritize monitoring projects for salmon and whitefish. These were reviewed to ensure that remaining priority information needs were considered.

For the Kuskokwim Region, the 2014 Request for Proposals is focused on the following priority information needs:

- Reliable estimates of Chinook, chum, sockeye, and coho salmon escapement.

- Effects on salmon stocks and users of fishery management practices implemented to conserve Chinook salmon.
- Methods for including “quality of escapement” measures (e.g., egg deposition, size composition, habitat utilization) in establishing Chinook salmon spawning goals and determining the reproductive potential of spawning escapements.
- Harvest, use, and associated contextual information for whitefish by species in upper Kuskokwim River drainage communities. Communities of interest include McGrath, Telida, Nikolai, Takotna, and Lime Village.
- Contextual information associated with whitefish harvest by species in central Kuskokwim River drainage communities to supplement information from previous research. Communities of interest include Upper Kalskag, Lower Kalskag, Aniak, Chuathbaluk, Red Devil, Sleetmute, Stony River, and Crooked Creek.
- Harvest, use, and associated contextual information for whitefish by species in lower Kuskokwim River drainage communities. Specific groups of communities of interest are Kwethluk, Akiachak, Napaskiak, and Tuluksak, or Cheforak, Kipnuk, Kongiganak, and Kwigillingok.
- Broad whitefish population assessment, including distribution and age structure.
- Location and timing of Bering cisco spawning populations in the Kuskokwim River drainage.
- Complete genetic baseline sampling and population marker development for sheefish spawning populations in the Kuskokwim River drainage.
- Estimate the number of salmon, by species, transported from the Kuskokwim River drainage each year by Federal and State subsistence users.

Southwest Region Priority Information Needs

Separate strategic plans were developed for the Bristol Bay-Chignik and Kodiak-Aleutians areas, corresponding to the geographic areas covered by the Bristol Bay and Kodiak/Aleutians Regional Advisory Councils. These strategic plans were reviewed to ensure that remaining priority information needs were considered.

For the Southwest Region, the 2014 Request for Proposals is focused on the following priority information needs:

- Obtain reliable estimates of Chinook salmon escapements.
- Environmental, demographic, regulatory, cultural, and socioeconomic factors affecting harvest levels of salmon for subsistence use in the Kodiak Area. Researchers should consider evaluating factors influencing use patterns and describing the socioeconomic impacts of other fisheries.

Southcentral Region Priority Information Needs

A strategic plan was developed for Prince William Sound-Copper River and an abbreviated strategic planning process was employed for Cook Inlet. These sources were reviewed to ensure that remaining priority information needs were considered.

For the Southcentral Region, the 2014 Request for Proposals is focused on the following priority information needs:

- Obtain reliable estimates of Chinook salmon escapement into Copper River.
- Mapping of lifetime and current subsistence use areas for harvest of salmon and non-salmon fish species by residents of Ninilchik, Hope, and Cooper Landing. Research should include intensity of use and use on Federal public lands and waters.
- Harvest, use, and associated contextual information for salmon and nonsalmon by species in communities of the Copper River Basin, updating previous research supported by the Monitoring Program.

Southeast Region Priority Information Needs

A strategic plan was developed for Southeast Region in 2006 and is reviewed and updated annually to ensure that priority information needs are identified. The 2014 Request for Proposals is focused on priority information needs for eulachon and sockeye salmon.

For the Southeast Region, the 2014 Request for Proposals is focused on the following priority information needs:

Eulachon

- Provide an index of escapement for Unuk River and Yakutat Forelands eulachon.

Sockeye Salmon

- Obtain reliable estimates of sockeye salmon escapement. Stocks of interest include: Hetta, Karta, Sarkar, Hatchery Creek, Redoubt, Gut Bay, Falls, Kah Sheets, Salmon Bay, Klag, Sitkoh, Kook, Kanalku, Hoktaheen, and Neva.
- Document in-season subsistence harvest of sockeye salmon. Stocks of interest include: Hetta, Hatchery Creek, Gut Bay, Falls, Kah Sheets, Salmon Bay, Klag, Kanalku, and Hoktaheen.

Multi-Regional Priority Information Needs

The Multi-regional category is for projects that may be applicable in more than one region. For the Multi-Regional category, the 2014 Request for Proposals is focused on the following priority information needs:

- Changes in subsistence fishery resources and uses, in the context of climate change where relevant, including but not limited to fishing seasons, species targeted, fishing locations, fish quality, harvest methods and means, and methods of preservation. Include management implications.

