



FEDERAL SUBSISTENCE BOARD

Work Session Materials

*July 26 - 28, 2016
Anchorage, Alaska*



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**FEDERAL SUBSISTENCE BOARD
WORK and EXECUTIVE SESSIONS**

USFWS Regional Office
Gordon Watson Conference Room
1011 East Tudor Road
Anchorage, Alaska 99503
Tuesday, July 26, 2016 – 8:30AM to 5:00PM
Wednesday, July 27, 2016 – 8:30AM to 5:00PM
Thursday, July 28, 2016 – 8:30AM to Finish

WORK SESSION AGENDA
*** Indicates Action Item**

1. Review and Adopt Agenda*
2. Information Exchange
3. Draft Nonrural Policy* (Amee Howard)
4. Request for Reconsideration – Makhnati Island Threshold Analysis* (Don Rivard)
5. Request for Reconsideration – Kasilof River Threshold Analysis* (Amee Howard)
6. Request for Reconsideration – Kenai River Update (Stewart Cogswell)
7. Action on Council Annual Report Replies* (Carl Johnson)
 - a. Southeast Alaska
 - b. Southcentral Alaska
 - c. Kodiak/Aleutians
 - d. Bristol Bay
 - e. Yukon Kuskokwim Delta
 - f. Western Interior
 - g. Seward Peninsula
 - h. Northwest Arctic
 - i. Eastern Interior
 - j. North Slope
8. Other Business
9. Fisheries Special Action Request (FSA16-02) submitted by Ninilchik Traditional Council regarding the Kenai Community Gillnet Fishery*

EXECUTIVE SESSION AGENDA
Remainder of the Meeting

1. Review Agenda
2. Action on Council Nominations* (Carl Johnson)
 - a. Southeast Alaska
 - b. Southcentral Alaska
 - c. Kodiak/Aleutians
 - d. Bristol Bay
 - e. Yukon Kuskokwim Delta
 - f. Western Interior
 - g. Seward Peninsula
 - h. Northwest Arctic
 - i. Eastern Interior
 - j. North Slope

Work Session Audio Access Information:

Toll-Free: 1-888-455-5897

Pass Code: 3344290

POLICY ON NONRURAL DETERMINATIONS

FEDERAL SUBSISTENCE BOARD

Adopted _____, 2017

PURPOSE

This policy clarifies the internal management of the Federal Subsistence Board (Board) and provides transparency to the public regarding the process of making or changing nonrural determinations of areas or communities for the purpose of identifying rural residents who may harvest fish and wildlife for subsistence uses on Federal public lands in Alaska. This policy is intended to clarify existing practices under the current statute and regulations. It does not create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its agencies, officers, or employees, or any other person.

INTRODUCTION

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) 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 situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses;..”(ANILCA Section 801). Rural status provides the foundation for the subsistence priority on Federal public lands to help ensure the continuation of the subsistence way of life in Alaska. Prior to 2015, implementation of this section and making rural determinations was based on criteria set forth in Subpart B of the Federal subsistence regulations.

In October 2009, the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, directed the Board to review the process of rural determinations. On December 31, 2012, the Board initiated a public review of the rural determination process. That public process lasted nearly a year, producing 278 comments from individuals, 137 comments from members of Regional Advisory Councils, 37 comments from Alaska Native entities, and 25 comments from other entities (e.g., city and borough governments). Additionally, the Board engaged in government-to-government consultation with tribes and consultation with Alaska Native Claims Settlement Act (ANCSA) corporations. In general, the comments received indicated a broad dissatisfaction with the rural determination process. Among other comments, respondents indicated the aggregation criteria were perceived as arbitrary, the population thresholds were seen as inadequate to capture the reality of rural Alaska, and the decennial review was widely viewed to be unnecessary.

Based on this information, the Board held a public meeting on April 17, 2014 and decided to recommend a simplification of the process to the Secretaries of the Interior and Agriculture (Secretaries) to address rural status in the Federal Subsistence Management Program. The Board's recommended simplified process would eliminate the criteria from regulation and allow the Board to determine which areas or communities are nonrural in Alaska. All other communities or areas would, therefore, be considered "rural" in relation to the Federal subsistence priority in Alaska.

The Secretaries accepted the Board recommendation and published a Final Rule on November 4, 2015, revising the regulations governing the rural determination process for the Federal Subsistence Management Program in Alaska. The Secretaries removed specific rural determination guidelines and criteria, including requirements regarding population data, the aggregation of communities, and a decennial review. The Board will now make nonrural determinations using a comprehensive approach that may consider such factors as population size and density, economic indicators, military presence, industrial facilities, use of fish and wildlife, degree of remoteness and isolation, and any other relevant material including information provided by the public.

By using a comprehensive approach and not relying on set guidelines and criteria, this new process will enable the Board to be more flexible in making decisions that take into account regional differences found throughout the State. This will also allow for greater input from the Councils, Federally recognized Tribes of Alaska, Alaska Native Corporations, and the public in making nonrural determinations by incorporating the nonrural determination process into the subsistence regulatory schedule which has established comment periods and will allow for multiple opportunities for input. Simultaneously with the Final Rule, the Board published a Direct Final Rule (80 FR 68245; Nov. 4, 2015) (**Appendix A**) establishing the list of nonrural communities, those communities not subject to the Federal subsistence priority on Federal public lands, based on the list of rural communities that predated the 2007 Final Rule (72 FR 25688; May 7, 2007).

