

WESTERN INTERIOR ALASKA Subsistence Regional Advisory Council



Carl Johnson

Musher and dog team, North Fork of the Koyukuk River.

Meeting Materials

March 5–6, 2013

Galena, Alaska

What's Inside

Page	
1	Agenda
4	Roster
5	Minutes from October 10-11, 2012 meeting
18	Wildlife Closure Review WCR12-20
26	Guidance on Annual Reports
28	Draft FY2102 Annual Report
30	FY2011 Annual Report Reply
36	Meeting Calendars
38	Kanuti NWR Report
42	Innoko NWR Report
47	Call for Proposals on Federal Wildlife Regulations
50	News Release on Rural Determination Process
53	Draft Tribal Consultation Implementation Guidelines
59	Customary & Traditional Use Determinations Recommendation Briefing
62	Letter from Southeast Alaska Subsistence Regional Advisory Council on Customary & Traditional Use Determinations
113	Briefing on Consultation with Tribes and ANCSA Corporations
115	Gates of the Arctic National Park & Preserve Update
116	Bureau of Land Management Report
121	Wood Bison Reintroduction Information
125	Yukon River Drainage Fisheries Association Bycatch Update
127	Yukon River Drainage Fisheries Association Draft Bycatch Resolution
128	Council Charter

WESTERN INTERIOR ALASKA SUBSISTENCE REGIONAL ADVISORY COUNCIL

Galena, Alaska Community Building
 March 5-6, 2013 8:30 a.m.-5:00 p.m. Daily

DRAFT AGENDA

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

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

*Asterisk identifies action item.

1. Roll Call and Establish Quorum (<i>Secretary</i>).....	4
2. Call to Order (<i>Chair</i>)	
3. Invocation	
4. Welcome and Introductions (<i>Chair Reakoff</i>)	
5. Review and Adopt Agenda* (<i>Chair Reakoff</i>)	1
6. Election of Officers* (<i>Melinda Hernandez, DFO</i>)	
A. Chair	
B. Vice-Chair	
C. Secretary	
7. Review and Approve Previous Meeting Minutes* (<i>Chair</i>).....	5
8. Reports	
A. Council member reports	
B. Chair’s report	
C. 805(c) Report/Summary of FSB Action on Fisheries Proposals	
D. Public and Tribal Comment on Non-Agenda Items	
9. Old Business (<i>Chair</i>)	
1. WCR12-20 —24B Moose (<i>Trevor Fox</i>).....	18
2. Approve Draft Annual Report for FY2012*.....	28
10. Review Draft Council Correspondence	
11. New Business (<i>Chair</i>)	

A. Future Meetings.....	36
1. Confirm date and location of fall 2013 meeting	
2. Select date and location of winter 2014 meeting*	
B. Kanuti National Wildlife Refuge Update (<i>Vince Matthews, FWS</i>).....	38
C. Innoko National Wildlife Refuge Update (<i>Bo Sloan, FWS</i>).....	42
D. Koyukuk/Nowitna NWR Moose Management and Survey Update (<i>Brad Scotton, FWS</i>)	
E. Mulchatna Caribou Herd data presentation (<i>Speaker TBD</i>)	
F. Western Arctic Caribou Herd Working Group briefing (<i>Speaker TBD</i>)	
G. Brooks Range Council Introduction (<i>Speaker TBD</i>)	
H. Call for Wildlife Regulatory Proposals (<i>Wildlife Division, OSM</i>)*.....	47
1. Winter Moose Hunt in 24B Proposal (<i>Trevor Fox</i>)	
2. GMU 24A Dall Sheep proposal development	
I. Presentation of Proposed Rule on Rural Determination Process (<i>OSM</i>).....	50
1. Review and Comment on Draft Tribal Consultation Implementation Guidelines (<i>Jack Lorrigan, OSM</i>)*	53
2. Customary and Traditional Use Determinations—Letter from Southeast RAC (<i>OSM</i>).....	59
12. Agency Reports	
A. OSM	
1. Budget Update	
2. Staffing Update	
3. Fisheries Monitoring Plan Request for Proposals	
4. Partners Update	
5. Council Appointments	
6. Regulatory Cycle Review	
7. MOU Update	
8. Briefing on Consultation with Tribes and ANSCA Corporations.....	113
B. USFWS	
C. NPS	
1. Gates of the Arctic National Park Update.....	115
D. BLM	
1. BLM Central Field Office Report (<i>Merben Cebrian</i>)	116
E. ADF&G	
1. Wood Bison Reintroduction (<i>Rita St. Louis, ADF&G</i>).....	121
F. YRDFA Bycatch Update.....	125

- 1. Draft Bycatch Resolution127
- G. Native Organizations
- 13. Closing Comments**
- 14. Adjourn (*Chair*)**

To teleconference into the meeting, call the toll free number: 1-866-638-8165, then when prompted enter the passcode: 9060609

The U.S. Fish and Wildlife is committed to providing access to this meeting for those with a disability who wish to participate. Please direct all requests for accommodation for a disability to the Office of Subsistence Management at least five business days prior to the meeting. If you have any questions regarding this agenda or need additional information, please contact Melinda Hernandez, Council Coordinator at 907-786-3885, melinda_hernandez@fws.gov, or contact the Office of Subsistence Management at 1-800-478-1456 for general inquiries.

REGION 6—WESTERN INTERIOR ALASKA REGIONAL ADVISORY COUNCIL

Seat	Yr Apptd Term Expires	Member Name & Address
1	2001 2013	Robert A. Walker Anvik, Alaska
2	2004 2013	Donald Victor Honea Jr. Ruby, Alaska
3	2010 2013	Pollock Simon Sr. Allakaket, Alaska
4	1993 2014	Raymond L. Collins McGrath, Alaska
5	1993 2014	Jack L. Reakoff Wiseman, Alaska
6	2008 2014	Eleanor S. Yatlin Huslia, Alaska
7	2008 2014	Timothy P. Gervais Ruby, Alaska
8	2007 2015	James L. Walker Holy Cross, Alaska
9	2006 2015	Jenny K. Pelkola Galena, Alaska
10	1997 2015	Carl M. Morgan Aniak, Alaska

MEETING MINUTES
Western Interior Alaska Subsistence Regional Advisory Council
October 10-11, 2012
Holy Cross Community Building
Holy Cross, Alaska

Call to Order

Meeting called to order by Chair Jack Reakoff at 8:42 a.m.

Roll Call and Establish Quorum

Jenny Pelkola called the roll. WIRAC Council members present: Timothy Gervais, Raymond Collins, Jack Reakoff, Jenny Pelkola, Don Honea, Eleanor Yatlin and Pollock Simon Sr., Robert Walker
Excused: James Walker and Carl Morgan

Invocation

Mr. Collins led an invocation to all present at the meeting.

Welcome and Introductions

Chair Reakoff welcomed guests and staff members.

The following personnel and members of the public were in attendance:

Government Agency Employees

Glen Chen	Bureau of Indian Affairs Anchorage
Fred Bue	U.S. FWS
Jeremy Havener	U.S. FWS Koyukuk/Nowitna NWR
Jerry Hill	U.S. FWS Innoko NWR
Vince Mathews	U.S. FWS Kanuti NWR
Keith Ramos	U.S. FWS Koyukuk/Nowitna NWR
Bo Sloan	U.S. FWS Innoko NWR Mgr
Karen Hyer	U.S. FWS OSM
Carl Johnson	U.S. FWS OSM
Tom Kron	U.S. FWS OSM
Kay Larson-Blair	U.S. FWS OSM
Trent Liebich	U.S. FWS OSM (via teleconference)
Jack Lorrigan	U.S. FWS OSM
Clarence Summers	National Park Service
Amy Bower	ADF&G (via teleconference)
Drew Crawford	ADF&G (via teleconference)

Heather Leba
Eric Newland

ADF&G
ADF&G (via teleconference)

Merben Cebrian
Dan Sharp

Bureau of Land Management Fairbanks
Bureau of Land Management (via teleconference)

Tribal Organizations

Alyssa Frothingham
Mike Thalhauser

Tanana Chiefs Conference (via teleconference)
Kuskokwim Native Association-Aniak

NGOs/Public

Kathy W. Chase
Clara Demientieff
Jeff Demientieff
Eugene Paul
Rita Paul
Leroy Peters

Holy Cross GASH
Holy Cross/McGrath
Holy Cross
Holy Cross
Holy Cross YRDFA
Holy Cross YRDFA

Review and Adoption of Agenda

Additional agenda items brought forward:

- Tanana Chief's Conference was added to the agenda under Item #12 (Native Organization)
- Koyukuk/Nowitna NWR was added under U.S. Fish and Wildlife for their agency report
- Mr. Timothy Gervais requested a discussion regarding the North Pacific Fisheries Management Council December meeting where bycatch will be discussed.

Mr. Honea moved to adopt the agenda as amended. Mrs. Pelkola seconded the motion. Motion carried unanimously.

Review/Approval of Minutes

Mrs. Pelkola moved to adopt the minutes from the Winter 2012 meeting in McGrath; seconded by Ms. Yatlin. Motion carried unanimously.

Council Member Reports

Don Honea: Low numbers up and down the Yukon prevented me from fishing at all this summer. It may be time to revisit the idea of a fishing moratorium. In my community, moose numbers were not as good as in years past. I am cautious to agree with the refuge when they say numbers are consistent.

Eleanor Yatlin: There is concern from Galena regarding a guide and a possible request to expand flight boundaries on the Koyukuk Refuge. Noticed more guides and transporter activity in their area, and larger boats were noted traveling further this year because of the high water. There is also desire expressed from the Huslia community for an increase flow of information regarding the happenings on the Koyukuk Refuge.

Pollock Simon: Plenty of chum salmon on the Koyukuk River, enough food for the dogs, but the king salmon numbers were pretty poor. Water levels on the river resulted in debris in the nets and tough fishing. Conservation needs to happen not just by users along the rivers, but by the high seas fishery as well. Moose numbers were low near Allakaket; predator control just went into effect, and I am hopeful it helps improve those moose numbers.

Raymond Collins: Despite closures to protect the first pulse of salmon, escapement numbers were still not met in some of the drainages. Management strategies and decisions need to be examined. There was hardship on the users, and hopefully in the future decisions can be made that will allow for at least some catch along the rivers without total closures.

Jenny Pelkola: I attended the recent YR DFA meeting in Galena; pulse closures versus windows was discussed at length—hopefully one day we can come to a consensus on what will work on the Yukon all the way to Canada.

Tim Gervais: Poor king salmon fishing in Ruby. Good fishing for silvers and chums, and still a healthy whitefish population. More aggressive approaches and actions need to be taken in dealing with king salmon issues. The discussion needs to change from conservation to rebuilding; genetic diversity must be maintained and more fish have to get across the boundary. I have been pleased with our moose counts, though hunting this year was not up to the usual standards. I am concerned about the placement of a North Pacific Fisheries Management Council (NPFMC) member whose recommendation by the Department of Commerce superceded the recommendation of the governor.

Jack Reakoff (Chair's Report): Thanked the Holy Cross community for hosting us, and expressed desire to dialogue about the 21E moose and king salmon issues. Concerned about the king salmon run like everyone else. In collecting samples for ADF&G, I noticed smaller and fewer salmon. Even in Jim River, at the peak of spawning, I could not find one king salmon in the river during my visit.

Lots of hunting pressure with guides on the road for the mountain communities (Anaktuvuk Pass, Wiseman, Arctic Village), along with poor weather this year. Some sheep and moose were harvested by community members, although not much caribou passed through the immediate area. Concerns exist about caribou herds, and what effect planned road projects will have on migrations and populations. People rely on those caribou populations, and increased competition will likely follow the proposed Umiat Road.

Tribal Consultation Update

David Jenkins, Office of Subsistence Management, provided the presentation regarding the Draft Tribal Consultation Policy. The Council provided comments which will be provided to the Working Group for consideration.

Customary Trade of Chinook on the Yukon River

David Jenkins provided the presentation regarding the Tri-RAC Subcommittee on Customary Trade of Yukon River Chinook Salmon. The Council reviewed the recommendation they chose to support at the Fall 2011 meeting and chose to submit a proposal “to limit customary trade of Yukon River Chinook

salmon may only occur between Federally qualified rural residents with a current customary and traditional use determination”.

Review and comment on the Board of Game Proposals

The Council reviewed and provided comments on various Board of Game proposals regarding the McGrath and Galena areas. The comments are to be compiled and submitted by the Council Coordinator.

Special Action Item

The Council reviewed a Draft Special Action letter regarding Dall sheep in the Dalton Highway Management area. A motion was made to submit the letter to the Office of Subsistence Management; the motion was adopted unanimously.

Review and Finalize DRAFT 2011 Annual Report

The Council reviewed and modified various items in the Draft 2011 Annual Report.

EA for Collection of Horns and Antlers on NPS Land

Dave Mills (Subsistence Statewide Program Manager) from the National Park Service gave the presentation. The Council wishes to comment after the Subsistence Resource Commissions have all provided their input. The council deferred the options to the Gates of the Arctic Subsistence Resource Commission to make final decisions.

Gates of the Arctic Hunting Plan Recommendation 11-01

The Council reviewed the Gates of the Arctic Subsistence Resource Commission Hunting Plan recommendation 11-01. The recommendation seeks an increase in the per diem rate for all Subsistence Resource Commissions, as well as Federal Regional Advisory Councils. The Per diem rates do not include additional costs in Alaska and the realities of traveling are different from what the actual reimbursement is.

The Council unanimously voted to submit this hunting plan recommendation to the FSB for review.