- Develop models based on long-term relationships between ocean conditions and production for Bering Sea and Gulf of Alaska Chinook salmon stocks to better understand and respond to changes in run abundance.
- An indexing method for estimating species-specific whitefish harvests on an annual basis for the Kuskokwim and Yukon drainages. Researchers should explore and evaluate an approach where sub-regional clusters of community harvests can be evaluated for regular surveying with results being extrapolated to the rest of the cluster, contributing to drainage-wide harvest estimates.
- Evaluation of conversion factors used to estimate edible pounds from individual fish, and from unorthodox units such as tubs, sacks, or buckets.



News Release

Bureau of Land Management, Alaska State Office, Office of Communications
222 W. 7th Avenue #13, Anchorage AK 99513-7504
Tel: 907-271-5555 Fax: 907-271-5421

FOR IMMEDIATE RELEASE

Contact: Ruth McCoard, 907-271-4418, rmccoard@blm.gov
KJ Mushovic, 907-271-3322, kjmushovic@blm.gov

News Release No. 12-16

July 25, 2012

BLM-Alaska Announces Scoping Period for Hunting Guide Capacity Study

BLM-Alaska is seeking public input on a planned statewide commercial hunting guide capacity analysis. BLM is proposing to establish allocation thresholds for special recreation permits authorizing commercial hunting guiding on BLM managed lands in Alaska. Interested parties are asked to identify issues and concerns that should be considered during an environmental analysis of the proposal. Detailed comments related to social issues or potential user conflict related to commercial hunting guiding in specific Guide Use Areas will be most useful for this analysis.

Comments and requests to be added to the mailing list may be submitted through September 9 by any of the following methods:

Email: BLM_AK_Hunting_Guide_Capacity_Study@blm.gov

Fax: (907) 271-5479 Attn: GUA Comments

Mail: BLM Alaska State Office, Attn: Hunting Guide Capacity Comments, BLM Alaska, 222 West 7th Avenue, Suite 13, Anchorage, AK 99513

For additional information, contact Bill Overbaugh at 907-271-5508 after July 11, or visit the BLM website at:

http://www.blm.gov/ak/st/en/prog/planning/Hunting_Guide_Capacity_Study_EA.html.

###

The BLM manages more than 245 million acres of public land, the most of any Federal agency. This land, known as the National System of Public Lands, is primarily located in 12 Western states, including Alaska. The BLM also administers 700 million acres of sub-surface mineral estate throughout the nation. In Fiscal Year (FY) 2011, recreational and other activities on BLM-managed land contributed more than \$130 billion to the U.S. economy and supported more than 600,000 American jobs. The Bureau is also one of a handful of agencies that collects more revenue than it spends. In FY 2012, nearly \$5.7 billion will be generated on lands managed by the BLM, which operates on a \$1.1 billion budget. The BLM's multiple-use mission is to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations. The Bureau accomplishes this by managing such activities as outdoor recreation, livestock grazing, mineral development, and energy production, and by conserving natural, historical, cultural, and other resources on public lands.

REGULATORY CYCLE REVIEW BRIEFING

Issue

During this past regulatory cycle, several Subsistence Regional Advisory Councils (Councils) have requested that the fall meeting window be moved to later in the year so meetings could occur in November after fall subsistence activities are finished. Additionally these Councils would like to see the January Federal Subsistence Board (Board) meetings moved to later in the year, possibly April or May stating that the move would: avoid overlap with other meetings such as the Board of Fish and the Board of Game; avoid the post-holiday rush; and avoid the travel of Council members that leave family to fend for themselves during one of the coldest months of the year. The Board met in May 2012 and discussed this issue and decided not to take action at that time, but to refer the issue back to the Councils for their recommendations.

Background

In 2003, a committee made up of Board staff, reviewed the regulatory cycle; the committee examined the historical timing of events in the Federal Subsistence Management Program's regulatory cycles and identified what was working well and where improvements could be made. Alternatives were developed to address issues and concerns. Each alternative was evaluated in terms of effectiveness, efficiency, cost, risks of compromising quality or customer service, ramifications for other subsistence program elements and other considerations. One of the issues addressed was the timing of Regional Advisory Council and Federal Subsistence Board meetings.