As of November 4, 2015, the Board determined all communities and areas in Alaska to be rural in accordance with 36 CFR 242.15 and 50 CFR 100.15 except for the following: Fairbanks North Star Borough; Homer area – including Homer, Anchor Point, Kachemak City, and Fritz Creek; Juneau area – including Juneau, West Juneau, and Douglas; Kenai area – including Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifornsky, Kasilof, and Clam Gulch; Ketchikan area – including Ketchikan City, Clover Pass, North Tongass Highway, Ketchikan East, Mountain Point, Herring Cove, Saxman East, Pennock Island, and parts of Gravina Island; Municipality of Anchorage; Seward area – including Seward and Moose Pass; Valdez; and Wasilla/Palmer area – including Wasilla, Palmer, Sutton, Big Lake, Houston, and Bodenbergs Butte (36 CFR 242.23 and 50 CFR 100.23).

BOARD AUTHORITIES

- ANILCA 16 U.S.C. 3101, 3126.
- Administrative Procedures Act (APA), 5 U.S.C. 551-559
- 36 CFR 242.15; 50 CFR 100.15
- 36 CFR 242.18(a); 50 CFR 100.18(a)
- 36 CFR 242.23; 50 CFR 100.23

POLICY

The Board will only address changes to the nonrural status of communities or areas when requested in a proposal. Any individual, organization, or community may submit a proposal to designate a community or area as nonrural. Additionally, any individual, organization, or community may request to change an existing nonrural determination by submitting a proposal to the Board to change the status of a community or area back to rural. This policy will outline what will be required of the proponent in the submission of a proposal, the administrative process to address a proposal, a general schedule or timeline, and the public process involved in acting on such proposals.

Submitting a Proposal

To file a request, you must submit a written proposal in accordance with the guidance provided in the Federal Register with a call for proposals to revise subsistence taking of fish and shellfish regulations and nonrural determinations. In addition to the requirements set forth below, all proposals must contain the following:

- Full name and mailing address.
- A statement describing the proposed nonrural determination action requested.
- A detailed description of the community or area to be considered nonrural, including any current boundaries, borders, or distinguishing landmarks, so as to identify what Alaska residents would be affected by the change in rural status;
- Guiding principles (law, policy, factors, or guidance) for the Board to consider in determining the nonrural status of an area or community; and
- A detailed statement of the facts that show that the community or area is nonrural under those guiding principles.
- Any ancillary documentation supporting the proposed change.

Process

Changing from Rural to Nonrural

For proposals seeking to change the status of a community or area from rural to nonrural, it is the proponent's responsibility to provide the Board with substantive narrative evidence to support the argument of why the proposed nonrural determination should be considered.

The Board will accept a proposal to designate a community or area as nonrural only if it meets the following threshold requirements:

- Based upon information not previously considered by the Board;
- Provides substantive guiding principles to determine the nonrural status of a community or area that take into consideration the unique qualities of the region; and
- Provides substantive information that supports those guiding principles and the argument that a community or area is nonrural instead of rural.

Upon receipt of a proposal to designate a community or area as nonrural, the Board shall determine whether the proposal satisfied the threshold requirements outlined above. If it does not, the proponent will be notified in writing. If it does, it will be considered in accordance with the timeline set forth below.

Rescinding a Nonrural Determination

For proposals seeking to have the Board rescind a nonrural determination, a proposal will be accepted if it is:

- Based upon information not previously considered by the Board; or
- Demonstrates that the information used and interpreted by the Board in designating the community as nonrural has changed since the original determination was made.

Proposals seeking to change the status of a community or area from nonrural to rural, must meet the threshold requirements outlined above for nonrural proposals.

Limitation on Submission of Proposals to Change from Rural to Nonrural

The Board is aware of the burden placed on rural communities and areas in defending their rural status. If, under this new process, a community's status is maintained as rural after a proposal to change its status to nonrural is either rejected for (i) failure to comply with these guidelines or (ii) is rejected after careful consideration by the Board, no proposals to change that community's or area's status as nonrural shall be accepted until there has been a significant change in that community's rural identity.

Whether or not there has been a "significant change" to the rural identity of an area or community is the burden of the proponent to show by a preponderance of the evidence.

Process Schedule

As authorized in 36 CFR 242.18(a) and 50 CFR 100.18(a), "The Board may establish a rotating schedule for accepting proposals on various sections of subpart C or D regulations over a period of years." To ensure meaningful input from the Councils and allow opportunities for public comment, the Board will only accept nonrural determination proposals every other year in conjunction with the call for proposals to

revise subsistence taking of fish and shellfish regulations and nonrural determinations. If accepted, the proposal will be deliberated during the regulatory Board meeting in the next Fisheries Regulatory cycle. This schedule thus creates a three- year period for proposal review, analysis, Regional Advisory Council input, Tribal and ANCSA corporation consultation, public comment, and Board deliberation and decision.