Misc. Presentations and Updates

- Leroy Peters from Holy Cross: Many local people caught about 5-10% of their king salmon needs. Summer chum fishing was plentiful, though this fish dries very hard, is difficult to chew, and in most years is used for the dogs. This is the worse fishing I have ever seen. Pollock fisheries, pollution, and climate change are all factors that could be contributing to the decline of king salmon. Climate change especially can be seen in the drying of water near the village and the consistently warmer temperatures. Moose hunting was successful this year. Pressure being felt from the guided and transported hunters moving into the area.
- Jack Lorrigan introduced himself as the new Native Liaison for the Office of Subsistence Management and discussed ongoing tribal consultation efforts.
- Mr. Fred Bue provided a 2012 fishing season review for the Yukon River. Some highlights include:

- The 2012 run of Chinook experienced a fifth consecutive season of below average to poor salmon production with low returns despite typically adequate escapement levels. A poor to below average run was anticipated and normal harvest levels were not anticipated. Meetings were held in preparation to share information and receive input on conservation management approaches. Key conservation approaches including earlier start dates for subsistence window fishing and pulse protection for the first pulse as it moved in. Mesh size allowed was also limited in some areas as it became apparent that the Chinook run was poor and not just late. Even with all the management actions, the estimated U.S./Canada border passage of 34,200 Chinook was below the inter-management escapement goal of 42,500
- Summer and fall chum runs have performed as expected with above average returns; the coho run was below average.
- The staff welcomed feedback about the season in general, actions that had to be taken, and whether or not the frequent notices were clear and received.
 - COUNCIL: ADF&G needs to assess catch and release of Chinook on the Chena River System which was allowed into the run, considering escapement needs were not met in recent years. Mortalities can be high and with significant restrictions happening with other fisheries, this is cause for concern. Also expressed appreciation and efforts of the river managers to protect the resource.
- Raymond Collins provided some comments on the Kuskokwim fishing season. Pg. 54-ish and look at Ray's community concern section again.
- Catherine Moncrieff from YRDFA provided a report on their activities; she acknowledged Leroy Peters, a YRDFA board member from Holy Cross who was present at the meeting.
 - YRDFA King Salmon Management Plan: Based on public support and a desire to formalize pulse protection and equitable fishery management, YRDFA developed a BOF proposal (131) and sought WIRAC support.
 - Salmon Bycatch: Current numbers were discussed
 - YRDFA Cultural Fish Camp: A grant will allow for YRDFA to assist 5 Yukon River communities in holding community-based fish camp for youth. Camps will involve tribal and city councils, schools, elders, youth, and the communities' fishers. This two-year grant has the goal of improving youth well-being through the sharing of cultural knowledge from elders to youth and participation in traditional fishing activities. A mentorship program was also introduced through the camps to assist youth with their educational and career goals.
 - In-season management teleconferences: This year 13 teleconferences were held every Tuesday from June-August. Participation was increased compared to previous years, mainly due to poor salmon returns.

Federal Fisheries Proposals

FP13-01

Proposal FP13-01 would allow drift gillnet fishery to continue in 4B and 4C, but rescind Federal permit requirements.

Mrs. Karen Hyer presented the staff analysis. The Office of Subsistence Management preliminary conclusion: **support**.

MOTION: Mr. Don Honea made a motion to **adopt Proposal FP13-01**. The motion was seconded by Mr. Timothy Gervais. The motion **passed unanimously**, 8-0.

JUSTIFICATION: Concerns regarding overfishing of Chinook as a result of the drift gillnet fishery have not been realized. Very few fish have been harvested by the drift gillnet fishery. The permit requirement is burdensome.

FP13-02

Proposal FP13-02 would align federal regulations with state regulations and simplify marking requirements of Chinook salmon taken for subsistence purposes in Districts 1, 2 and 3 on the Yukon River.

Mrs. Karen Hyer presented the staff analysis. The Office of Subsistence Management preliminary conclusion: **support**.

MOTION: Mr. Pollock Simon made a motion to **adopt Proposal FP13-02**. The motion was seconded by Mrs. Jenny Pelkola. The motion **passed unanimously**, 8-0.

JUSTIFICATION: This proposal, if adopted, would make it easier for subsistence users to not have to follow regulations that are in conflict with the state.

FP13-03

Proposal FP13-03 would establish a daily limit of three 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.

Mrs. Karen Hyer presented the staff analysis. The Office of Subsistence Management preliminary conclusion: **oppose**.

MOTION: Mr. Pollock Simon made a motion to **adopt Proposal FP13-03**. The motion was seconded by Mr. Don Honea. The motion **passed unanimously**, 8-0.

JUSTIFICATION: There has been overfishing and waste of Northern Pike in the area. Placing limits would ensure that the resource would be there in abundance in the future to provide for subsistence opportunity as well as to fulfill important cultural uses. It was an important consideration that this was proposed by local people, and that they chose to take this step to protect the local resources. Local testimony stated that three a day would be adequate.

FP13-06

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

Mr. Tom Kron presented the staff analysis. The Office of Subsistence Management preliminary conclusion: **support with modification** to add clarification at the end that this is for Yukon River Chinook salmon.

MOTION: Mr. Robert Walker made a motion to **adopt Proposal FP13-06**. The motion was seconded by Mrs. Jenny Pelkola. The motion **passed unanimously**, 8-0.

JUSTIFICATION: The Council emphasized the conservation concern about the Chinook salmon populations on the Yukon River drainage and felt it was important to take this measure in order to take steps to restore the health of the populations. The Council recognizes a need to be able to resort to a more relaxed regulatory structure in the future. If and when the runs return, then a proposal can be submitted to relax the regulation.

FP13-09/10

Proposal FP13-09/10 would prioritize direct personal and family consumption over customary trade of Yukon River Chinook salmon.

Mr. Tom Kron presented the staff analysis. The Office of Subsistence Management preliminary conclusion: **oppose**.

MOTION: Mr. Raymond Collins made a motion to **adopt Proposal FP13-09/10**. The motion was seconded by Mr. Timothy Gervais. The motion was **opposed unanimously**, 8-0.

JUSTIFICATION: This Council recognizes customary trade is a use of Chinook salmon on the Yukon River by all Federally qualified subsistence users. Precluding the use of an elder buying salmon would be contrary to a valid use. The Council is also opposed to using section 804 of ANILCA to establish a system of allocating using of Chinook salmon on the Yukon River.

FP13-11

Proposal FP13-11 would set a monetary limit of \$750 per household on customary trade from the Yukon River drainage.

Mr. Tom Kron presented the staff analysis. The Office of Subsistence Management preliminary conclusion: **oppose**.

MOTION: Mrs. Jenny Pelkola made a motion to **adopt Proposal FP13-11**. The motion was seconded by Mr. Raymond Collins. The motion was **opposed**, 7-1.

JUSTIFICATION: The Council disagreed that with modern costs, particularly fuel costs, \$750 could not be considered a “significant commercial enterprise.” Setting a dollar amount does not reflect inflation and devaluation of the U.S. Dollar. Fuel costs alone are climbing at such a rate that having a fixed dollar amount would not be realistic.

FP11-08

Proposal FP11-08 would restrict customary trade in the Yukon River Fisheries Management Area in any year when Chinook salmon runs are insufficient to fully satisfy subsistence harvest needs and subsistence fisheries are restricted.

Mr. Tom Kron presented the staff analysis. The Office of Subsistence Management preliminary conclusion: **oppose**.

MOTION: Mr. Pollock Simon made a motion to **adopt Proposal FP11-08**. The motion was seconded by Mrs. Jenny Pelkola. The motion was **opposed unanimously**, 8-0.

JUSTIFICATION: For some individuals, the only way to meet their need is by purchasing salmon strips through customary trade. The primary concern is whether salmon is being exchanged for cash with residents of urban areas. If FP13-06 is adopted by the Federal Subsistence Board, the Council believes the primary problem will be addressed. .

Recommendations on Alaska Board of Fisheries Proposals for 2013-2015

Proposal 97&98 Northern Pike

Council Recommendation: Support

Justification: There has been overfishing and waste of Northern Pike in the area. Placing limits would ensure that the resource would be there in abundance in the future to provide for subsistence opportunity as well as to fulfill important cultural uses.

Proposals 105/106 Kuskokwim River Salmon Rebuilding Management Plan

Council Recommendation: Support

Justification: There was not sufficient dialogue with the various user groups in preparing this proposal. Additionally, the plan needs to be more detailed to include sufficient hard numbers and also to address more specific issues that are not raised. It is uncertain whether this plan, as revised, would help meet subsistence needs. We need optimum escapements of salmon and adequate densities to allow for subsistence. There is no need for increased commercial harvest while the runs recover.

Proposal 110 Gillnet Mesh Size

Council Recommendation: Support

Justification: Larger mesh size has been shown to be detrimental to female Chinook salmon.

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

Council Recommendation: Oppose

Justification: With the declining Chinook salmon run, there will be more reliance on chum salmon by subsistence users. The Council is concerned that reducing the number for ANS on chum salmon at this time does not reflect the needs of subsistence users. This raises concerns of reallocating harvest of summer and fall chum salmon to commercial harvest, and would consequently increase pressure on other species of salmon, particularly in the fall. The Council is satisfied with the ANS numbers as they currently are stated.

Proposal 131 Yukon River pulse protection for Chinook salmon

Council Recommendation: Support

Justification: This could be another useful conservation method for improving the Chinook salmon run, and the Council supports efforts to promote conservation and to work toward restoring the Chinook salmon runs.

Proposal 132 Sale of King Salmon

Council Recommendation: Support

Justification: The preclusion of sale of Chinook salmon in the fishery provides a disincentive to sell bycatch. Disseminating the bycatch into the subsistence system helps to provide for subsistence use of Chinook salmon.

Proposal 138 Fall Chum Salmon

Council Recommendation: Oppose

Justification: With declining Chinook salmon runs, people are increasingly relying on coho and fall chum salmon to meet subsistence needs. This reliance on fall fish would not only continue, but likely increase in the future. This proposal is designed to increase commercial harvest of fall chum salmon. Increased commercial opportunity for fall chum and coho through reduction of the trigger point is unwarranted at this time.

Review of Draft MOU between the FSB and State of Alaska

Dr. Glen Chen and Mr. Jerry Berg provided an update on the latest revisions and edits on the latest version and asked for council comments and feedback. The latest version incorporates changes based on Council input from the 2011 RAC meeting cycle. Important changes to note:

1. An attempt was made to make the document more concise and clear.
2. Slight change in the layout of the document to focus more on the Federal program.
3. Though the Councils suggested a glossary at the end, the group tried to focus on the first comment of plain language.
4. A number of Councils suggested an increased emphasis on Traditional Ecological Knowledge. The group inserted the term “customary and traditional use” which comes directly from ANILCA.
5. Some Councils commented that they would like to see the Federal program take on the topic of predator control. Since the Federal program was established, predator control was, and still is, the responsibility of the individual agencies. Therefore, we do not address predator control in this MOU.
6. A number of Councils feel as though there is too much emphasis on State management plans (i.e. The Western Arctic Caribou). As a result, the MOU aims to be more broad (to use Federal, State, and cooperative management plans) and reduce the emphasis on State plans.
7. The Councils wanted to have regular evaluation of the document. The working group came up with a suggestion of putting the completed document on the Council agendas once a year as a discussion item. Feedback will then be carried to the FSB on a regular basis.
8. The Councils asked about existing protocols (Yukon River Salmon, Information sharing between the State and Federal Programs). These supplemental protocols will be reviewed as the Councils have suggested.

The Western Interior Council provided feedback:

- The Council feels the MOU review is a positive step in the right direction. The Council is happy additional opportunities exist to comment on the recent work.
- The Council would like to see the language stated more clearly (No. 3 under IV) which references a difference in harvestable surplus between ANILCA mandates and maximum sustainable yield. Maximum sustained yield under the State management can cut the fine edge of sustainability and reduce population levels to where it becomes highly competitive for subsistence users. Whereas, ANILCA maintains healthy populations, which would reflect healthy bull/cow ratios and compositions of the populations at levels that would be more beneficial for subsistence users and the general public.
- Under No. 11, IV, the Council feels stronger language should be used regarding the health of populations and the use of scientific principles. State and Federal managers need to develop plans that assure the health of the resources using recognized scientific principles and including Council review.
- The Council felt the MOU should reflect the lack of accommodation by the Boards of Fish and Game. The Councils have been treated as individuals when representing their respective Councils instead of an advisory body.

Discussion of Council Applications:

There has been a decline statewide (especially in the northern region) in the number of applications and nominations received each year for Council membership. Some strategies to increase the number of applicants/nominations were provided by the Council Coordination Division Chief. These included: a more personal approach by existing Council members to identify good candidates and utilizing the nominations process.

The Council offered some challenges and frustrations encountered by Council and potential Council members which make serving on the RAC's difficult for rural Alaskans.

Regulatory Cycle Review:

Mr. Tom Kron provided a summary of the meeting cycle discussion. There was a request that the fall meeting window be moved later in the year so that the Council meetings could occur into November after the fall subsistence had occurred. The Board met -- the Federal Subsistence Board met in May 2012 this past spring and discussed this issue and decided not to take action until it heard first from the Regional Advisory Councils.

The Council has been vocal on this issue and included it in their Annual Report to the Federal Subsistence Board in 2011. The Council reiterated their cycle shift suggestions, including the FSB meeting to February and shifting fisheries publications to May 1. Those comments and suggestions were transmitted to the Federal Subsistence Board for their consideration.

Gates of the Arctic National Park SRC appointment:

The Council voted unanimously reappointed Pollock Simon Sr. (who currently serves as the Chair) to represent the Council on the Gates of the Arctic National Park Subsistence Resource Commission.

Special Action on 21E Moose:

This issue has been discussed at previous meetings and, The Federal Subsistence Board passed the WP10-69, which was a customary and traditional use determination for Lower Unit 21E, which this Council has referred to for Aniak, Chuathbaluk, Upper and Lower Kalskag. Those communities now will be able to hunt for moose in the lower portion of 21E from Paimiut Slough to Molybdenum Mountain south. Our concerns were the winter moose hunt and Innoko has taken our comments and then developed a preliminary strategy.

An emergency special action was requested for 21E Southern Portion Zone 1 during the meeting, but was later clarified as unnecessary due to the fact that current regulations allow for the Council's wishes.

Review of 2011 Annual Report Reply from the FSB:

- The Council wishes to reflect in the record that we feel that the customary and traditional practices of jarring, drying strips, etc. are indeed customary and traditional. These preservation practices have been taking place for quite some time and should be recognized by the Federal Subsistence Board as customary and traditional.

Fisheries Resource Monitoring Program Priority Information Needs:

Mrs. Karen Hyer solicited input from the Council on the 2014 request for Proposals for the Fisheries Resource Management Plan. This year there is approximately \$4.8 million available for research proposals to be sent throughout the state and divided up by regions. A list of priorities is being developed with input from the Council. From that list, researchers can submit proposals to the program for review and evaluation.

Mrs. Hyer covered the priority information needs list for the Yukon and Kuskokwim Rivers. The Council was asked to review the list and add or remove priorities which will be ranked once proposals are submitted.