Several changes were made following this review:

1. The fall meeting window was expanded.

Historically, the meeting window was approximately 5–6 weeks and ran from early September to mid-October. The meeting window was expanded to mid-August to mid-October, adding approximately 3 weeks to the fall meeting window. Since 2003, in an effort to further accommodate the Councils, meetings have been allowed to be scheduled outside the meeting window (Table 1).

2. The effective date for subsistence fishing regulations was moved from 1 March to 1 April in 2005.
3. The Federal Subsistence Board meeting to address fisheries proposals was moved from early December to mid-January.

While subsistence fisheries occur in Alaska year-round, most subsistence fishing activities occur in spring, summer and fall. The March 1 effective date for the subsistence fisheries regulations was 4–12 weeks before most spring subsistence fisheries start across the state. Shifting the effective date for these regulations to April 1, allowed the publication of the regulations after various winter subsistence fisheries and the Southeast Alaska spring hooligan fishery.

Recommendations

Staff reviewed the current regulatory cycles (**Table 2**) and developed the following recommendations (**Table 3**):

1. Hold the Board's meeting to review proposed changes to the wildlife hunting and trapping regulations in early April.

The Board's wildlife meeting should be held no later than early April to ensure the regulations are published in the Federal register and the public book is published and distributed prior to the 1 July effective date. Historically, the Board meeting for wildlife occurred in early May; however, often there were problems getting the regulations published and distributed in a timely manner.

2. Extend the Regional Council meeting window into early November. This would have minimal impacts.
3. Hold the Board meeting to review proposed changes to the subsistence fisheries regulations no later than early January.

Based on the current effective date of 1 April for these regulations, it is impractical to change the Board meeting date any later than early January. Doing so would not allow staff the time to finalize the regulations and get them published in the Federal register and in the public regulations booklet. Note: In recent years, moving the regulations through the surname process in D.C. has taken considerably more time, which needs to be taken into account.

4. Maintain the current effective date for the subsistence fisheries regulations.

Historically, the Board held its meeting to review subsistence fisheries in December and the regulations became effective on 1 March. Following the 2003 regulatory cycle review, both of these dates were changed: the Board meeting was shifted into January and the effective date for the subsistence fisheries regulations was changed to 1 April. The effective date was changed to allow for the publication of the regulations after various winter subsistence fisheries and the Southeast Alaska spring hooligan fishery. In addition, regulatory years are defined in 50 CFR 100.25(a) and if these are changed it would need to go through the regulatory process, this is not a purely administrative action, it would require rule making, including a proposal to be submitted for public review. However, this is a plausible solution if the desire is to avoid all Board meetings conducted in January.

Reference tables for above narrative.**Table 1.** Past FSB Meeting Dates.

Year	FSB Wildlife meeting dates (# of proposals)	FSB Fisheries meeting dates (# of proposals)
2003	May 20–22 (53)	December 9–11 (40)
2004	May 18–21 (87)	Due to a change in meeting cycles, there was no Fishery Board Meeting in 2004. The Fish Proposals submitted in 2004 were addressed in Jan. 2005.
2005	May 3–4 (20)	January 11–13 (30)
2006	May 16–18 (69)	January 10–12 (34)
2007	April 30 – May 2 (63)	January 9–11 (26)
2008	April 29 – May 1 (54)**	—
2009	—	January 13–15 (14)
2010	May 18 – 21 (105)	—
2011	—	January 18–20 (15)
2012	January 17–20 (100)	—
2013	—	January 22–24 (28)
Fisheries regulations became effective on 1 March, until 2006 when the effective date was changed to 1 April		
Wildlife regulations become effective on 1 July		
**Start of the two year cycle		

Table 2. Current Regulatory Cycle.

Fisheries		Wildlife
January – March	Proposal Period	January – March
February – March	Councils Meet to develop proposals	February – March
April – June	Comment Period	April – June
April – August	Staff Analyses Prepared	April – August
August – October	Councils meet to make Recommendations	August – October
November	Staff committee Meets	November
January	Federal Subsistence Board Meets	January
April 1	New Regulatory Year Begins	July 1

Table 3. Proposed Changes to the Regulatory Cycles

Fisheries		Wildlife
January – March	Proposal Period	January – March
February – March	Councils Meet to develop proposals	February – March
April – June	Comment Period	April – June
April – August	Staff Analyses Prepared	April – August
August – October Early November	Councils meet to make Recommendations	August – October Early November
November	Staff committee Meets	November
January Early April	Federal Subsistence Board Meets	January Early April
April July 1	New Regulatory Year Begins	July 1

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.