Decision Making

When acting upon proposals to change the nonrural status of a community or area, the Board will:

- Proceed on a case-by-case basis to address each proposal regarding nonrural determinations.
- Base its determination or changes to a determination on information of a reasonable and defensible nature contained within the administrative record.
- Make nonrural determinations based on a comprehensive application of considerations presented in the proposal that have been verified by the Board as accurate.
- Consider recommendations of the appropriate Subsistence Regional Advisory Council.
- Consider comments from the State of Alaska and the public.
- Engage in government-to-government consultation with affected tribes or consultation with affected ANCSA corporations.
- Implement a final decision on a nonrural determination after compliance with the APA, if the determination is supported and valid.

As part of its decision-making process, the Board may extrapolate based on information from other, similarly-situated communities or areas if limited information exists for a certain community or area. The Board also has discretion to determine the geographical extent of the area relevant to the nonrural determination. The Board will look to the Regional Advisory Councils for confirmation that any relevant information brought forth during the nonrural determination process accurately describes the unique characteristics of the affected region. However, deference to the Councils does not apply.

General Process Timeline

Outlined in Table 1 and Table 2

Table 1. General Process Timeline

1. January to March (Even Year) – A proposed rule is published in the Federal Register. The Fisheries proposed rule is published in even numbered years.
2. April to July (Even Year) – Proposals for nonrural determinations are validated by staff. If the proposal is not valid, the proponent will be notified in writing.
3. August to November (Even Year) –Affected Regional Advisory Council(s) reviews the validated proposals and provides their initial recommendations, which should include relevant regional characteristics, at their fall meeting on the record.
4. November to December (Even Year) – Staff will organize Nonrural Determination proposal presentations.
5. January (Odd Year) – At the Board’s Fishery Regulatory meeting, Board will determine if the threshold requirements have been met. If the proposal does not meet the threshold requirements, the proponent will be notified in writing. If the proposal does, it will be considered in accordance with the timeline set forth here.
6. February (Odd Year) to July (Even Year) (18 months) – For proposals that have been determined by the Board to meet the Threshold Requirements, the Board will conduct public hearings in the communities that will be affected by the validated proposals. During this time period, independent of the fall Council meetings, Tribes/ANCSA Corporations may also request formal consultation on the nonrural determination proposals. Following the Council meeting cycle, public hearings, and Tribal/ANCSA consultations, staff will prepare a written analysis for each nonrural determination proposal following established guidelines.
7. August to November (Even Year) –The Council(s) will provide recommendations on the draft Nonrural Determination Analyses.
8. November 2018 to December (Even Year) – Staff incorporates Council recommendations and comments into the draft Nonrural Determination Analyses for the Board.
9. January (Odd Year) – At the Board’s Fisheries Regulatory meeting, Staff present the Nonrural Determination Analyses to the Board. The Board makes a final decision on the Nonrural Determination proposals.

Table 2. General Process Timeline Comparison with other Cycles

Wildlife & FRMP Cycle	Fishery Cycle	Dates	FSB or Activity	Proposed Nonrural Determination Cycle			
		Council Cycle		Even Years			
Wildlife & FRMP Review Cycle	Fishery Review Cycle	January	FSB FRMP Work Session	1	Nonrural Proposed Rule Jan 2016		
		February March	Fishery Proposed Rule Jan- Mar				
		April July	FSB Meeting	2	Proposal Validation		
		August September October November	Fishery Proposal Review				
		December		4	Finalize Proposal Presentations for the Board		
		January					
	Fishery Review Cycle		February March	Wildlife Proposed Rule Jan - Mar	6	Odd to Even Years (18 months) - Public Hearings, Tribal/ANCSA Corporation Consultation, and Writing of Nonrural Determination Analyses for proposals that meet the threshold requirements as determined by the Board	
			April July				
			August September October November	Wildlife Proposal & FRMP Project Review			
			December				
			January	FSB FRMP Work Session	7	Even Years Analysis Review	
			February March	Fishery Proposed Rule Jan- Mar			
			April July	FSB Meeting			
			August September October November	Fishery Proposal Review			
Fishery Review Cycle		December		8	Finalize Nonrural Determination Analyses		
		January	FSB Meeting				

Appendix A – Final Rule – Rural Determination Process

DRAFT

DEPARTMENT OF AGRICULTURE**Forest Service****36 CFR Part 242****DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 100**

[Docket No. FWS-R7-SM-2014-0063;
FXRS12610700000-156-FF07J00000;
FBMS# 4500086287]

RIN 1018-BA62

**Subsistence Management Regulations
for Public Lands in Alaska; Rural
Determination Process**

AGENCIES: Forest Service, Agriculture;
Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Secretaries of Agriculture and the Interior are revising the regulations governing the rural determination process for the Federal Subsistence Management Program in Alaska. The Secretaries have removed specific guidelines, including requirements regarding population data, the aggregation of communities, and a decennial review. This change will allow the Federal Subsistence Board (Board) to define which communities or areas of Alaska are nonrural (all other communities and areas would, therefore, be rural). This new process will enable the Board to be more flexible in making decisions and to take into account regional differences found throughout the State. The new process will also allow for greater input from the Subsistence Regional Advisory Councils (Councils), Federally recognized Tribes of Alaska, Alaska Native Corporations, and the public.