The Council provided feedback:

- The Council added the incidental dropout harvest (sockeye and Chinook) mortality date needs of the chum fishery which they feel has a large effect on population.
- Quality of escapement
- Genetic marker for sheefish
- Snow depth and hydrology effects on fish fry and predators
- Pulse patterns and the effect of water levels

BLM Hunting Guide Capacity Environmental Assessment:

Mr. Dan Sharp provided a status report on BLM's effort to assign a maximum number of special recreation permits that will be issued for any guide use area. The initial scoping period has just finished up, but Council input is still being sought.

The Council provided input to Mr. Sharp during the meeting and also transmitted these points to the BLM in written form as well. Themes included: healthy post-hunt wildlife populations, breeding capacity, recognizing the subsistence needs of available harvest, allocation of permits to guides and selling prohibitions, and the level of non-guided sport hunter use of the population.

Misc. Presentations and Updates

- Clarence Summers and Marcy Okada from the National Park Service briefly summarized actions by the Denali Commission and Gates of the Arctic National Park SRC
- Mr. Jerry Hill provided an update from the Innoko National Wildlife Refuge
- Mr. Vince Matthews provided an update from the Kanuti National Wildlife Refuge
- Mr. Jeremy Havener and Mr. Keith Ramos provided an update from the Koyukuk/Nowitna National Wildlife Refuge
- Mr. Merben Cebiran from the Central Yukon Field Office provided a report on the activities on BLM land
- Heather Leba from ADF&G provided a season summary packet and discussed the educational presentation she provided to the Holy Cross School students
- Alyssa Frothingham represented Tanana Chief's Conference via teleconference and provided some weir project and educational program updates.

Confirm Dates and Locations of Future Meetings:

- Winter 2013: March 5-6 in Galena, AK
- Fall 2013: October 8-9 in Fairbanks, AK

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

Melinda Hernandez, Designated Federal Officer
USFWS Office of Subsistence Management

Jack Reakoff, Chair

Western Interior Subsistence Regional Advisory Council

These minutes will be formally considered by the Western Interior Alaska Subsistence Regional Advisory Council at its next public meeting, and any corrections or notations will be incorporated into the minutes of that meeting.

**FEDERAL WILDLIFE CLOSURE REVIEW
WCR12-20**

Closure Location: Unit 24B—The Kanuti Controlled Use Area, which consists of that portion of Unit 24 bounded by a line from the Bettles Field VOR to the east side of Fish Creek Lake; to Old Dummy Lake; to the south end of Lake Todatonten (including all waters of these lakes); to the northernmost headwaters of Siruk Creek; to the highest peak of Double Point Mountain; and then back to the Bettles Field VOR.

Current Federal Regulation

Unit 24B—All drainages of the Koyukuk River downstream from and including the Henshaw Creek drainage—1 antlered bull by Federal registration permit. Aug. 25–Oct. 1
Dec. 15–Apr. 15 (until June 30, 2014).

Federal public lands in the Kanuti Controlled Use Area, as described in Federal regulations, are closed to taking of moose, except by Federally qualified subsistence users of Unit 24, Koyukuk, and Galena hunting under these regulations.

Unit 24B remainder—1 antlered bull. A Federal registration permit is required for the Sept. 26–Oct. 1 period. Aug. 25–Oct. 1

Federal public lands in the Kanuti Controlled Use Area, as described in Federal regulations, are closed to taking of moose, except by Federally qualified subsistence users of Unit 24, Koyukuk, and Galena hunting under these regulations.

Closure Dates: Aug. 25–Oct. 1, Dec. 15–Apr. 15

Current State Regulations

Unit 24B—all drainages of the Koyukuk River upstream from the Henshaw Creek drainage, excluding the North Fork of the Koyukuk River Drainage

Resident: One bull HT Sept. 1–Sept. 25

Nonresident: One bull with 50-inch antlers or 4 or more brow tines on one side HT Sept. 5–Sept. 25

Unit 24B remainder

Resident: One bull OR HT Sept. 1–Sept. 25

One antlered bull by permit available online at <http://hunt.alaska.gov> or in person in Hughes, Allakaket or Fairbanks beginning Dec. 14 RM833 Dec. 15 – Apr. 15

Nonresident: One bull with 50-inch antlers or antlers with 4 or more brow tines on at least one side HT Sept. 5–Sept. 25

Regulatory Year Initiated: 1992

Regulatory History

The Kanuti Controlled Use Area (CUA) was adopted from State regulations into Federal regulations on July 1, 1990, when the Federal government took over the management of subsistence use of fish and wildlife resources on Federal public lands. In 1992, the Federal Subsistence Board (Board) adopted Proposal 115 with modification to close Federal public lands within the Kanuti CUA to all non-Federally qualified users. The justifications for the closure were: (1) that higher than recommended harvest levels were occurring in the area; and (2) the area should be closed to provide continued opportunity for Federally qualified subsistence users on Federal public lands within the Kanuti CUA (FSB 1992).

The Alaska Board of Game and the Board adopted regulations in 2006 (WP06-36) which subdivided Unit 24 into four subunits A, B, C, and D. The State and Federal boards adopted these changes in response to the complexities of managing wildlife populations in large game management units, such as Unit 24. The Board adopted WP06-34 with modification to provide fall season extensions to Units 21B, 21D, and the new subunit descriptions of Unit 24. In Unit 24B, the fall seasons were extended from Aug. 25–Sept. 25 to Aug. 25–Oct. 1. Proposal WP06-34 was submitted in response to the Board rejecting Special Action WSA05-04, which requested fall season extensions due to unseasonably warm fall temperatures. The special action was rejected because the proposed regulation failed to meet the criteria that would validate the need for extended fall season.

Recent regulatory changes in Unit 24B have been associated with the need to provide additional winter opportunities for Federally qualified subsistence users to hunt moose. Until 2001, the State had a 10-day winter hunt (Mar. 1–10) that included drainages north of the Koyukuk River near Bettles and Evansville. Under Federal regulations, there was a Mar. 1–10 moose season until 2005, when the season was modified to a Mar. 1–5 “to-be-announced” season with the adoption of WP05-13 with modification by the Board. There was very little harvest under this more limited five-day “to-be-announced” season, mainly because of low moose densities, users being restricted to Federal public lands, and users being restricted to a narrow time window, which more often than not included inclement weather. Season extensions were granted by Special Actions (WSA06-08 and WSA07-09) due to extremely cold weather conditions during the Mar. 1–5 season in 2007 and 2008, respectively. In 2010, a Special Action (WSA09-15) was adopted to shift the five-day season from Mar. 1–5 to Mar. 27–31 in the Kanuti CUA to provide harvest opportunity when there were better weather and daylight conditions. The Alaska Board of Game adopted State Proposal 90A in 2010, which established a Dec. 15–Apr. 15 moose season in Unit 24B, except for the drainages of the Koyukuk River upstream from the Henshaw Creek drainage, excluding the North Fork of the Koyukuk River drainage. Adoption of State Proposal 90A replaced an existing Dec. 1–15 moose season in Unit 24B remainder. In 2010, the Board adopted WP10-67 with modification to expand the Dec. 15–Apr. 15 season to all Kanuti NWR and BLM lands of Unit 24B.

The Alaska Board of Game adopted State Proposal 94 in 2010, which reduced the size of the Kanuti CUA under State regulation. In January 2012, the Board adopted WP12-57 to remove sections of Federal public land near Bettles and Evansville from the winter (Dec. 15–Apr. 15) season to align the winter seasons under State and Federal regulations (FSB 2012). However, the Kanuti CUA boundaries were not changed under Federal regulations. Thus, the boundary of the State CUA is currently out of alignment with Federal regulations. In conjunction with action on WP12-57, the Board adopted a modification of WP12-58 to create a Federal registration permit for all Federal public lands contained in all drainages of the Koyukuk River downstream from and including the Henshaw Creek drainage, which included the Kanuti CUA (FSB 2012).

Closure Last Reviewed: 2008 — WCR08-20.

Justification for the Original Closure (Section 815(3) Criteria)

Section §815(3) of ANILCA states:

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

In 1992, the Federal Subsistence Board adopted Proposal 115 with modification to close Federal public lands within the Kanuti CUA to all non-Federally qualified users. The justifications for the closure were that higher than recommended harvest levels were occurring in the area and the area should be closed to provide continued opportunity for Federally qualified subsistence users on Federal public lands within the Kanuti CUA (FSB 1992).

Council Recommendation for the Original Closure

Because the Western Interior Regional Council was not established until 1993, the State's Interior Regional Advisory Council (State Regional Council) was solicited for a recommendation to the Board in 1992. The Chair of the State Regional Council stated that no action was taken on this proposal due to the lack of subsistence input from the Koyukuk River Fish and Game Advisory Committee.

State Recommendation for the Original Closure

The State opposed the closure, as the Kanuti CUA already limited use by nonlocal users by restricting access by aircraft. Comments indicated that much of the use that was occurring in the Kanuti CUA was by local residents.

Biological Background

The Koyukuk River Moose Management Plan 2000–2005 (Management Plan) (ADF&G 2001) set the management goals and objectives for the Koyukuk River moose population. For the portion of Unit 24 where the Kanuti CUA is located, the management goal is to maintain or increase moose populations while continuing to provide moderate levels of hunter participation and harvest. The Management Plan listed biological decision-making factors for managing the moose population along the upper Koyukuk River (upstream of Hughes).

Population surveys have been conducted on the Kanuti National Wildlife Refuge (Refuge) since 1989, but surveys in 1989 and 1993 are not easily compared to more recent surveys due to different survey methods. Surveys conducted from 1999 to 2011 employed the GeoSpatial Population Estimator technique (Kellie and Delong 2006) and can be more readily compared. Moose population estimates resulting from GSPE surveys on the Refuge have ranged from a low of 588 moose in 2007 to a high of 1,068 in 2010 (**Table 1**). The moose population on the Refuge appears to have been relatively stable at approximately 1,000 estimated moose since 1999, but the population has been at a low density (Craig and Stout 2011). Density estimates in the Refuge ranged from 0.22 to 0.39 moose/mi² between 1999 and 2011 (Craig and Stout 2011). The density estimates are typical of Western Interior moose populations, which range from 0.25–2.00 moose/mi² (Stout 2008), and are similar to the mean density of predator limited moose

Table 1. Summary statistics for eight moose population estimates (90% confidence intervals) in the Kanuti National Wildlife Refuge Survey Area, Game Management Unit 24B, Alaska (Craig and Stout 2012). Surveys conducted in November 1989 and 1993 employed the Gasaway method, while subsequent surveys were conducted using the GeoSpatial Population Estimator method.

Year	Survey area (mi ²) ^a	Units surveyed	Population estimate (90% CI)	Moose density (moose/mi ²)	Cows	Bulls	Estimated composition ratios		
							Bulls:100 cows	Yearling bulls:100 cows	Calves:100 cows
1989	2,615	na ^b	1,172 (867–1,476)	0.45	na	na	64	4	17
1993	2,644	na ^b	2,010 (1,567–2,453)	0.76	na	na	61	8	33
1999	2,715	108	1,003 (794–1,211)	0.37	542	320	59	4	30
2004	2,710	103	842 (602–1,083)	0.31	403	252	62	9	46
2005	2,710	82	1,025 (581–1,470)	0.38	471	331	70	20	43
2007	2,714	150	588 (463–714)	0.22	276	167	60	13	53
2008	2,715	80	872 (669–1,075)	0.32	432	199	46	14	58
2010	2,714	164	1,068 (946–1,191)	0.39	569	293	51	7	33
2011	2,714	151	797 (644–951)	0.29	388	268	69	10	41

^a Survey areas vary among years depending on how survey units are delineated.

^b Survey units varied in shape and size and are not comparable to units used in subsequent years.

populations in Alaska and the Yukon Territory (0.38 moose/mi²) (Van Ballenberg and Ballard 2007). Population density estimates include all age and sex classes of moose; however, the density of antlered bulls, the harvestable class, were estimated at 0.11 and 0.10 bulls/mi² in 2010 and 2011, respectively (Craig and Stout 2011, 2012).

Population composition estimates are generated as part of the GeoSpatial Population Estimator surveys. Bull:cow ratios are high for the area (46–70 bulls:100 cows) (**Table 1**), which is above the Management Plan's objectives; however, relatively high bull:cow ratios (30–40 bulls:100 cows) may be required for this low density population to allow for adequate breeding (ADF&G 2001). The higher bull:cow ratios suggest this population can support current harvest levels. Calf:cow ratios have been above or within the objective for adequate recruitment (30–40 calves:100 cows) in all survey years since 1993 (**Table 1**). While the calf ratios meet the management objective, yearling bull:cow ratios have been low during most years and suggests limited recruitment to breeding age.

Additional surveys were also conducted on portions of Unit 24B that lie outside of the Refuge boundaries in 2010 and 2011; the Refuge was a subset of the total survey area (Craig and Stout 2011, 2012). In 2011, estimated calf ratios were similar between Refuge land (41 calves:100 cow) and the total survey area (43 calves:100 cows) (Craig and Stout 2012). However, the estimated total bull ratios were lower on the Refuge (69 bulls:100 cows) compared to the total survey area (78 bulls:100 cows) (Craig and Stout 2012).

Habitat

Habitat studies are limited in Unit 24B; however, habitat does not appear to be limiting the population in the subunit. Biomass of production and browse removal were measured at browse plots in Unit 24B in 2007. The assessment found little brooming of shrub species and that 51% of sampled plants had no

evidence of past browsing by moose (Stout 2010). Browse conditions throughout Unit 24 have been described as excellent (Stout 2010), and twinning rates (an indicator of nutritional status) of radio-collared females were high (37%–60%) from 2009 to 2011 (Craig and Stout 2012).

Harvest History

Moose are an important subsistence resource to residents of communities in Unit 24B. Household surveys in 2002/2003 estimated that 92% of households in Middle Yukon and Koyukuk River communities utilized moose (Brown et al. 2004). In general, harvest levels of moose in Unit 24B (or portions of the unit that would become Unit 24B in 2006) decreased under State regulations beginning in 2003 (Figure 1). The mean annual harvests between 1983–2010 by nonlocal Alaska residents, residents of Unit 24B, and nonresidents were 23, 13, and 10 moose under State regulations, respectively. Between 2006 and 2010, the mean reported harvest by nonlocal Alaska residents, residents of Unit 24B, and nonresidents declined to 15, 10, and 6 moose under State regulations, respectively. Annual harvest success for all users hunting under State regulations ranged from 25% to 45% between 2006 and 2010 (OSM 2012).