**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//

Secretary of the Interior

DEC - 2 2011

Date Signed

DEC 03 2011

Date Filed

STAFFING UPDATE

Kathy O'Reilly-Doyle was hired as the new Deputy Assistant Regional Director for the Office of Subsistence Management. Kathy previously worked for the U.S. Fish & Wildlife Service Branch of Habitat Restoration in Arlington Virginia, providing national oversight and implementation of the Partners for Fish and Wildlife Act.

Jack Lorrigan was hired as the new Native Liaison for the Office of Subsistence Management. Jack comes to OSM from the U.S. Forest Service where he worked in Sitka as a Subsistence Biologist. Prior to that, he was the Natural Resources Director for the Sitka Tribe.

Dr. David Jenkins was hired as the new Policy Coordinator for the Office of Subsistence Management. Dr. Jenkins was previously a staff anthropologist with OSM and had been the acting Policy Coordinator for several months. He has over a decade of teaching experience in anthropology, history, and environmental studies at MIT, Bates College in Maine, and the University of Arizona.

George Pappas was hired as the new State Subsistence Liaison for the Office of Subsistence Management. George has extensive experience working with State-Federal subsistence issues, and has worked with many of us since 2007 in his role as the Program Coordinator for the Alaska Department of Fish and Game's Federal Subsistence Liaison Team.

Melinda Hernandez was hired as one of the new Council Coordinators. Melinda comes to OSM from the U.S. Forest Service, where she has been working in the southeast on subsistence issues for the past eight years.

Eva Patton was hired as one of the new Council Coordinators. Eva has a background as a fisheries biologist and has been working in Bethel for the last seven years through the Partners for Fisheries Monitoring Program.

Trent Liebiech was hired as a fisheries biologist for the Office of Subsistence Management. Trent previously worked at the Izembek National Wildlife Refuge as an aquatic ecologist for two years. Prior to that, he was with the National Marine Fisheries Service for 6 years in the Atlantic salmon program through the Protected Resources Division.

Tom Evans has hired as a wildlife biologist for the Office of Subsistence Management. Tom previously worked for 20 years in the Marine Mammals Management office for Region 7 U.S. Fish & Wildlife Service, working primarily as a polar bear biologist.

Pam Raygor has hired as an Administrative Support Assistant for the Office of Subsistence Management. Pam previously worked as the Parish Administrator for the Holy Family Cathedral in Anchorage.

BUDGET UPDATE

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. As a result of these continued cuts, travel outside of normal Council meetings in the future will be very limited.

COUNCIL MEMBERSHIP APPLICATION/NOMINATION UPDATE

The Office of Subsistence Management sent out over 1,500 Regional Advisory Council applications in direct mailings to individuals, villages, municipalities, Tribal organizations, ANCSA corporations, and various non-profit organizations. The application period closed on February 18, 2012. In total, OSM received 67 applications and nominations. However, OSM received low numbers of applications for the northern regions: Seward Peninsula, Western Interior, Eastern Interior, Northwest Arctic and North Slope. In two instances, there were only enough applications to submit names to fill vacancies; in another instance, the Council will still have a vacant seat under the best case scenario.

The regional nominations panels met in April and May to evaluate and rank the applicants for each region. In June, the Interagency Staff Committee met to consider the panel reports and make recommendations to the Federal Subsistence Board for appointment.

The Federal Subsistence Board, in an executive session on July 18, 2012, voted on the applicants it will forward to the Secretaries of Interior and Agriculture for appointment. The next step will be to prepare a package to forward those names for vetting and consideration. The Secretary of Interior will issue appointment letters by early December 2012. The Office of Subsistence Management will not have notice of who the appointments are until those letters are issued.

RURAL DETERMINATION PROCESS AND METHOD REVIEW

At its January 2012 public meeting, the Federal Subsistence Board passed a motion to direct staff “to initiate a review of the rural determination process and the rural determination findings through publication of a proposed rule” (FSB January 20, 2012:560).

The intention of the Board is to conduct a global review of rural determination processes, analytical methods, and findings, beginning with public input. Board member Gene Virden referred to the review as a “bottom up process,” which would include public comment, tribal consultations, and Regional Advisory Council recommendations.