DATES: This rule is effective November 4, 2015.

ADDRESSES: This rule and public comments received on the proposed rule may be found on the Internet at www.regulations.gov at Docket No. FWS-R7-SM-2014-0063. Board meeting transcripts are available for review at the Office of Subsistence Management, 1011 East Tudor Road, Mail Stop 121, Anchorage, AK 99503, or on the Office of Subsistence Management Web site (<https://www.doi.gov/subsistence>).

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Eugene R. Peltola, Jr., Office of Subsistence Management; (907) 786-3888 or subsistence@fws.gov. For

questions specific to National Forest System lands, contact Thomas Whitford, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 743-9461 or twhitford@fs.fed.us.

SUPPLEMENTARY INFORMATION:**Background**

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program. This program provides a preference for take of fish and wildlife resources for subsistence uses on Federal public lands and waters in Alaska. The Secretaries published temporary regulations to carry out this program in the **Federal Register** on June 29, 1990 (55 FR 27114), and published final regulations in the **Federal Register** on May 29, 1992 (57 FR 22940). The program regulations have subsequently been amended a number of times. Because this program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, "Parks, Forests, and Public Property," and Title 50, "Wildlife and Fisheries," at 36 CFR 242.1-242.28 and 50 CFR 100.1-100.28, respectively. The regulations contain subparts as follows: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife.

Consistent with Subpart B of these regulations, the Secretaries established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board comprises:

- A Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- The Alaska Regional Director, U.S. Fish and Wildlife Service;
- The Alaska Regional Director, U.S. National Park Service;
- The Alaska State Director, U.S. Bureau of Land Management;
- The Alaska Regional Director, U.S. Bureau of Indian Affairs;
- The Alaska Regional Forester, U.S. Forest Service; and
- Two public members appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture.

Through the Board, these agencies and members participate in the development of regulations for subparts C and D, which, among other things, set forth program eligibility and specific harvest seasons and limits.

In administering the program, the Secretaries divided Alaska into 10 subsistence resource regions, each of which is represented by a Regional Advisory Council. The Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Council members represent varied geographical, cultural, and user interests within each region.

Prior Rulemaking

On November 23, 1990 (55 FR 48877), the Board published a notice in the **Federal Register** explaining the proposed Federal process for making rural determinations, the criteria to be used, and the application of those criteria in preliminary determinations. On December 17, 1990, the Board adopted final rural and nonrural determinations, which were published on January 3, 1991 (56 FR 236). Final programmatic regulations were published on May 29, 1992, with only slight variations in the rural determination process (57 FR 22940). As a result of this rulemaking, Federal subsistence regulations at 36 CFR 242.15 and 50 CFR 100.15 require that the rural or nonrural status of communities or areas be reviewed every 10 years, beginning with the availability of the 2000 census data.

Because some data from the 2000 census was not compiled and available until 2005, the Board published a proposed rule in 2006 to revise the list of nonrural areas recognized by the Board (71 FR 46416, August 14, 2006). The final rule published in the **Federal Register** on May 7, 2007 (72 FR 25688).

Secretarial Review

On October 23, 2009, Secretary of the Interior Salazar announced the initiation of a Departmental review of the Federal Subsistence Management Program in Alaska; Secretary of Agriculture Vilsack later concurred with this course of action. The review focused on how the Program is meeting the purposes and subsistence provisions of Title VIII of ANILCA, and if the Program is serving rural subsistence users as envisioned when it began in the early 1990s.

On August 31, 2010, the Secretaries announced the findings of the review, which included several proposed administrative and regulatory reviews and/or revisions to strengthen the Program and make it more responsive to those who rely on it for their subsistence uses. One proposal called

for a review, with Council input, of the rural determination process and, if needed, recommendations for regulatory changes.

The Board met on January 20, 2012, to consider the Secretarial directive and the Councils' recommendations and review all public, Tribal, and Alaska Native Corporation comments on the initial review of the rural determination process. After discussion and deliberation, the Board voted unanimously to initiate a review of the rural determination process and the 2010 decennial review. Consequently, the Board found that it was in the public's best interest to extend the compliance date of its 2007 final rule (72 FR 25688; May 7, 2007) on rural determinations until after the review of the rural determination process and the decennial review were completed or in 5 years, whichever comes first. The Board published a final rule on March 1, 2012 (77 FR 12477), extending the compliance date.

The Board followed this action with a request for comments and announcement of public meetings (77 FR 77005; December 31, 2012) to receive public, Tribal, and Alaska Native Corporations input on the rural determination process.

Due to a lapse in appropriations on October 1, 2013, and the subsequent closure of the Federal Government, some of the preannounced public meetings and Tribal consultations to receive comments on the rural determination process during the closure were cancelled. The Board decided to extend the comment period to allow for the complete participation from the Councils, public, Tribes, and Corporations to address this issue (78 FR 66885; November 7, 2013).