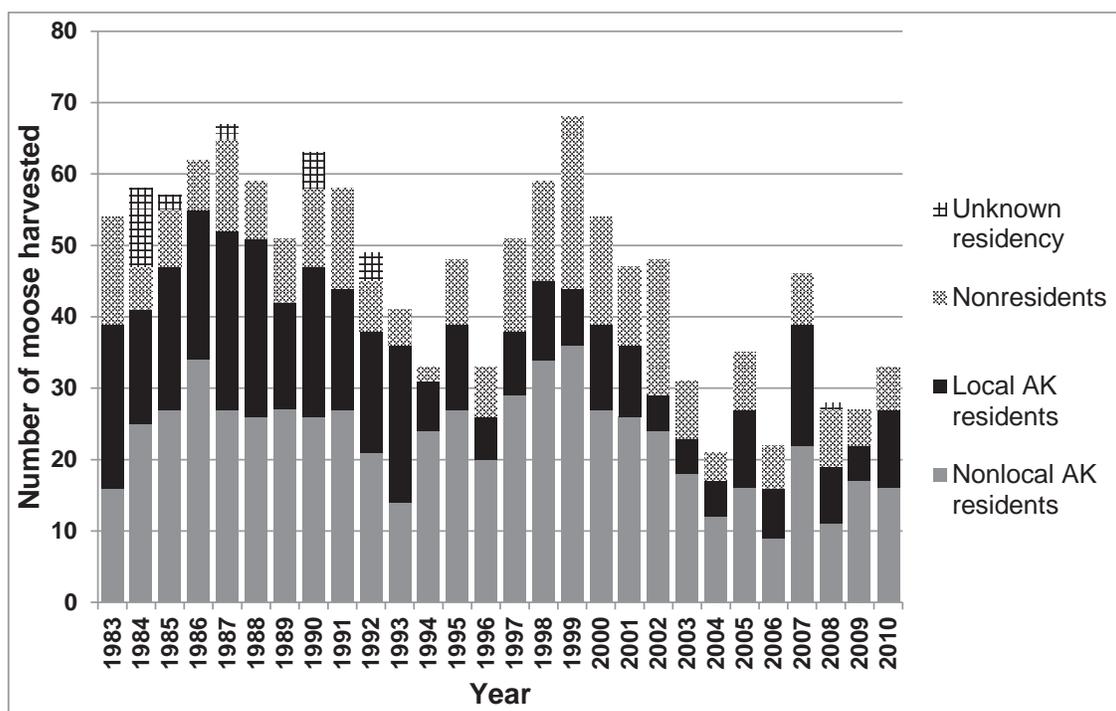


Figure 1. Moose harvested by user group in Unit 24B under State regulations, 1983–2010 (OSM 2012). Local Alaska residents are residents of communities that have a positive customary and traditional use determination under Federal regulations.

Local subsistence users had difficulties harvesting moose during previous years, which prompted the establishment of additional seasons or season extensions (see Regulatory History). Approximately 95% of the moose harvested in Unit 24 were harvested during the Sept. 1–25 season (Stout 2008). The winter seasons provide harvest opportunities for those subsistence users that were unable to harvest a moose in the fall. Federal moose seasons have been primarily used by residents of Allakaket, while use among residents of Alatna and Bettles/Evansville has been low. Harvest success has been low (0–30% success between 2006 and 2011) among all Federally qualified subsistence users attempting to harvest moose

during Federal moose seasons in Unit 24B, with an average of 2.3 moose (**Table 2**). The majority of moose were harvested by residents of Allakaket (10 moose), while residents of Bettles and Alatna each harvested 2 moose in Unit 24B under Federal regulations between 2006 and 2011.

OSM Preliminary Recommendation.

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

Justification

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

Based on population size, density, and composition data for moose in the Kanuti Controlled Use Area, the continuation of the closure is warranted. The closure was originally justified due to higher than recommended harvest levels occurring in the area, and the area should remain closed to provide continued opportunity for Federally qualified subsistence users. The closure restricted harvest on Federal public lands within the Kanuti CUA to only Federally qualified subsistence users. The bull:cow ratios suggest that the population can sustain current harvest levels; however, the limited harvest has not allowed the moose population to increase. The population has remained stable since 1999 in a low-density equilibrium, which is typical of Interior Alaska moose populations that are limited by predation. Lifting the closure could result in increased harvest pressure, which could lead to a decline in the moose population and reduce harvest opportunity for Federally qualified subsistence users.

LITERATURE CITED

- ADF&G. 2001. Final Koyukuk River Moose Management Plan, 2000–2005. March 2001. Division of Wildlife Conservation, ADF&G. Juneau, AK. 44 pages.
- Brown, C.L., R.J. Walker, and S. Vanek. 2004. The 2002–2003 harvest of moose, caribou, and bear in Middle Yukon and Koyukuk River communities. Technical Paper No. 280, Alaska Department of Fish and Game. Juneau, AK.
- Craig, T., and G. W. Stout. 2011. Aerial moose survey on and around Kanuti National Wildlife Refuge, November 2010. Unpublished report. Kanuti National Wildlife Refuge, FWS. Fairbanks, AK. 16 pages.
- Craig, T., and G. W. Stout. 2012. Aerial moose survey on and around Kanuti National Wildlife Refuge, November 2011. Unpublished report. Kanuti National Wildlife Refuge, FWS. Fairbanks, AK. 19 pages.
- FSB. 1992. Transcripts of Federal Subsistence Board proceedings, April 9, 1992. Office of Subsistence Management, FWS. Anchorage, AK.
- FSB. 2012. Transcripts of Federal Subsistence Board proceedings, January 19, 2012. Office of Subsistence Management, FWS. Anchorage, AK.
- Kellie, K.A., and R.A. DeLong. 2006. Geospatial survey operations manual. ,ADF&G. Fairbanks, AK, USA.
- OSM. 2012. Federal subsistence permit database. Microcomputer database, accessed August 2012.

Table 2. Harvest of moose by Federally qualified subsistence users on Federal public lands in Unit 24B between 2006-2011 (OSM 2012).

Permit	Year ^a	Season	Issued	Used	Unreported	Harvest
FM2401	2006	Mar. 1–5	25	10	1	0
	2007	Mar. 1–5	13	6	7	0
	2008	Mar. 27–31	6	4	1	1
	2009	Mar. 27–31	8	5	1	0
FM2402	2006	Sept. 26–Oct. 1	1	-	1	-
	2007	Sept. 26–Oct. 1	0	-	-	-
	2008	Sept. 26–Oct. 1	0	-	-	-
	2009	Sept. 26–Oct. 1	0	-	-	-
	2010	Sept. 26–Oct. 1, Dec. 15–Apr. 15	16	10	3	1
	2011	Sept. 26–Oct. 1, Dec. 15–Apr. 15	15	10	1	3
FM2403	2006	Sept. 26–Oct. 1	46	11	29	2
	2007	Sept. 26–Oct. 1	35	15	14	4
	2008	Sept. 26–Oct. 1	17	13	0	3
	2009	Sept. 26–Oct. 1	15	2	6	0
	2010	Sept. 26–Oct. 1	0	-	-	-
	2011	Sept. 26–Oct. 1	0	-	-	-
FM2404	2010	Dec. 15–Apr. 15	8	6	0	0
	2011	Dec. 15–Apr. 15	0	-	-	-

^a Start of the regulatory year (e.g., 2006 starts 1 July 2006 and ends 30 June 2007).

Stout, G. W. 2008. Unit 24 moose. Pages 579–616 in P. Harper, editor. Moose management report of survey and inventory activities 1 July 2005–30 June 2007. ADF&G. Project 1.0. Juneau, AK.

Stout, G. W. 2010. Unit 24 moose. Pages 572–610 in P. Harper, editor. Moose management report of survey and inventory activities 1 July 2007–30 June 2009. ADF&G. Project 1.0. Juneau, AK.

Van Ballenbergh, V., and W.B Ballard. 2007. Population dynamics. Pages 223–245 in A.W. Franzmann and C.C. Schwartz, editors. Ecology and Management of the North American Moose, second edition. University Press of Colorado. Boulder, CO. 733 pages.

Ver Hoef, J. M. 1996. Parametric empirical Bayes methods for ecological applications. *Ecological Applications* 6:1047–1055.

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.

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

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

Dear Mr. Towarak:

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

1. Lack of a rural subsistence representative on the NPFMC

The Council is concerned about the lack of rural or subsistence representation on the North Pacific Fisheries Management Council (NPFMC). The Pollock industry wields too much influence on the appointments to the NPFMC, as illustrated by a recent incident where one of the Governor's appointees was replaced by a Pollock industry executive. The next time the Magnuson-Stevens Act is updated, there needs to be a seat reserved for a rural subsistence user.

2. Western Arctic Caribou Herd Working Group (WACHWG) April 2012 Letter

The WACHWG membership is comprised from a vast area and including Federal Subsistence Regional Advisory Council members as well as Federal and State agencies whose purpose is to ensure the conservation of the Western Arctic Herd. The Council wants to make the Board aware of some very important issues brought out by the WACHWG in a recent letter to the Governor of Alaska. Concerns were outlined regarding the proposed roads through herd migration routes which could potentially be disruptive to caribou migration and negatively impact rural users who depend on this resource.

The WACHWG is requesting that the State of Alaska fund a Community Health Impacts Assessment to identify potential impacts of proposed roads on people and their communities within range of the Western Arctic Herd. Further, no decision should be made regarding whether or not to build these roads until the Assessment is completed with input from the communities, and the final results provided to potentially affected communities. ****A copy of this letter will be attached.*

3. Chinook

The Council is very concerned regarding the lack of performance of Chinook salmon to meet escapement and subsistence needs on the Yukon and Kuskokwim Rivers. The Council would like to encourage the FSB to dialogue with NPFMC for specific strategies to protect Chinook and chum salmon passage in the Bering Sea. This Council feels like conservation methods of the in-river user groups have been exhausted and further exploration of the bycatch harvest and activities on the Bearing Sea need to be discussed.

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

Sincerely,

Jack Reakoff, Chair
Western Interior Regional Advisory Council

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



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

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



SEP 13 2012

FWS/OSM 12058.CJ

Mr. Jack L. Reakoff, Chair
Western Interior Alaska Subsistence
Regional Advisory Council
114 Newhouse Street
Wiseman, Alaska 99790

Dear Mr. Reakoff:

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

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

Issue 1: Council and Board Meeting Cycles

The meeting windows for the Board and the Regional Advisory Councils need to be adjusted to better suit the needs of subsistence users whose activities revolve around seasonal patterns and conditions. This is an important step to provide user-friendly and meaningful participation of rural users in the Federal process, including Tribal consultation. Nature drives how people participate in subsistence as well as when and if they are able to participate in this public process.

The Board meeting window in January is problematic as it is extremely difficult for individuals to leave home and travel when much of Alaska is dealing with brutally cold conditions. At extreme cold temperatures, travel can be dangerous if not unavailable. Shifting the Federal Subsistence Board Wildlife meeting to mid-April or early-May (after the current Regional Advisory Council winter windows) avoids the overlap with other meetings of the State. Both staff and Tribal representatives have to divide their attention and time when these meetings are taking place concurrently. Further, some of the advisory committees and subsistence resource

Mr. Jack L. Reakoff

2

commissions throughout the state also meet in January. It would better facilitate information exchange if the Board window was after these other meeting cycles.

There is a real need to synchronize the publication and effect of Federal fish/shellfish and wildlife regulations. Fish/shellfish and wildlife regulations should follow the regulatory year July 1 through June 30. By changing regulation publication, it allows the whole Federal subsistence program freedom to synchronize meetings with the real life subsistence cycles.

If the fall Council meeting window were moved back one month, there would be more time for proposals and issues to be reviewed by rural subsistence users and to provide valid comments and feedback. The Board should take notice of the fact that there are four weeks during the fall 2012 meeting cycle where Councils chose to not schedule meetings. The current Council fall cycle does not provide the Tribal councils meaningful input into the Regional Advisory Councils, which they desire and the Department of Interior directive mandates. When the Tribal consultation teleconferences were held in fall 2011, only two participants from the 30+ communities in our region participated. One reason for this low turnout was due to the fact that many people were still out fishing, hunting, and cleaning up camps.

Response

The Board appreciates your input and has heard similar concerns from other Regional Advisory Councils as well. During our May 9, 2012 meeting, the Board received a background briefing on the meeting-cycle issue, and tasked the Office of Subsistence Management (OSM) and the Interagency Staff Committee to develop possible options for modifying the annual cycle, taking into account annual subsistence activities as well as other issues affecting the program. Staff have drafted a briefing paper including possible options, which are being presented to the Regional Advisory Councils this fall for their review and input. OSM staff and the Council Coordinator will facilitate a discussion of the options at each Council meeting. The Board will then consider the input from the Councils at its January meeting.

Issue 2: Mesh Size and Incidental Harvest Mortality Data Needs within the Directed Chum Fishery

The Council would like to know what were/are the effects of the 7.5" net mesh size implemented on the Yukon River in 2011. The Council would also like to see a study to develop an incidental harvest mortality loss for Chinook salmon, in the Yukon Directed Chum salmon fishery using 6" mesh. Currently there is no scientific based information to evaluate if the mesh size restrictions are enough of a factor in helping Chinook salmon stocks recover. There is also an unknown number of Chinook salmon dropping out of Chum gear without indices to calculate mortality.

Response

After only one year of use of gillnets with 7.5" net mesh size on the Yukon River, it is difficult to make definitive statements concerning the effects of this smaller mesh size. For Chinook

Mr. Jack L. Reakoff

3

salmon, preliminary data for 2011 suggests that the 7.5” net mesh size was more efficient (more fish caught per unit effort) and proportionally caught more males and smaller individuals than the 8.5” mesh size gillnets previously used.