Office of Subsistence Management Staff, in conjunction with the Interagency Staff Committee, met to develop a tentative outline of a global review, and to project a timeline for the review.

Staff concluded that a Public Notice published in the Federal Register is the first step. It would ask for public input on rural processes, methods, criteria, and determinations. That Public Notice is being drafted and will be published in January 2013. The winter 2013 Subsistence Regional Advisory Council meeting will provide an initial public forum for comment on the rural determination process, analytical methods, and findings.

The global review, with public, tribal, and Council input, may include the following topics:

- Rural definitions
- Population thresholds
- Rural characteristics
- Aggregation of communities
- Information sources

Other topics of concern may arise through the review process.

The final goal is to develop a rural determination process and through that process to make final determinations on rural status.

BRIEFING ON CONSULTATION POLICIES

The Federal Subsistence Board (Board) adopted its Government-to-Government Tribal Consultation Policy on May 9, 2012. The Board postponed adopting the supplemental ANCSA corporation consultation policy pending the Department of Interior finalizing its own policy on consultation with ANCSA corporations.

The Board directed that the Consultation Workgroup develop implementation guidelines, which will define the responsibilities of the five Federal agencies and the Office of Subsistence Management in the implementation of the Tribal Consultation Policy and supplemental ANCSA corporation consultation policy (once adopted) within the framework of the Federal Subsistence Management Program regulatory review cycles. The goal is to have final implementation guidelines for presentation to the Board sometime in 2013; interim implementation guidelines will be used until the Board adopts the final guidelines. The workgroup will also ensure that the policies are being implemented and identify areas for improvement.

The Board recently sent a letter to Tribes and ANCSA corporations seeking nominations to the workgroup in order to broaden the spectrum of members from the current seven Federal and seven Tribal representatives. In addition, Tribes and ANCSA corporations were notified that opportunities to provide input on the proposed changes to subsistence fisheries regulations will be available at the Subsistence Regional Advisory Council meetings and time will be available for consultation with the Board at the upcoming Board meeting, January 22–24, 2013.

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

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

DRAFT April 27, 2012

The Board is directing the Consultation Workgroup to continue the development of the guidelines with agency field manager input. The Workgroup will present a more developed guideline at a future Board meeting.

Appendix A

Interim Implementation Guidelines

for

Fiscal Year 12-13

Federal Subsistence Management Program

Tribal and ANCSA Corporation Consultation

This document provides guidance for the Federal Subsistence Management Program's Tribal Consultation Policy and ANCSA Corporation Consultation Policy. The Office of Subsistence Management Native Liaison, working with the Federal Subsistence Board and Interagency Staff Committee, plays a central role in ensuring the implementation of the Board's consultation policies. The following guideline is intended to be flexible for implementing these policies.

CONSULTATION SCHEDULE FOR THE REGULATORY CYCLE

1. OSM Native Liaison: Notify Tribes and ANCSA Corporations and, on request made to OSM Native Liaison, facilitate consultation on regulatory proposals among the appropriate parties. Prepare written summaries of consultations, ensure appropriate coordination within the Federal Subsistence Program, and maintain records of consultation for the Program.
2. OSM Native Liaison: Coordinate consultation with Tribes and ANCSA Corporations when Team Review analyses are available. Ensure a written summary is prepared of the results of consultation and appropriate coordination within the Federal Subsistence Program.
3. OSM Native Liaison: In coordination with OSM's Subsistence Regional Advisory Council Coordinators and Council Chairs, ensure opportunity for Tribal and ANCSA Corporation input at Council meetings. Summarize pertinent input in writing and ensure appropriate coordination within the Federal Subsistence Program.
4. Opportunity is provided for consultation with Tribes and ANCSA Corporations at Federal Subsistence Board meetings.
5. Consultations may also be requested by Tribes and ANCSA Corporations at any time.



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.