The Councils were briefed on the Board's **Federal Register** documents during their winter 2013 meetings. At their fall 2013 meetings, the Councils provided a public forum to hear from residents of their regions, deliberate on the rural determination process, and provide recommendations for changes to the Board.

The Secretaries, through the Board, also held hearings in Barrow, Ketchikan, Sitka, Kodiak, Bethel, Anchorage, Fairbanks, Kotzebue, Nome, and Dillingham to solicit comments on the rural determination process. Public testimony was recorded during these hearings. Government-to-government tribal consultations on the rural determination process were held between members of the Board and Federally recognized Tribes of Alaska. Additional consultations were held

between members of the Board and Alaska Native Corporations.

Altogether, the Board received 475 substantive comments from various sources, including individuals, members of the Councils, and other entities or organizations, such as Alaska Native Corporations and borough governments. In general, this information indicated a broad dissatisfaction with the current rural determination process. The aggregation criteria were perceived as arbitrary. The current population thresholds were seen as inadequate to capture the reality of rural Alaska. Additionally, the decennial review was widely viewed to be unnecessary.

Based on this information, the Board at their public meeting held on April 17, 2014, elected to recommend a simplification of the process by determining which areas or communities are nonrural in Alaska; all other communities or areas would, therefore, be rural. The Board would make nonrural determinations using a comprehensive approach that considers population size and density, economic indicators, military presence, industrial facilities, use of fish and wildlife, degree of remoteness and isolation, and any other relevant material, including information provided by the public. The Board would rely heavily on the recommendations of the Subsistence Regional Advisory Councils.

In summary, based on Council and public comments, Tribal and Alaska Native Corporation consultations, and briefing materials from the Office of Subsistence Management, the Board developed a proposal that simplifies the process of rural determinations and submitted its recommendation to the Secretaries on August 15, 2014.

On November 24, 2014, the Secretaries requested that the Board initiate rulemaking to pursue the regulatory changes recommended by the Board. The Secretaries also requested that the Board obtain Council recommendations and public input, and conduct Tribal and Alaska Native Corporation consultation on the proposed changes. If adopted through the rulemaking process, the current regulations would be revised to remove specific guidelines, including requirements regarding population data, the aggregation of communities, and the decennial review, for making rural determinations.

Public Review and Comment

The Departments published a proposed rule on January 28, 2015 (80 FR 4521), to revise the regulations governing the rural determination

process in subpart B of 36 CFR part 242 and 50 CFR part 100. The proposed rule opened a public comment period, which closed on April 1, 2015. The Departments advertised the proposed rule by mail, radio, newspaper, and social media; comments were submitted via www.regulations.gov to Docket No. FWS-R7-SM-2014-0063. During that period, the Councils received public comments on the proposed rule and formulated recommendations to the Board for their respective regions. In addition, 10 separate public meetings were held throughout the State to receive public comments, and several government-to-government consultations addressed the proposed rule. The Councils had a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, a Council Chair, or a designated representative, presented each Council's recommendations at the Board's public work session of July, 28, 2015.

The 10 Councils provided the following comments and recommendations to the Board on the proposed rule:

Northwest Arctic Subsistence Regional Advisory Council—unanimously supported the proposed rule.

Seward Peninsula Subsistence Regional Advisory Council—unanimously supported the proposed rule.

Yukon-Kuskokwim Delta Subsistence Regional Advisory Council—unanimously supported the proposed rule.

Western Interior Alaska Regional Advisory Council—supported the proposed rule.

North Slope Subsistence Regional Advisory Council—unanimously supported the proposed rule as written. The Council stated the proposed rule will improve the process and fully supported an expanded role and inclusion of recommendations of the Councils when the Board makes nonrural determinations. The Council wants to be closely involved with the Board when the Board sets policies and criteria for how it makes nonrural determinations under the proposed rule if the rule is approved, and the Council passed a motion to write a letter requesting that the Board involve and consult with the Councils when developing criteria to make nonrural determinations, especially in subject matter that pertains to their specific rural characteristics and personality.

Bristol Bay Subsistence Regional Advisory Council—supported switching the focus of the process from rural to

nonrural determinations. They indicated there should be criteria for establishing what is nonrural to make determinations defensible and justifiable, including determinations of the carrying capacity of the area for sustainable harvest, and governmental entities should not determine what is spiritually and culturally important for a community. They supported eliminating the mandatory decennial; however, they requested a minimum time limit between requests (at least 3 years). They discussed deference and supported the idea but felt it did not go far enough.

Southcentral Alaska Subsistence Regional Advisory Council—supported the proposed rule with modification. They recommended deference be given to the Councils on the nonrural determinations.

Southeast Alaska Subsistence Regional Advisory Council—supported the proposed rule with modification. The Council recommended a modification to the language of the proposed rule: “The Board determines, after considering the report and recommendations of the applicable regional advisory council, which areas or communities in Alaska are non-rural” The Council stated that this modification is necessary to prevent the Board from adopting proposals contrary to the recommendation(s) of a Council and that this change would increase transparency and prevent rural communities from being subject to the whims of proponents.