The Board is also interested in learning about effects on Chinook salmon resulting from the 6” mesh size used in the directed chum salmon fishery. The 2012 request for proposals for the Fisheries Resource Monitoring Program did include the following Yukon Region priority information need: “Effects on salmon stocks (e.g., gillnet dropout mortality) and users of fishery management practices implemented to conserve Chinook salmon (e.g., gillnet mesh size, gillnet depth, and windowed openings).” However, no proposals addressing Chinook salmon gillnet dropout mortality were received. The Board has tasked the Office of Subsistence Management staff to work with the Council to develop a priority information need concerning incidental harvest mortality of Chinook salmon, in the Yukon River directed chum salmon fishery for the 2014 request for proposals. Developing priority information needs is on the agenda for the fall 2012 meeting of the Council.

Issue 3: Analysis to Implement a Section 804 Hunt for Subsistence

The Council would like to re-visit issue #11 from the 2010 Annual Report. The Council requested the Federal Subsistence Board initiate a Section 804 analysis in Unit 19A [moose] to develop another tool to prioritize subsistence users if a problem with the resource exists. During times of shortage, similar to the State of Alaska Tier II hunt, it is important to give rural residents priority of the resources based on their direct dependence of those resources. This process will ensure that rural residents with a long history of use be able to acquire a Federal subsistence permit to meet their needs. ANILCA Section 804 requires consideration of (1) customary and direct dependence upon the populations as the mainstay of livelihood; (2) local residency; and (3) the availability of alternative resources. Currently, Federal drawing permits only address clause (2) of Section 804, but not clauses (1) and (3).

Response

The Board appreciates the Council’s concern for providing a subsistence priority and ensuring that all rural residents with a long history of use are able to acquire a subsistence permit.

As the Council is aware, in Unit 19A Remainder, where Federal public lands are closed to moose hunting except for a drawing permit for a number of communities, a Section 804 analysis was written in connection with WP07-35. This analysis included consideration of (1) customary and direct dependence upon the populations as the mainstay of livelihood; (2) local residency; and (3) the availability of alternative resources. It was the Council’s recommendation to modify WP07-35, which the Board adopted, that created the permitting system that exists today. The drawing permit was used as a tool to allow all the residents of the affected communities the same chance to obtain one of a limited number of permits. It has been the policy of the Board to recognize customary and traditional uses on a community basis, not on an individual basis. If your Council is willing to devote time in a work session to develop criteria for distinguishing

Mr. Jack L. Reakoff

4

between individuals for a future Section 804 analysis, it could be used as a proposal for the Board to consider. The Council could alternatively propose different communities or systems of hunt allocations.

In Unit 19A North, there is no Federal season and the area is closed to all moose hunting. The Council may want to request a Section 804 analysis in the form of a proposal to change the regulations to determine which communities would have a priority for harvesting these animals when a hunt can again be opened in this area. Submitting a proposal is the appropriate mechanism to make changes to the regulations, as was done recently in Unit 18.

If the Council chooses to pursue any of the options suggested in this response, it should submit a proposal when the wildlife proposal period opens during the winter 2013 meeting cycle.

Issue 4: Preservation Practices

It has been argued that if you sell processed fish, then State health regulations apply and the Board has adopted this same argument. The Council has recognized the process of making salmon into strips or jarring as a long-standing traditional practice. The Council feels that the Board should recognize these customary preservation practices as part of customary trade (drying and smoking, jarring, freezing and conveyance). These preservation methods are an integral part of customary trade and use of fish throughout the Western Interior region. Customary and traditional preservation methods are integral to customary trade and the Council would like to see these concepts recognized accordingly.

Response

Section 803 of ANILCA defines “subsistence uses” as “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 50 CFR 100.27(a)(11) & (12) and 36 CFR 242.27(a)(11) & (12), a Federally qualified user may exchange for cash “fish, their parts, or their eggs” with others so long as the customary trade does not rise to the level of a “significant commercial enterprise” (50 CFR 100.4 and 36 CFR 242.4). This regulation states the type of customary trade in which Federally qualified subsistence users can participate.

The Board makes determinations on which fish stocks and wildlife populations have been customarily and traditionally used for subsistence. To make these determinations, the Board relies on eight factors, which exemplify customary and traditional use.

Factor 5 refers to “a means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations, including consideration of alteration of past

Mr. Jack L. Reakoff

5

practices due to recent technological advances, where appropriate” (50 CFR 100.16 and 36 CFR 242.16).

Residents of the Yukon River Drainage and the community of Stebbins have customary and traditional use determinations for salmon, with the exception of fall chum salmon. Residents of the Yukon River Drainage and the communities of Chevak, Hooper Bay, Stebbins, and Scammon Bay have a customary and traditional use determination for fall chum salmon.

By making these determinations, the Board has recognized among the eight factors “a means of handling, preparing, preserving, and storing of fish or wildlife which has been traditionally used by past generations...” In other words, the Board has already recognized the process of making salmon into strips or jarring as a long-standing cultural practice. But this recognition is not an assertion that such practices are safe for human consumption. Such assertions are not within the Board’s jurisdiction.

However, for the last decade, the Board has advised Federally qualified users that they could be subject to civil or criminal enforcement by the State if they engage in customary trade of processed fish without following State food safety laws governing processed fish. This places the responsibility on the rural user to choose whether to comply with State food safety laws when engaging in customary trade.

Issue 5: High Traffic of Jet Boats on the Aniak River

Local people are very concerned about the amount of jet boat traffic, including guided, that is going up the Aniak River. Area residents are seeing larger boats with larger loads which could cause erosion on the river, creating concern for native species such as rainbow trout. The Aniak River is a major tributary for all salmon species and is the northernmost river where native rainbow trout return to spawn. The Council would like to see the Board and applicable land managers take what steps are necessary to assess the impacts of jet boat traffic on the Aniak River and implement measures to ameliorate such impacts.

Response

The Board understands your concerns about impacts from jet boats; however, the Board does not have the authority to manage access to navigable waters. Additionally, there is little Federal land along the river, so Federal managers would not be able to adequately address this issue (see enclosed map). This issue is under the jurisdiction of the State of Alaska, Department of Natural Resources (DNR). The Council’s concerns have been forwarded to the appropriate DNR staff. If the Council wishes to pursue this issue further the Council may want to provide its Council Coordinator with input on how it would like to proceed. In addition, the following individuals can be contacted for more information:

Mr. Jack L. Reakoff

6

Thompson, Richard Natural Resource Mgr III	Natural Resources MLW-LAND ANCHORAGE	(907)269-8559 richard.thompson@alaska.gov	550 W 7th Ave Ste 900c Anchorage, AK 99501- 3577
Cox, Clark Natural Resource Mgr II	Natural Resources MLW-LAND ANCHORAGE	(907)269-8565 clark.cox@alaska.gov	550 W 7th Ave Ste 900c Anchorage, AK 99501- 3577

In closing, I want to thank you and your Council for their continued involvement and diligence in matters regarding the Federal Subsistence Management Program. I speak for the entire Board in expressing our appreciation for your efforts and our confidence that the subsistence users of the Western Interior region are well represented through your work.

Sincerely,

/S/

Tim Towarak, Chair
Federal Subsistence Board

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

Fall 2013 Regional Advisory Council Meeting Calendar

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

Meeting dates and locations are subject to change.

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

Winter 2014 Regional Advisory Council Meeting Calendar

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

Meeting dates and locations are subject to change.

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



**Kanuti National Wildlife Refuge's Report to the
Western Interior Regional Subsistence Advisory
Council – March 2013**

Moose

Population surveys

- Kanuti National Wildlife Refuge (Refuge) usually assists Alaska Department of Fish and Game with a fall moose count in the Refuge. In fall 2012 we did not conduct a moose GSPE survey because survey weather conditions required by our protocol were not met. We usually conduct the surveys in November but there must be at least 10" of snow (or a slightly less amount and frost on vegetation) on the ground so that conditions are consistent year-to-year. This past fall the snow depth on the Refuge was too shallow to conduct a comparable survey. Nonetheless, we have no reason to expect that the moose population on the Refuge changed significantly from 2011 when we did the last survey, because mortalities of radio-collared moose are not much different from past years.

Radio Telemetry Study Update

- Since 2008 Kanuti Refuge, Gates of the Arctic National Park and Preserve, the Alaska Department of Fish and Game, and the Bureau of Land Management have been cooperating in a radio-telemetry study of moose in Game Management Units (GMU) 24A and 24B. We are wrapping up the 4-year study this spring. The study helped us collect information on several things including moose movements, habitat use, twinning and mortality. Although the official end of data acquisition for the study is this spring, Kanuti Refuge and Alaska Department of Fish and Game will still use the radio-collars to monitor moose for a period after that time.

Moose Browse study

- We began a moose habitat study late last summer. This project is in cooperation with the University of Alaska, Fairbanks and is designed to help us understand how moose use different aged burns -- a good thing to know on Kanuti Refuge where 70% of the Refuge has burned in the past 60 years. We will be traveling to different aged burns on the Refuge with snowmachines in March and by boat in August to collect more data this year. Prior research elsewhere in Alaska has shown that moose prefer burns from 10-30 years old for winter browse.

Federal Subsistence Moose Hunting

- Recent Refuge actions have resulted in Alatna/Allakaket hunters having one vendor from which to obtain their federal and state hunt permits, and purchase a current hunting license. There are two federal subsistence permitted moose hunts on Kanuti Refuge and nearby BLM lands. The joint State-Federal winter hunt for all drainages of the Koyukuk River downstream from and including the Henshaw Creek requires a state permit for state and private lands, and there is a single federal permit for the federal August 25 – October 1 and the December 15 – April 15 seasons. A federal permit is required for federal fall season for September 26 – October 1 upstream of the Henshaw Creek drainage. Participation in the federal permitted hunts on refuge/BLM lands was lower than expected last year. Various factors like available caribou, weather conditions, and complex regulations may be the reasons for the lower than expected participation.

Both state and federal winter seasons (December 15 – April 15: one antlered bull) were adopted with a four-year sunset clause due to expire in 2014. Regulatory proposals will be needed to allow this winter hunt to continue both in federal and state regulations.

Subsistence Updates

Advisory & Working Groups

Refuge staff plans to attend the winter meeting of the Koyukuk River Fish and Game Advisory Committee meeting scheduled for February 16 in Hughes. The committee will be considering submitting wildlife proposals for the Federal Subsistence Board and Alaska Board of Game. Federal wildlife proposal due date is Friday, March 29; Board of Game proposal due date is May 1.

Refuge staff continued to monitor regulatory proposals that involve subsistence fisheries that relate to Refuge waters. This includes the recent fisheries proposals before the Alaska Board of Fisheries for the AYK region and the Federal Subsistence Board for the Yukon River Region. Board actions are available directly from the two Board's support staff or from Refuge staff.

The Refuge staff understands the importance of waterfowl harvest to subsistence users in the vicinity of the Kanuti Refuge and continued to be directly involved with the Alaska Migratory Co-Management Council (AMBCC) by serving on the Harvest Survey Committee and attending the Council's public meetings. The AMBCC will be meeting on April 2 – 4, 2013 in Anchorage. Attention is currently focused on AMBCC developing eligibility guidelines for village councils to allow residents outside subsistence harvest areas to participate in the spring waterfowl hunts.

Habitat Inventory

The FWS regional office will conduct a vegetation classification study on several interior Refuges, beginning this summer. Kanuti Refuge is one of the refuges that will be involved. Teams of botanists will fly or boat to certain locations on the Refuge and walk transects from lower elevations to higher elevations, collecting vegetation and abiotic data at plots along their route. The purpose is to conduct a floristic inventory and document landscape vegetation patterns in the interior.

Wildlife/Weed Surveys this summer

We will be looking for invasive plants and conducting breeding bird surveys along two Refuge rivers by boat this summer. The purposes are multifaceted: 1) to develop a method to monitor nesting northern goshawks and other forest-dwelling hawks using broadcast calls, 2) participate in the national Breeding Bird Survey by conducting a route along Kanuti River, and 3) to look for weeds that may have moved downstream from the Dalton Highway and become established on the Refuge. We plan to survey the South Fork Koyukuk and Kanuti Rivers.

Caribou

We have been monitoring the locations of Western Arctic Caribou in relation to Kanuti Refuge. Most of the satellite-collars are far to the west of the Refuge. As a result, we have not seen, and do not expect, anywhere near as many of these animals on the Refuge this winter as last year.

Water Resources

Stream Gages

USFWS's Water Resources Branch will continue to monitor stream flow and other variables at 8 stream gages in 2013. The gages are installed on rivers and creeks within or near Kanuti Refuge including along the main stem Koyukuk, South Fork Koyukuk, Kanuti, and Kilolitna rivers, as

well as Fish, Henshaw, and Holonada Creeks. Monitoring began in 2009 and will continue through this year.

Stream studies

Beginning in summer 2011, Kanuti Refuge and USFWS Water Resources Branch partnered with the University of Alaska Environment and Natural Resources Institute to study water quality and flow conditions on three representative rivers (Kanuti, South Fork Koyukuk, and Kanuti-Kilolitna Rivers) on Kanuti Refuge. We will continue this work this summer. Determining baseline water quality data are especially important in light of anticipated climate warming and the recent increase in mining activity in tributaries upstream of the Refuge boundary.

Salmon studies

The South Fork Koyukuk River, located within the Kanuti Refuge, is a major tributary of the Yukon River and known spawning ground for Chinook and Chum salmon. Pending available funding, Tanana Chiefs Conference will work with the Refuge to collect biological samples from spawning Chinook salmon in the South Fork Koyukuk River. Collected information will establish genetic baselines for upper Koyukuk Chinook and will help to identify the relative contribution of upper Koyukuk-bound Chinook salmon stock in the Yukon River's mixed-stock fishery.

The Tanana Chiefs Conference has operated the Henshaw Creek weir successfully for the past five years and will continue in 2013. The weir was in operation from June 24 to August 4, 2012. Record numbers of chum salmon were observed during the 2012 season with approximately 292,082 chum counted. Chinook salmon counts were down from the 2011 season with approximately 922 Chinook salmon counted for 2012

Administration

Budget

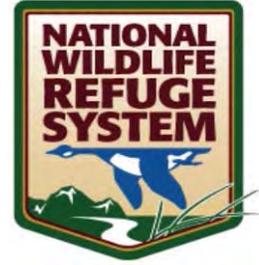
We have been advised to plan for a 5% budget cut. Pending action in Congress, we could get cut less, or more. In the current economic situation we would be extremely happy with a "flat" budget" but are bracing for deeper cuts. If cuts do happen it will reduce our ability to travel to meetings and do fieldwork on Kanuti Refuge. We will try to do the best that we can, and be as efficient as we can with the funding that we are allocated.