Appendix C

Venues for Training

- Bureau of Indian Affairs Tribal Service Providers Conference
- Alaska Forum on the Environment
- Alaska Tribal Conference on Environmental Management
- Alaska Federation of Natives Annual Convention
- Association of Village Council Presidents
- Tanana Chiefs Conference
- Bristol Bay Native Association
- Aleutians Pribilof Islands Association
- Cook Inlet Tribal Council
- Karawek, Inc.
- Maniilaq Association
- Sealaska Heritage Institute
- Central Council of Tlingit and Haida Tribal Assembly
- Southeast Clan Conference
- Arctic Slope Native Association
- Chugach Regional Resources Commission
- Copper River Native Association
- Kodiak Area Native Association
- First Alaskans Institute Elders & Youth Conference
- Alaska Native Professionals Association



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

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



U.S. FOREST SERVICE

JUN 28 2012

FWS/OSM 12046.AM

Subjects: (1) Nominations to the Board's Consultation Workgroup
(2) Opportunities for consultation on proposed changes to subsistence fishing regulations

Dear Tribal Leader:

Thank you for your meaningful participation in the development of the Federal Subsistence Board's Tribal consultation policy and congratulations to you on this momentous occasion! The Federal Subsistence Board (Board) adopted the Government-to-Government Tribal Consultation Policy on May 9, 2012. The new policy and its three appendices are enclosed.

The Department of Interior (DOI) is working on a policy for consultation with ANCSA corporations¹. The Federal Subsistence Board has decided to wait until the DOI policy is finalized before writing and implementing its supplemental policy on ANCSA corporation consultation. Until that time, the Board is utilizing the attached interim implementation guidelines to consult with ANCSA corporations on Federal subsistence matters.

The next step, in addition to engaging in consultation with your Tribe, is to develop implementation guidelines. The implementation guidelines will define the responsibilities of the five Federal agencies and the Office of Subsistence Management in the implementation of the Tribal consultation policy and supplemental ANCSA corporation consultation policy (once adopted) within the framework of the Federal Subsistence Management Program regulatory review cycles.

The Board's Consultation Workgroup will develop the implementation guidelines. The workgroup will also ensure that we are following the consultation policies and help us evaluate how we are doing and identify areas for improvement.

¹ Consultation with Alaska Native corporations is based on 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, which 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."

1) Nominations to the Board's Consultation Workgroup

The Board is looking to expand the membership of the workgroup from its current membership of seven Federal and seven Tribal representatives to include a broader spectrum of members. To that end, we are now soliciting nominations for Tribal and ANCSA corporation representatives to serve on the Board's Consultation Workgroup and continue its good work.

Please send workgroup nominations to the contact below, either via mail, email, or fax by July 27, 2012. Include the name of the Tribe or ANCSA corporation, the nominee's name, title, and a brief description of their experience with the Federal Subsistence Management Program and/or consultation.

U.S. Fish and Wildlife Service
Office of Subsistence Management
Attention: Andrea Medeiros
1011 East Tudor Road, MS 121
Anchorage, AK 99503

or via e-mail to
subsistence@fws.gov

or via fax at
907-786-3898

Realize that while we strive to expand membership of the workgroup, we must keep the workgroup a reasonable size and not all nominees will be selected. Also, be aware that funding is not likely to be available for participation in this workgroup and that it may be necessary to meet by teleconference. Regardless of who is ultimately appointed to the workgroup, involvement of the Tribes and ANCSA corporations in the continued efforts of the Board to build constructive consultation processes is important to us. We will continue to dialogue with Tribes and ANCSA corporations as we work to develop the implementation guidelines and ANCSA corporation consultation policy. We will also be looking to you for feedback on how we are doing.

2) Consultation on Proposed Federal Subsistence Fishing Regulations

The Federal Subsistence Board is currently engaged in the process to review proposed changes to the Federal subsistence fishing regulations. You may have received a proposal book several weeks ago. The proposal book is also posted to the Federal Subsistence Management Program's website under Public Participation (<http://alaska.fws.gov/asm/public.cfml>) or may be requested by contacting the Office of Subsistence Management by e-mail (above) or by calling 1-800-478-1456 or (907) 786-3888.

Tribal Leader

3

Federal Subsistence Management Program staff are currently working on analyzing the subsistence fisheries proposals. The Board is seeking your input on the proposals and the analyses. We are sensitive to the demands on your time and would like to avoid sending unsolicited documents. If you are interested in participating in the review of the proposals and/or the early drafts of the analyses, please contact the Office of Subsistence Management (see contact information above) and copies will be provided. If your Tribe wants to consult on any proposals, please contact us to schedule a time.