Kodiak/Aleutians Subsistence Regional Advisory Council—is generally appreciative that the Board has recommended changes to the rural determination process and supported elimination of the decennial review. The Council recommended that the Board implement definitive guidelines for how the Board will make nonrural determinations to avoid subjective interpretations and determinations; that the language of the proposed rule be modified to require the Board to defer to the Councils and to base its justification for not giving deference on defined criteria to avoid ambiguous decisions; that the Board provide program staff with succinct direction for conducting analyses on any proposals to change a community's status from rural to nonrural; and that the Board develop written policies and guidelines for making nonrural determinations even if there is a lack of criteria in the regulations. The Council is concerned that proposals to change rural status in the region will be frequently submitted from people or entities from outside the region; the Council is opposed to

proposals of this nature from outside its region and recommends that the Board develop guidelines and restrictions for the proposal process that the Board uses to reassess nonrural status.

Eastern Interior Alaska Subsistence Regional Advisory Council—opposed the proposed rule due to the lack of any guiding criteria to determine what is rural or nonrural. They stated the lack of criteria could serve to weaken the rural determination process. They supported greater involvement of the Councils in the Board's process to make rural/nonrural determinations. This Council was concerned about changes including increasing developments, access pressure on rural subsistence communities and resources, and social conflicts in the Eastern Interior region.

A total of 90 substantive comments were submitted from public meetings, letters, deliberations of the Councils, and those submitted via www.regulations.gov.

- 54 supported the proposed rule;
- 16 neither supported nor opposed the proposed rule;
- 7 supported the proposed rule with modifications;
- 7 neither supported nor opposed the proposed rule and suggested modifications; and
- 6 opposed the proposed rule.

Major comments from all sources are addressed below:

Comment: The Board should provide, in regulatory language, objective criteria, methods, or guidelines for making nonrural determinations.

Response: During the request for public comment (77 FR 77005; December 31, 2012), the overwhelming response from the public was dissatisfaction with the list of regulatory guidelines used to make rural determinations. The Board, at their April 17, 2014, public meeting, stated that if the Secretaries approved the recommended simplification of the rural determination process, the Board would make nonrural determinations using a comprehensive approach that considers, but is not limited to, population size and density, economic indicators, military presence, industrial facilities, use of fish and wildlife, degree of remoteness and isolation, and any other relevant material, including information provided by the public. The Board also indicated that they would rely heavily on the recommendations of the Subsistence Regional Advisory Councils. The Board, at their July 28, 2015, public work session, directed that a subcommittee be established to draft options (policy or rulemaking) to address future rural determinations. The subcommittee options, once reviewed

by the Board at their January 12, 2016, public meeting will be presented to the Councils for their review and recommendations.

Comment: The Board should give deference to the Regional Advisory Councils on nonrural determinations and place this provision in regulatory language.

Response: The Board expressed during its April 2014 and July 2015 meetings that it intends to rely heavily on the recommendations of the Councils and that Council input will be critical in addressing regional differences in the rural determination process. Because the Board has confirmed that Councils will have a meaningful and important role in the process, a change to the regulatory language is neither warranted nor necessary at the present time.

Comment: Establish a timeframe for how often proposed changes may be submitted.

Response: During previous public comment periods, the decennial review was widely viewed to be unnecessary, and the majority of comments expressed the opinion that there should not be a set timeframe used in this process. The Board has been supportive of eliminating a set timeframe to conduct nonrural determinations. However, this issue may be readdressed in the future if a majority of the Councils support the need to reestablish a nonrural review period.

Comment: Redefine “rural” to allow nonrural residents originally from rural areas to come home and participate in subsistence activities.

Response: ANILCA and its enacting regulations clearly state that you must be an Alaska resident of a rural area or community to take fish or wildlife on public lands. Any change to that definition is beyond the scope of this rulemaking.

Comment: Develop a policy for making nonrural determinations, including guidance on how to analyze proposed changes.

Response: The Board, at their July 28, 2015, public work session, directed that a subcommittee be established to draft options (policy or rulemaking) to address future rural determinations that, once completed, will be presented to the Councils for their review and recommendations.

Comment: Allow rural residents to harvest outside of the areas or communities of residence.

Response: All rural Alaskans may harvest fish and wildlife on public lands unless there is a customary and traditional use determination that identifies the specific community's or area's use of particular fish stocks or

wildlife populations or if there is a closure.

Rule Promulgation Process and Related Rulemaking

These final regulations reflect Secretarial review and consideration of Board and Council recommendations, Tribal and Alaska Native Corporations government-to-government tribal consultations, and public comments. The public received extensive opportunity to review and comment on all changes.

Because this rule concerns public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

Elsewhere in today's **Federal Register** is a direct final rule by which the Board is revising the list of rural determinations in subpart C of 36 CFR part 242 and 50 CFR part 100. See "Subsistence Management Regulations for Public Lands in Alaska; Rural Determinations, Nonrural List" in Rules and Regulations.