Environmental Education and Outreach

- Allakaket Outreach Event – Kanuti Refuge, in partnership with Gates of the Arctic National Park and Preserve, will be visiting Allakaket on March 7. Staff visit school classrooms with various activities and in the evening, an outreach event will be held that is open to all community members. There will be informative presentations, games, and dinner.
- Henshaw Creek Science Camp – If funded, we plan to conduct the Saagedleno' (Henshaw Creek) Weir Science Camp again this summer in July. The science camp is hosted by Kanuti Refuge and The Tanana Chiefs Conference in partnership with The Fairbanks North Star Borough District Watershed School, The Friends of Alaska National Wildlife Refuges, and the Yukon Koyukuk School District. The goal of the camp is to create a learning environment where elders, students, and staff gain information on western science and traditional skills.
- Facebook–Kanuti National Wildlife Refuge now has a Facebook page (www.facebook.com/kanuti.refuge). Interesting information about happenings on the Refuge and its wildlife are contained in this regularly-updated web page.

If you have any questions about Kanuti feel free to call the refuge staff at 877-220-1853. Our headquarters office is located in the Fairbanks Federal building, at 101 12th avenue. Our field station is located near the airport at Bettles, along with the NPS ranger station and visitor center. If any WIRAC members are ever in the vicinity of Fairbanks or Bettles, we invite you to stop by for a visit!





Innoko National Wildlife Refuge Update

Western Interior Regional Advisory Council (WIRAC)

March 4-5, 2013 – Galena, AK

Moose

Unit 21E Federal Winter Moose Hunt:

The Innoko National Wildlife Refuge (NWR), Office of Subsistence Management (OSM), and the Bureau of Land Management (BLM) spent a considerable amount of time preparing for the 2013 (Regulatory year 2012/2013) Federal Winter Moose Hunt in Unit 21E. This year, a second permit was created due to the granting of Customary and Traditional use by the Federal Subsistence Board to Aniak, Chuathbaluk, Upper Kalskag, and Lower Kalskag for the area of Unit 21E south of Paimiut Slough. The original permit grants access to all Federal Public Lands for rural residents of 21E and Russian Mission, while the new permit details a restricted hunt area for the four villages mentioned above. Permitting for the GASH villages and Russian Mission will be done by the Innoko NWR and the remaining four villages will be permitted by BLM in early February. Because this update was written prior to permitting, results and updates will be provided at the WIRAC meeting in Galena (March 4-5, 2013) or via written correspondence with the the chairman of the council.

GSPE Moose Survey:

The Innoko NWR, with assistance from the Alaska Department of Fish & Game (ADF&G) and the Koyokuk/Nowitna NWR, will attempt to complete a GSPE survey for Game Management Unit (GMU) 21A in late February through early March of 2013. Survey efforts will primarily focus on areas within the refuge boundary. This will be the first survey of its kind for GMU 21A and will add a great deal to the Refuge's moose monitoring program. ADF&G will also benefit by receiving population data from the refuge survey that can be extrapolated to other areas within the GMU. Results of the survey will be presented in oral and written updates at the Galena WIRAC meeting or via written correspondence with the chairman of the council.

Composition Survey:

The Koyokuk/Nowitna NWR biological program assisted with the completion of moose composition surveys on the Innoko NWR. Pilots and biologists surveyed the trend count area that was developed during the November 2011 survey (see Fig. 1). In addition, the survey crews covered additional units

that were not included in the 2012 survey area (see Fig. 1). It is likely that some minor adjustments will be made to the trend count area by dropping 1-2 of the original survey units and adding 1-2 new units for the 2013 effort. This is an effort to target survey units with the highest quality moose habitat, hence yielding the highest number of moose observed (on average). See Table 1 for a summary of the raw data from the 2011 and 2012 surveys, and Table 2 for comparison of results in the trend count area between the 2011 and 2012 surveys.

Table 1: Comparison of raw data collected during the 2011 and 2012 composition surveys on the Innoko NWR.

<u>2011</u>	<u>2012</u>
165 moose observed (14 moose/hr.)	163 moose observed (11 moose/hr.)
72 cows	81 cows
32 calves (19%)	23 calves (14%)
7 sets of twins	3 sets of twins
44 calves:100 cows	28 calves:100 cows
15 small bulls	10 small bulls
27 medium bulls	21 medium bulls
17 large bulls	25 large bulls
59 total bulls	56 total bulls
82 bulls: 100 cows	69 bulls:100 Cows

Table 2: Comparison of survey results in the trend count area between the 2011 and 2012 surveys.

Year	GMU	Bulls			Cows w/Calves			Total Moose	Bulls:100 Cows	Calves:100 Cows
		S	M	L	w/0	w/1	w/2			
2011	21A	9	17	15	32	12	6	115	82:100	48:100
2012	21A	7	14	16	38	11	3	106	71:100	33:100

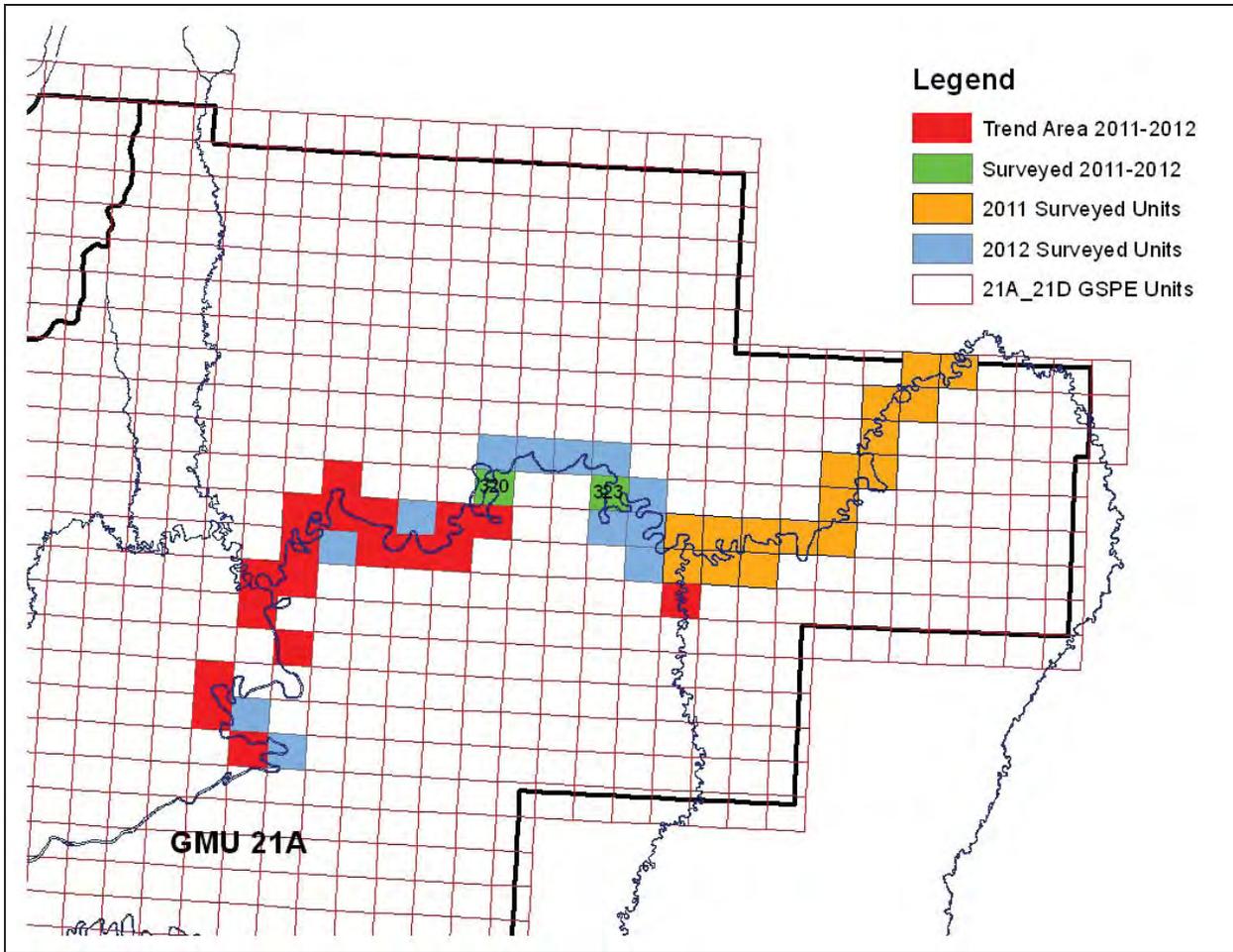


Figure 1. Map depicting GSPE sample units surveyed during 2011 and 2012 composition surveys in unit 21A.

21E Moose Telemetry Project:

The moose telemetry project is an ongoing cooperative effort between Innoko NWR, BLM, and ADF&G. The project was initiated in March 2010 when 44 moose (24 males and 20 females) were captured and fitted with radio collars carrying GPS receivers; an additional 10 females were caught and fitted with conventional VHF radio collars. The ADF&G has contracted with ABR, Inc. out of Fairbanks to assist with managing the data and making it accessible to all cooperating agencies. This will help streamline data analysis, and simplify data management and information sharing. This project is scheduled to end during the spring of 2014, at which time all collars still active in the field will be recovered. The data collected from this project will help cooperating agencies manage the moose population in Unit 21E. An example of an objective shared by all agencies involved is to determine seasonal movements of moose that overwinter in the Yukon and Innoko River floodplains to assist managers in defining winter range, spring calving areas, and moose distribution during hunting season and periods of aerial surveys in autumn (age-sex composition) and late winter (density).

Inventory and Monitoring

Snow Marker Surveys:

The Innoko NWR pilots resumed the annual task of conducting snow marker surveys. Unfortunately, this task was not completed during the winter of 2011/2012 due to the lack of available pilot and aircraft. This long-term dataset will help to determine changes in the environment and will aid in analyzing future moose survey data. Several of our snow markers have degraded to the point that they are of little value. The refuge has purchased new markers and selected sites for future placement. The sites are near old snow marker locations and replicate the original site (i.e. slope, shading, etc.) as close as possible.

Rural Education & Outreach

Furbearer Management & Trapping Workshop:

The Innoko NWR and the ADF&G presented the third Furbearer Management & Trapping Workshop in the village of Holy Cross in late January of 2013. A robust agenda was created to introduce the participants of the workshop to the many facets of trapping and furbearer management. Refuge staff presented the reasons for the development of the workshop and the importance of carrying on the trapping heritage of native villages in interior Alaska. A wildlife biologist with the ADF&G discussed state game laws related to trapping and their importance in the management of furbearers for sustainable use. An experienced trapper from McGrath, AK was generous enough to volunteer his time, experience and knowledge in leading the bulk of the instruction on trapping techniques, fur handling and marketing, furbearer ecology, and much more. Participants in the workshop had the opportunity to handle and learn about different types of traps, construct snares specific to their interests, and participate in a marten skinning and stretching demonstration.

Refuge Biologists Visit GASH Area Schools

Wildlife Biologists, Jerry Hill and Dara Whitworth, took time to visit with students from all four GASH area schools. These were short interactive sessions aimed at building relationship with not only the students but the school staff as well. Although our visits with the schools were short, we hope to build a long-term relationship and provide a high quality environmental education program for the students. The Refuge is currently working on an education program about moose that utilizes data from the moose telemetry project. Refuge staff and partners, BLM and ADF&G, have developed a draft program and will work closely with teachers to make sure the program meets teacher and curriculum needs prior to scheduling school visits.

Alaska Migratory Bird Calendar

The Innoko NWR worked with the Iditarod Area School District to encourage students to participate in the U.S. Fish & Wildlife Service's Alaska Migratory Bird Calendar Contest. The purpose of the contest is to encourage local children to learn about bird conservation. Students from across Alaska submit poster and/or written literature entries addressing the calendars theme, "Healthy Birds for Healthy Food" for

the 2014 calendar contest. At each participating location (i.e., Refuge), five local judges select 24 winners (12 posters and 12 literature) to be entered in the state-wide contest. Of all the submissions, 12 posters and 12 literature entries are selected for publishing in the calendar and the winners receive fun prizes. Refuge Managers from participating stations also select a local winner in each category to be included in the first two pages of the calendar.

Fire Management

The Innoko NWR is currently working with BLM, Tanana Chiefs Conference, and members of the Southwest State Forestry office on a Community Wildland Fire Protection Plan for the village of Shageluk.

The refuge is changing approximately 10,240 acres of Full Fire Management protection to Limited Fire Protection within the Innoko Wilderness (see maps). The new boundary line more closely follows natural barriers and matches up with fire protection boundaries on Doyon lands just outside of the southern boundary. All potentially affected parties (land owners/managers) are being notified by certified mail.

Personnel

Innoko NWR senior biologist, Steve Kovach, accepted a position with the U.S. Forest Service, he started his new position in November, 2012. Jerry Hill, wildlife biologist with Innoko NWR has since been selected as the new senior or lead wildlife biologist at the Refuge.



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

Federal Subsistence Board News Release



Forest Service

For Immediate Release:

January 14, 2013

Contact:

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

Call for Proposals to Change Federal Subsistence Hunting and Trapping Regulations

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

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

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

Submit proposals:

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

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

You may call the Office of Subsistence Management at 800-478-1456 or email subsistence@fws.gov with your questions.

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

-###-

2014–2016 Federal Subsistence Wildlife Hunting and Trapping Proposal

(Attach additional pages as needed).

Name: _____

Organization: _____

Address: _____

Phone: _____ Fax: _____

E-mail: _____

**Submit proposals by
March 29, 2013**

Questions?