There will be several other opportunities to review and comment on the proposals and the analyses throughout the regulatory process. At each Subsistence Regional Advisory Council meeting (calendar enclosed) there will be opportunities for Tribes and ANCSA corporations to provide input on the subsistence fisheries proposals. At the Federal Subsistence Board meeting in January, there will be time set aside for Tribes and ANCSA corporations to consult with the Board on the proposals and analyses. Teleconference access to all of the meetings will be provided, so there is no need to travel; written comments are also welcome. Your participation is essential in the process to review the proposals that have been submitted to the Federal Subsistence Board. Please participate in any way you can.

We are happy to be a part of this moment in history with all Federally recognized Tribes in Alaska and we look forward to many important dialogues in the future.

Sincerely,

/S/ Tim Towarak

Tim Towarak, Chair
Federal Subsistence Board

Enclosures (2)

cc: Regional Native Non-Profits
Ken Salazar, Secretary of the Interior
Tom Vilsack, Secretary of Agriculture
Federal Subsistence Board
Regional Advisory Council Chairs
Pete Probasco, Assistant Regional Director OSM
Kathy O'Reilly-Doyle, Deputy Regional Director OSM
Administrative Record



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

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



JUN 28 2012

FWS/OSM 12047.AM

Subjects: (1) Nominations to the Board's Consultation Workgroup
(2) Opportunities for consultation on proposed changes to subsistence fishing regulations

Dear ANCSA Corporations:

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ANCSA Corporation

3

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Sincerely,

/S/ Tim Towarak

Tim Towarak, Chair
Federal Subsistence Board

Enclosures (2)

cc: Regional Native Non-Profits
Ken Salazar, Secretary of the Interior
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Pete Probasco, Assistant Regional Director OSM
Kathy O'Reilly-Doyle, Deputy Regional Director OSM
Administrative Record

Winter 2013 Regional Advisory Council Meeting Calendar

February–March 2013 current as of 09/11/12

Meeting dates and locations are subject to change.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
<i>Feb. 10</i>	<i>Feb. 11</i> <i>Window Opens</i>	<i>Feb. 12</i> BB—Naknek SP—Nome	<i>Feb. 13</i>	<i>Feb. 14</i>	<i>Feb. 15</i>	<i>Feb. 16</i>
<i>Feb. 17</i>	<i>Feb. 18</i> HOLIDAY	<i>Feb. 19</i>	<i>Feb. 20</i> SC—TBA EI—Tok	<i>Feb. 21</i>	<i>Feb. 22</i>	<i>Feb. 23</i>
<i>Feb. 24</i>	<i>Feb. 25</i>	<i>Feb. 26</i> NS—Barrow	<i>Feb. 27</i> YKD—Bethel	<i>Feb. 28</i>	<i>Mar. 1</i>	<i>Mar. 2</i>
<i>Mar. 3</i>	<i>Mar. 4</i>	<i>Mar. 5</i> NWA—Kotzebue WI—Galena	<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> SE—Ketchikan	<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> K/A—Old Harbor/Kodiak	<i>Mar. 20</i>	<i>Mar. 21</i>	<i>Mar. 22</i> <i>Window Closes</i>	<i>Mar. 23</i>

Fall 2013 Regional Advisory Council Meeting Calendar

August–October 2013 current as of 09/11/12

Meeting dates and locations are subject to change.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Aug. 18	Aug. 19 WINDOW OPENS	Aug. 20	Aug. 21	Aug. 22	Aug. 23	Aug. 24
	NS—Barrow		NWA—Kiana			
Aug. 25	Aug. 26	Aug. 27	Aug. 28	Aug. 29	Aug. 30	Aug. 31
Sept. 1	Sept. 2 HOLIDAY	Sept. 3	Sept. 4	Sept. 5	Sept. 6	Sept. 7
Sept. 8	Sept. 9	Sept. 10	Sept. 11	Sept. 12	Sept. 13	Sept. 14
Sept. 15	Sept. 16	Sept. 17	Sept. 18	Sept. 19	Sept. 20	Sept. 21
Sept. 22	Sept. 23	Sept. 24	Sept. 25	Sept. 26	Sept. 27	Sept. 28
Sept. 29	Sept. 30 END OF FY2013	Oct. 1	Oct. 2	Oct. 3	Oct. 4	Oct. 5
Oct. 6	Oct. 7	Oct. 8	Oct. 9	Oct. 10	Oct. 11 WINDOW CLOSES	Oct. 12