Conformance With Statutory and Regulatory Authorities

Administrative Procedure Act Compliance

The Board has provided extensive opportunity for public input and involvement in compliance with Administrative Procedure Act requirements, including publishing a proposed rule in the **Federal Register**, participation in multiple Council meetings, and opportunity for additional public comment during the Board meeting prior to deliberation. Additionally, an administrative mechanism exists (and has been used by the public) to request reconsideration of the Secretaries' decision on any particular proposal for regulatory change (36 CFR 242.18(b) and 50 CFR 100.18(b)). Therefore, the Secretaries believe that sufficient public notice and opportunity for involvement have been given to affected persons regarding this decision. In addition, because the direct final rule that is mentioned above and is related to this final rule relieves restrictions for many Alaskans by allowing them to participate in the subsistence program activities, we believe that we have good cause, as required by 5 U.S.C. 553(d), to make this rule effective upon publication.

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement that described four

alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The Final Environmental Impact Statement (FEIS) was published on February 28, 1992. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (Alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations.

A 1997 environmental assessment dealt with the expansion of Federal jurisdiction over fisheries. The Secretary of the Interior, with concurrence of the Secretary of Agriculture, determined that expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

Section 810 of ANILCA

An ANILCA section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final section 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

Paperwork Reduction Act

An agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. This rule does not contain any new collections of information that require OMB approval. OMB has reviewed and approved the collections of information associated with the subsistence regulations at 36 CFR part 242 and 50 CFR part 100, and assigned OMB Control Number 1018-0075, which expires February 29, 2016.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all

significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that two million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of \$3.00 per pound, this amount would equate to about \$6 million in food value Statewide. Based upon the amounts and values cited above, the Departments certify that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of \$100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this Program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies, and there is no cost imposed on any State or local entities or tribal governments.

Executive Order 12988

The Secretaries have determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132

In accordance with Executive Order 13132, the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

Title VIII of ANILCA does not provide specific rights to tribes for the subsistence taking of wildlife, fish, and shellfish. However, the Secretaries, through the Board, provided Federally recognized Tribes and Alaska Native corporations opportunities to consult on this rule. Consultation with Alaska Native corporations are based on Public Law 108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: “The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175.”

The Secretaries, through the Board, provided a variety of opportunities for consultation: Commenting on proposed changes to the existing rule; engaging in dialogue at the Council meetings; engaging in dialogue at the Board’s meetings; and providing input in

person, by mail, email, or phone at any time during the rulemaking process.

On March 23 and 24, 2015, the Board provided Federally recognized Tribes and Alaska Native Corporations a specific opportunity to consult on this rule. Federally recognized Tribes and Alaska Native Corporations were notified by mail and telephone and were given the opportunity to attend in person or via teleconference.

Executive Order 13211

This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. However, this rule is not a significant regulatory action under E.O. 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

Drafting Information

Theo Matuskowitz drafted these regulations under the guidance of Eugene R. Peltola, Jr. of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by

- Daniel Sharp, Alaska State Office, Bureau of Land Management;
- Mary McBurney, Alaska Regional Office, National Park Service;
- Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Trevor T. Fox, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Thomas Whitford, Alaska Regional Office, U.S. Forest Service.

Authority

This rule is issued under the authority of Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126).

List of Subjects*36 CFR Part 242*

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, the Secretaries amend 36 CFR part 242 and 50 CFR part 100 as set forth below.

**PART ____—SUBSISTENCE
MANAGEMENT REGULATIONS FOR
PUBLIC LANDS IN ALASKA**

- 1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart B—Program Structure

- 2. In subpart B of 36 CFR part 242 and 50 CFR part 100, § _____.15 is revised to read as follows:

§ _____.15 Rural determination process.

(a) The Board determines which areas or communities in Alaska are nonrural. Current determinations are listed at § _____.23.

(b) All other communities and areas are, therefore, rural.

Dated: Oct. 28, 2015.

Sally Jewell,

Secretary of the Interior.

Dated: Sept. 30, 2015.

Beth G. Pendleton,

Regional Forester, USDA—Forest Service.

[FR Doc. 2015–27994 Filed 10–30–15; 8:45 am]

BILLING CODE 3410–11–4333–15–P

**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Parts 52 and 81**

[EPA–R04–OAR–2014–0904; FRL–9936–55–Region 4]

**Air Plan Approval and Air Quality
Designation; TN; Reasonably Available
Control Measures and Redesignation
for the TN Portion of the Chattanooga
1997 Annual PM_{2.5} Nonattainment Area**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the portion of a State Implementation Plan (SIP) revision submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), on October 15, 2009, that addresses reasonably available control measures (RACM), including reasonably available control technology (RACT), for the Tennessee portion of the Chattanooga, TN-GA-AL nonattainment area for the 1997 fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS) (hereinafter referred to as the “Chattanooga TN-GA-AL Area” or

Appendix B – Direct Final Rule – Nonrural List

DRAFT

Need for Correction

As published, the final regulations (TD 9728) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the final regulations (TD 9728), that are subject to FR Doc. 2015–18816, are corrected as follows:

1. On page 45866, in the preamble, third column, last sentence of first full paragraph, the language “rules, including section 706(d)(2) and section 706(d)(3).” is corrected to read “rules, including section 704(c), § 1.704–3(a)(6) (reverse section 704(c)), section 706(d)(2), and section 706(d)(3).”