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

E-mail: subsistence@fws.gov

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

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

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

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

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



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

Federal Subsistence Board News Release



Forest Service

For Immediate Release:

January 14, 2013

Contact:

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

Federal Subsistence Board Seeks Comments on Rural Determinations Process

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

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

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

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

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

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

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

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

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

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

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

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

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

Submit written comments by one of the following methods:

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

E-mail: subsistence@fws.gov

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

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

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

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

-###-

Implementation Guidelines

for the

Federal Subsistence Board Government-to-Government Tribal Consultation Policy

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

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

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

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

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

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

OSM Sends a return receipt letter to Tribes:

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

¹ Department of Interior Policy on Tribal Consultation

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

Regulatory process;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Other:

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

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

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

Recommended Training Topics for Federal Staff and Tribal Citizens

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

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

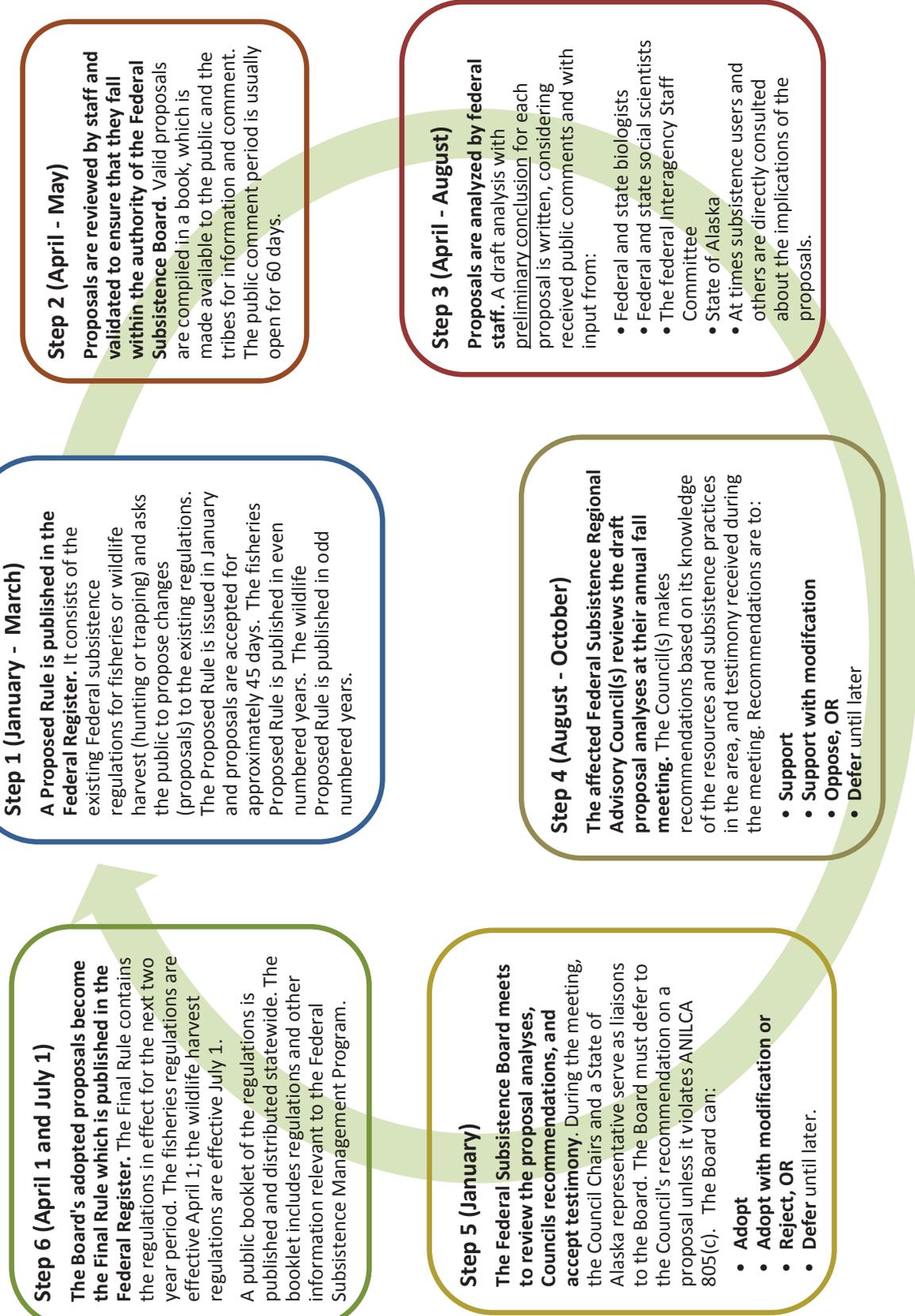
Accountability, Reporting, and Information Management

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



Appendix B

FEDERAL SUBSISTENCE MANAGEMENT PROGRAM ANNUAL REGULATORY PROCESS AT A GLANCE



Step 6 (April 1 and July 1)

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

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

Step 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.

Southeast Alaska Subsistence Regional Advisory Council

January 22, 2013

Customary and Traditional Use Determination Recommendation Briefing

Issue:

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

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

Background:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Southeast Council Findings:

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

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

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

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

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

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

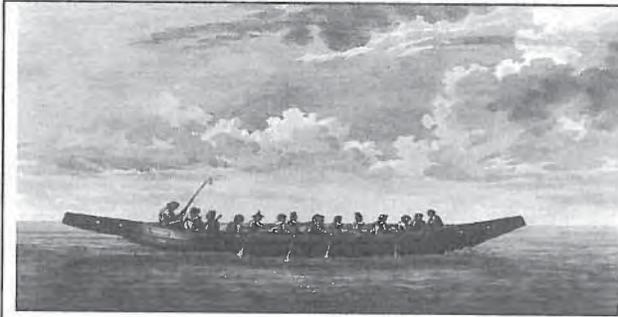
Action:

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

Key Contacts:

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

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



**Southeast Alaska Subsistence Regional
Advisory Council**

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

kaadashan@alaska.net

RAC SE13001.RL

JAN 11 2013

Mr. Jack L. Reakoff, Chair
Western Interior Alaska Subsistence
Regional Advisory Council
114 Newhouse Street
Wiseman, Alaska 99790

Dear Mr. Reakoff:

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

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

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

Mr. Jack L. Reakoff

2

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

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

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

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

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

Mr. Jack L. Reakoff

3

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

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

Gunalchéesh (thank you).

Sincerely,
/S/

Bertrand Adams Sr., Chair

Enclosures

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

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

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

PURPOSE

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

INTRODUCTION

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

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

BOARD AUTHORITIES

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

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

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

POLICY

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

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

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

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

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

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

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

Decision Making

The Board shall:

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

Additional Guiding Considerations:

The Board recognizes that:

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

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

Definitions:

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

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

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

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

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

Southcentral Subsistence Regional Advisory Council

Comments on Draft C&T Policy

Decision Making

The Board shall:

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

Together,

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

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

Additional Guiding Considerations:

The Board recognizes that:

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

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

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

On Page 3 of the Draft Policy:

Decision Making

The Board shall:

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

Chuck Burkhardt
PO Box 272
Gustavus, AK. 99826

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

Federal Subsistence Board and Staff:

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

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

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

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

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

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

Respectfully,

Chuck Burkhardt

/S/

To: Theo Matuskowitz and Subsistence Board

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

Re: Customary and Traditional use Policy Draft.

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

Thanks for listening.

Erik Weingarh



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

November 28, 2007

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

RE: Comments on Draft Customary & Traditional Use Policy

Dear Mr. Matuskowitz:

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

Purpose

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

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

Introduction

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

Board Authorities:

No Comment

Policy

Paragraph one - No comment

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

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

Paragraph four - No comment

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

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

Decision Making

Bullet one - No comments

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

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

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

Bullet five - No comments

Additional Guiding Considerations

No comment

Definitions

No comment

Summary

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

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

Thank you for the opportunity to provide these comments.

Sincerely,

/S/

Wilson Justin

Cc MSTC Board
Elaine Sinyon
Shawn Sanford



P.O. Box 39070
Ninilchik, Alaska 99639
Ph: 907 567-3313 / Fx: 907 567-3308
E-mail: ntc@ninilchiktribe-nsn.gov
Web Site: www.ninilchiktribe-nsn.gov

November 30, 2007

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

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

Dear Federal Board Members,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,
/S/

Ivan Encelewski
NTC Executive Director



YAKUTAT TLINGIT TRIBE

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

December 7, 2007

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

Subject: Policy on Implementation of Customary and Traditional Use Determinations

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

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

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

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

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

Thank you for the opportunity to respond.

Sincerely,

/S/

Victoria L. Demmert, President
Yakutat Tlingit Tribe

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



November 28, 2007

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

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

Dear Federal Board Members,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

/S/

Linda Tyone,
Chairperson



CENTRAL COUNCIL

Tlingit and Haida Indian Tribes of Alaska

ANDREW P. HOPE BUILDING

Office of the President

320 W. Willoughby Avenue • Suite 300

Juneau, Alaska 99801-9983

December 7, 2007

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

Subject: Policy on Implementation of Customary and Traditional Use Determinations

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

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

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

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

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

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

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

Sincerely,

/S/


William E. Martin
President

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

December 1, 2007

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

RE: Comments on Draft Customary and Traditional Use Policy

Dear Federal Board Members:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

/S/

Julie Kitka
President

/chd

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

SARAH PALIN, GOVERNOR

P.O. BOX 115526
JUNEAU, AK 99811-5526
PHONE: (907) 465-4100
FAX: (907) 465-2332

December 7, 2007

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

Attn: Theo Matuskowitz
e-mail at subsistence@fws.gov

Dear Mr. ^{Mike}Fleagle:

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

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

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

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

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

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

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

Sincerely,

/S/

Ken Taylor
Deputy Commissioner

Attachment A: Section Specific Comments on the Draft Policy

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

December 7, 2007, C&T Policy Review
Attachment A, Page 1 of 6

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

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

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

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

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

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

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

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

This section of Title I actually states:

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

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

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

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

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

December 7, 2007, C&T Policy Review
Attachment A, Page 3 of 6

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

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

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

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

December 7, 2007, C&T Policy Review
Attachment A, Page 4 of 6

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

December 7, 2007, C&T Policy Review
Attachment A, Page 5 of 6

Decision Making:

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

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

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

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

Additional Guiding Considerations

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

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

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

Additional Guiding Considerations

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

Definitions

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

ATTACHMENT B

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

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

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

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

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

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

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

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

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



December 4, 2007

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

FAX: (907) 786-3898

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

Dear Mr. Matuskowitz,

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

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

Policy Purpose and Background:

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

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

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

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

Review and Comments:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Summary:

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

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

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

Respectfully,

Ricky Gease, Executive Director
Kenai River Sportfishing Association



UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 110
Juneau, Alaska 99801-1172
(907) 586-2820
(907) 463-2545 Fax
E-Mail: ufa@ufa-fish.org
www.ufa-fish.org

December 7, 2007

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

Re: Draft Customary and Traditional Use Policy

Dear Mr. Matuskowitz:

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

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

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

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

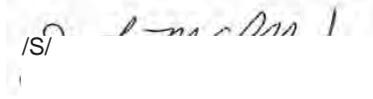
The policy also states that determinations "must be based on a community's long term consistent pattern of use" and that "in all instances, the Board makes a decision based upon the best available information." However, without accountability in the decision making process, it is unclear how the "best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

Theo Matuskowitz

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

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

Thank you for your consideration,



Joe Childers
President

MEMBER ORGANIZATIONS

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

BRIEFING ON CONSULTATION WITH TRIBES AND ANCSA CORPORATIONS

I. INTRODUCTION

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

II. BACKGROUND

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

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

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

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

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

III. POSITION OF INTERESTED PARTIES

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

IV. FWS POSITION

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

National Park Service Updates for the Western Interior Regional Advisory Council Meeting March 5 and 6, 2013

Compiled by Marcy Okada, Program Manager for Subsistence and Ethnography, Gates of the Arctic National Park and Preserve

- The Gates of the Arctic National Park Subsistence Resource Commission (SRC) did not have a meeting in fall 2012 due to a budget system conversion. The SRC plans to meet this spring to discuss topics such as the Ambler Mining District access route, Foothills West Transportation Access (Road to Umiat), and other items of concern and interest.
- **New Chief of Integrated Resources:** Tom Liebscher retired in November 2012 and our new Chief of Integrated Resources is Jeff Rasic. The Chief of Integrated Resources manages the Natural Resources Division, Cultural Resources Division, the Subsistence Program, and the Fire Management Program.
- **Gates of the Arctic National Park and Preserve Compendium:** A public meeting was held via teleconference in Bettles/Evansville on December 20, 2012 to discuss the Board of Game wildlife regulations that would affect Preserve lands. The provisions discussed were extending coyote and wolf hunting seasons and were based on recent changes to State of Alaska hunting regulations. The State has extended the hunting seasons for wolves and coyotes into the summer in several areas, including nine National Preserves. The NPS is proposing to prohibit the take between May 1 and August 9 because it is the period when wolves and coyotes are denning and raising offspring and their pelts have little trophy or economic value. This meeting was the first step leading to a potential implementation of restrictions in the annual Superintendent's compendium, an annual compilation of temporary closures and similar restrictions.
- **Western Arctic Caribou Herd Information - Summer 2012:** Collared caribou were primarily north of park units during calving and northwest during insect relief periods; a time when mosquitoes, nasal bots and warble flies all plague caribou. In July 2012, approximately 300,000 caribou from the herd came together near Cape Krusenstern National Monument and Noatak National Preserve.

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

For more Information regarding Gates of the Arctic National Park and Preserve, please contact:
(907) 457-5752

For more information regarding Gates of the Arctic National Park and Preserve Subsistence Program, please contact: Marcy Okada, Program Manager for Subsistence and Ethnography:
(907) 455-0639.

**Report to the Western Interior Region Advisory Council – Holy Cross, Alaska.
5-6 March 2013**

Bureau of Land Management,
Central Yukon Field Office, Fairbanks, Alaska

The BLM administrative units that overlap the Western Interior Region are the Central Yukon (CYFO) and the Anchorage (AFO) Field Offices. This report is for the CYFO.

Planning (Contact: Jeanie Cole 474-2340)

- BLM will be starting development of a Resource Management Plan (RMP) with an associated Environmental Impact Statement (EIS) for the Central Yukon Planning Area in the coming months. When finalized, the plan will provide future direction for approximately 16 million acres of BLM-administered public land in central and northern Alaska, including the Dalton Highway Corridor, BLM-managed lands in the central Yukon River watershed, the eastern Nulato Hills, and the Central Arctic Management Area Wilderness Study Area. We will be holding public meetings in the region to get public comment on issues in the planning area. Once meetings are scheduled, we will publicize them through the BLM website and local media. If you would like to be on the mailing list please provide your name and address to Jeanie Cole at j05cole@blm.gov or at the phone number listed above.

Education/Outreach (Contact: Kelly Egger, 474-2242):

- No new information

Fisheries (Program contact: Bob Karlen, 474-2315):

- In 2013, the Central Yukon Field Office Fisheries staff will continue its effort to document reference characteristics and functional status of placer mined streams within the Dalton Highway corridor. Placer mining within the Dalton Highway corridor continues to be one of the primary impacting agents with respect to aquatic, riparian, and water resources. Since gold prices remain at or near an all-time high, the number of requests received by the Central Yukon Field Office (CYFO) to authorize new or modified mining plans will remain a major workload for the CYFO staff for the foreseeable future. As part of authorizing mine plans, it is BLM's responsibility to ensure that fish habitat is rehabilitated and federal and state water quality standards are maintained (43 CFR 3809.420 performance standards among others). Attainment of these performance standards is dependent on the complex interaction of chemical, biological, and physical processes. This project proposes to document some of the basic components involved in this interaction thereby providing a solid foundation for: evaluating mining plans of operation, establishing reclamation performance standards, and monitoring the

outcome of current and future proposals. To date work has been completed on Nugget and Gold Creek. As many as 24 other streams along the Dalton Highway Corridor are candidates for the project.

- An instream flow reservation is being completed for the Tozitna River and will be submitted to the Alaska Department of Natural Resources in the next few months. The proposed reservation is based on ten years of flow data and will help ensure that the high quality salmon habitat found within the Tozitna River is maintained.

Sand and Gravel (Contact Darrel VandeWeg, 474-2325)

- There is still an increased interest in gravel sales along the Dalton Highway, from the Yukon River northward. There have been several inquiries by private contractors for gravel from existing pits, as well as exploration and expansion by ADOT.
- ADOT is working with UAF on a frozen debris lobe that is moving toward the Dalton Highway at about milepost 219. The eventual outcome of the studies will help ADOT determine what should be done for the protection of the highway.
- The reauthorization for the ADOT&PF mineral material pits is still ongoing. Several have been reauthorized, several are closing and there have been some requests for additional pits. Fieldwork for the environmental (NEPA) documents has been conducted this field season and will continue into next summer's field season.

Realty Actions (Contact: Robin Walthour, 474-2304)

- TERRA-Kotzebue. This project which encompasses five (5) communication site towers to be installed by Unicom/GCI with three (3) sites being on Central Yukon Field Office lands and the remaining two (2) sites on the Anchorage Field Office lands. This right-of-way is being worked by Tom Sparks of our Nome Office 443-2177. This is Phase III of a planned 4 phase project. BLM is reviewing the EA for this project.

Recreation (Contact: Kelly Egger, 474-2242):

- The BLM has 17 Special Recreation Permits (SRP) that expired by the end of calendar year 2012. Of the 17 expired permits 11 SRP holders have submitted paper work to renew their permits and to operate on BLM lands in 2013 and beyond. In addition, one permittee has requested an amendment to his permit and six applications have been received from new operators. Of the six new applicants, three are tour operators, two are hunting guides, and one is an air transporter. Overall this is a combination of 45 either

permits or applications for permits on file in the Central Yukon Field Office. Three of the current permits are for air transporters. Of the 45 files, 58% are commercial hunting guides.

- Commercial Tour operators continue to utilize BLM managed road side facilities along the Dalton Highway as well as the Arctic Interagency Visitors Center (AIVC) in Coldfoot. The BLM and partner agencies made over 18,000 visitor contacts at Dalton Highway recreation sites and delivered over 100 evening interpretive programs at the AIVC. The 2012 recreation use recording year witnessed a 5% decrease in visitor usage over the previous year.

Ecology (Contact: Jennifer McMillan 474-2308)

- Dalton Highway Invasive Plant Strategy: We have received ARRA (aka stimulus funds) to help complete an Environmental Analysis of a proposed invasive plant management strategy for the Dalton Highway. Public meetings were held in potentially affected communities. The strategy includes the possible application of herbicides. Analysis of the proposal will include an ANILCA 810 analysis of potential impacts to subsistence resources. The document will be available for public review and comment this winter before BLM signs a decision record.
- Jennifer is serving as the point of contact for several Rapid Ecological Assessments (REAs). REAs provide the BLM with a large amount of information about current and projected resource condition which is used to prepare land use plans and plan amendments; conduct cumulative impact analyses; establish development, restoration and conservation priorities; develop best management practices, and authorize public land uses. One REA has recently been completed. The Yukon Lowlands-Kuskokwim Mountains-Lime Hills Rapid Ecological Assessment (REA) was initiated in summer of 2012 and is on-going. Two others are planned for upcoming years.
- Western Arctic Caribou Herd (WACH) winter habitat monitoring is ongoing; two thirds of the long-term habitat monitoring transects were re-visited this August. The remaining transects will be re-visited this summer. In addition, the BLM is working towards a WAH Caribou Habitat Management Plan for the Nulato Hills. A scoping letter will be distributed to all interested parties.

Wildlife (Contact: Tim Hammond, 474-2200)

- The BLM, Alaska Department of Fish and Game, Kanuti National Wildlife Refuge and Gates of the Arctic National Park are winding down the radio-telemetry study of moose in GMU 24 A&B. NPS and FWS may remove collars in 2013. BLM and its cooperators have been radio-tracking 20 moose in the northern part of the study area monthly, when weather allows. BLM funded the download of GPS data for

December, January, and February.

- The BLM, ADF&G, and Kanuti National Wildlife Refuge, in conjunction with the University of Idaho are analyzing caribou location data for the Hodzana Herd and the Ray Mountain Herd. Results suggest that these two herds are spatially distinct from each other. A relocation flight is scheduled for May.
- Merben Cebrian stepped down from his job as the wildlife biologist for BLM Central Yukon Field Office and accepted his new job as the Wildlife/Subsistence Specialist for the BLM Anchorage Field Office. He now occupies the position that was vacated by Geoff Beyersdorf in 2011.

Law Enforcement

- The BLM CYFO hired a law enforcement ranger, Seth McMillan. He assumed duties in January 2013 and he looks forward topatrolling a large portion of BLM lands in Interior Alaska.



Wood Bison News



Drawing courtesy of Wes Olson

Issue Number 7, Winter 2013

Comment Period Open on Proposed Wood Bison Reintroduction

On January 17, 2013 the U.S. Fish and Wildlife Service (USFWS) announced the draft regulation to enable the reintroduction of wood bison in Alaska. The draft regulation is known as the “10(j) rule.” There is a 60-day public comment period the ends on March 18, 2013. It may take six months to one year for the USFWS to consider all comments and then publish a final decision. If the final decision is accepted by the State, wood bison may be released the following spring.

The regulation proposes to designate wood bison in Alaska as a “nonessential experimental population.” Because large numbers of wood bison live in Canada, Alaska animals are not considered “essential” to survival of the species. However, reintroducing wood bison to Alaska will enhance their genetic diversity and create disease free populations in their native range, isolated from the Canadian herds.

The intent of the 10(j) Rule is to allow oil and gas development, mining, recreation, hunting, and trapping to coexist with wood bison herds without legal conflicts. Without the

Key Points of the 10(j) Rule:

- ◆ **ADF&G to be the lead agency in reintroduction and management responsibility.**
- ◆ **Regulated hunting allowed**
- ◆ **Disturbance from resource development, hunting, trapping and recreation allowed**
- ◆ **No “critical habitat” designation**
- ◆ **If the reintroduction effort fails, remove animals from the landscape**

final regulation, conflicts could arise because wood bison are listed as threatened under the Endangered Species Act.

If the final regulation is approved by the state, management plans for each release site would be developed by ADF&G with involvement of landowners and other stakeholders. Management plans would include regulated hunting based on sustained yield principles.

The 135 wood bison at the Alaska Wildlife Conservation Center near Portage Alaska came from Canadian stock and are disease free. They will serve as the seed stock when a release occurs.

The first release of at least 40 bison is planned for the lower Yukon/Innoko area. Bison will be transported by plane and held in an enclosure in early spring. A release later in spring will allow them enough time to become familiar with their new habitat so that they can successfully calve and gain weight before the coming winter. Other potential future release areas with suitable habitat are Yukon Flats and Minto Flats, and other areas as well.



Photo by Doug Lindstrand

Now is the time to offer comments. The deadline is March 18, 2013. **The USFWS welcomes any comments regarding wood bison reintroduction and this proposed rule.**

You can send comments by mail or electronically:

Mail: Attn: FWS-R7-ES-2012-0033; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

Electronically: <http://www.regulations.gov> . Search for Docket FWS-R7-ES-2012-0033 and then follow the instructions for submitting comments

The complete text of the proposed rule can be found at <http://www.fws.gov/policy/library/2013/2013-00692.pdf>

An environmental assessment is a necessary part of the wood bison release. The draft environmental assessment can be found at <http://www.regulations.gov#!documentDetail;D=FWS-R7-ES-2012-0033-0003>

The USFWS particularly seeks comments concerning (1) biological or ecological requirements of wood bison, (2) current or planned activities in the Nonessential Experimental Population (NEP) area, (3) current or planned management of the NEP population, and (4) any information concerning the boundaries of the NEP area.



Photo by Mike Miller

“The Department looks forward to the establishment of a final rule incorporating the 10(j) nonessential experimental population provision and the special rule delegating primary management of this nonessential population to the State. I believe the proposed rule represents a necessary step towards the potential reintroduction of wood bison to the Alaskan landscape.”

*Acting Director,
Doug Vincent-Lang*

Western Interior Alaska Subsistence Regional Advisory Council

c/o Office of Subsistence Management

101 12th Avenue, Room 110, Fairbanks, Alaska 99701

Phone: 1-(907)-456-0277 or 1-800-267-3997, Fax: 1-(907)-456-0208

E-mail: Vince_Mathews@fws.gov

August 12, 2009

Mr. Michael R. Fleagle, Chair
Federal Subsistence Board
c/o U.S. Fish and Wildlife Service
1011 East Tudor Road, Mail Stop 121
Anchorage, Alaska 99503

Dear Mr. Fleagle:

The Western Interior Alaska Subsistence Regional Advisory Council endorses the reintroduction of the wood bison (*Bison bison athabasca*) into the Western Interior Region. The Council has been monitoring the efforts of the Alaska Department of Fish and Game with this important restoration for some time. We understand that the southwestern portion of our region in the lower Innoko River valley near the villages of Shageluk and Holy Cross offers abundant high quality habitat and winter conditions favorable to wood bison. We also understand that skeletal remains and historical accounts show that wood bison existed in Interior Alaska and played an important role with Athabascan tribes. It is the opinion of this Council that the wood bison would be beneficial in many ways to the people of the Western Interior Region.

The Alaska Department of Fish and Game has been diligent to inform us of the progress with the wood bison reintroduction. We would appreciate updates from the U.S. Fish and Wildlife Service on the progress to have the wood bison designated as a nonessential experimental population under section 10(j) of the Endangered Species Act.

Working together will allow the wood bison to return to its former range and again be part of the traditional subsistence harvest pattern. If you have any questions or would like to discuss in more detail our support for this restoration effort, please give me a call. I can be reached at 1-907-687-2007.

Yours truly,

/S/



Jack Reakoff, Chair

cc: Geoff Haskett, Regional Director, USFWS
Denby Lloyd, Commissioner, ADF&G
Peter J. Probasco, ARD, USFWS/OSM
Todd Logan, Regional Chief, Alaska National Wildlife Refuges
Bo Sloan, Innoko NWR
Council members

RECEIVED



Salmon Bycatch Update

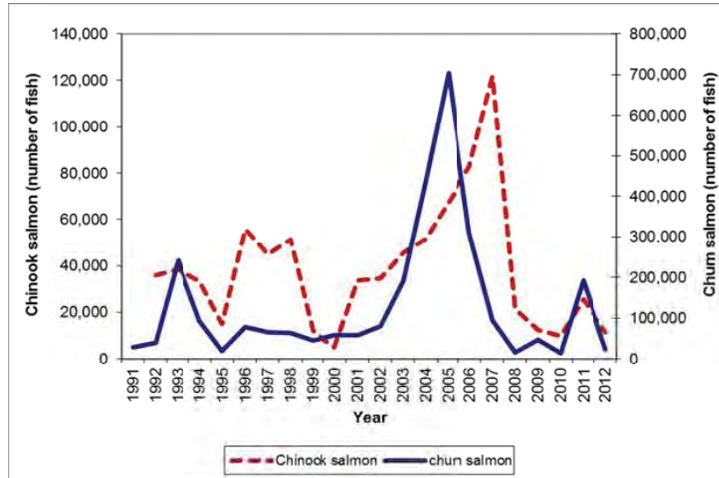
January 2013

BACKGROUND & NUMBERS

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

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

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



CHINOOK SALMON BYCATCH MANAGEMENT: AMENDMENT 91

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

Salmon Bycatch Update

January 2013

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

CHUM SALMON BYCATCH MANAGEMENT

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

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

WHAT YOU CAN DO TO REDUCE SALMON BYCATCH

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

725 CHRISTENSEN DRIVE, SUITE 3-B • ANCHORAGE, ALASKA 99501
TELEPHONE: 907-272-3141 • 1-877-99YUKON(9-8566)
AX: 907-272-3142 • EMAIL: info@yukonsalmon.org
WWW.YUKONSALMON.ORG



YUKON RIVER DRAINAGE FISHERIES ASSOCIATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Western Interior Alaska Subsistence Regional Advisory Council

Charter

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

- (3) A recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs.
 - (4) Recommendations concerning policies, standards, guidelines and regulations to implement the strategy.
- e. Appoint one member to the Gates of the Arctic National Park Subsistence Resource Commission in accordance with Section 808 of Alaska National Interest Lands Conservation Act (ANILCA).
 - f. Make recommendations on determinations of customary and traditional use of subsistence resources.
 - g. Make recommendations on determinations of rural status.
 - h. Provide recommendations on the establishment and membership of Federal local advisory committees.
5. **Agency or Official to Whom the Council Reports.** The Council reports to the Federal Subsistence Board Chair, who is appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture.
 6. **Support.** The U.S. Fish and Wildlife Service will provide administrative support for the activities of the Council through the Office of Subsistence Management.
 7. **Estimated Annual Operating Costs and Staff Years.** The annual operating costs associated with supporting the Council's functions are estimated to be \$150,000, 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