2. On page 45868, in the preamble, first column, fourth line from the bottom of the column, the language “interim closings of its books except at” is corrected to read “interim closing of its books except at”.

3. On page 45871, in the preamble, second column, third line from the bottom of the column, under paragraph heading “*v. Deemed Timing of Variations*,” the language “taxable year was deemed to close at the” is corrected to read “taxable year was deemed to occur at the”.

4. On page 45873, in the preamble, third column, eighth line from the bottom of the column, the language “taxable as of which the recipients of a” is corrected to read “taxable year as of which the recipients of a”.

5. On page 45874, second column, eight lines from the bottom of the column, the following sentence is added to the end of the paragraph: “These final regulations do not override the application of section 704(c), including reverse section 704(c), and therefore the final regulations provide that the rules of section 706 do not apply in making allocations of book items upon a partnership revaluation.”

6. On page 45876, in the preamble, second column, under paragraph heading “*Effective/Applicability Dates*”, fifth line of the first paragraph, the language “of a special rule applicable to § 1.704–” is corrected to read “of a special rule applicable to § 1.706–”.

7. On page 45876, in the preamble, second column, under paragraph heading “*Effective/Applicability Dates*”, third line of the second paragraph, the language “regulations apply to the partnership” is corrected to read “regulations apply to partnership”.

8. On page 45876, in the preamble, third column, fourth line from the top of the column, the language “that was formed prior to April 19, 2009.” is corrected to read “that was formed prior to April 14, 2009.”

9. On page 45877, first column, under paragraph heading “*List of Subjects*,” the fourth line, the language “26 CFR part 2” is corrected to read “26 CFR part 602”.

10. On page 45883, third column, the first line of the signature block, the language “Karen L. Schiller,” is corrected to read “Karen M. Schiller,”.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2015–28014 Filed 11–3–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE**Forest Service****36 CFR Part 242****DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 100**

[Docket No. FWS–R7–SM–2015–0156; FXRS12610700000–156–FF07J00000; FBMS#4500086366]

RIN 1018–BA82

Subsistence Management Regulations for Public Lands in Alaska; Rural Determinations, Nonrural List

AGENCY: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Direct final rule.

SUMMARY: This rule revises the list of nonrural areas in Alaska identified by the Federal Subsistence Board (Board). Only residents of areas that are rural are eligible to participate in the Federal Subsistence Management Program on public lands in Alaska. Based on a Secretarial review of the rural determination process, and the subsequent change in the regulations governing this process, the Board is revising the current nonrural determinations to the list that existed prior to 2007. Accordingly, the community of Saxman and the area of Prudhoe Bay will be removed from the nonrural list. The following areas continue to be nonrural, but their boundaries will return to their original borders: the Kenai Area; the Wasilla/Palmer area; the Homer area; and the Ketchikan area.

DATES: This rule is effective on December 21, 2015 unless we receive significant adverse comments on or before December 4, 2015.

ADDRESSES: You may submit comments by one of the following methods:

- **Electronically:** Go to the Federal eRulemaking Portal: <http://www.regulations.gov> and search for FWS–R7–SM–2015–0156, which is the docket number for this rulemaking.

- **By hard copy:** U.S. mail or hand-delivery to: USFWS, Office of Subsistence Management, 1011 East Tudor Road, MS 121, Attn: Theo Matuskowitz, Anchorage, AK 99503–6199

FOR FURTHER INFORMATION CONTACT:

Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Eugene R. Peltola, Jr., Office of Subsistence Management; (907) 786–3888 or subsistence@fws.gov. For questions specific to National Forest System lands, contact Thomas Whitford, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 743–9461 or twhitford@fs.fed.us.

SUPPLEMENTARY INFORMATION:**Background**

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program (Program). This program provides a preference for take of fish and wildlife resources for subsistence uses on Federal public lands and waters in Alaska. Only residents of areas identified as rural are eligible to participate in the Program on Federal public lands in Alaska. Because this program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, “Parks, Forests, and Public Property,” and Title 50, “Wildlife and Fisheries,” at 36 CFR 242.1–242.28 and 50 CFR 100.1–100.28, respectively.

Consistent with these regulations, the Secretaries established a Federal Subsistence Board (Board) comprising Federal officials and public members to administer the Program. One of the Board’s responsibilities is to determine which communities or areas of the State are rural or nonrural. The Secretaries also divided Alaska into 10 subsistence resource regions, each of which is represented by a Regional Advisory Council (Council). The Council members represent varied geographical, cultural, and user interests within each region. The Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a

meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska.

Related Rulemaking

Elsewhere in today's **Federal Register** is a final rule that sets forth a new process by which the Board will make rural determinations ("Subsistence Management Regulations for Public Lands in Alaska; Rural Determination Process"). Please see that rule for background information on how this new process was developed and the extensive Council and public input that was considered. A summary of that information follows:

Until promulgation of the rule mentioned above, Federal subsistence regulations at 36 CFR 242.15 and 50 CFR 100.15 had required that the rural or nonrural status of communities or areas be reviewed every 10 years, beginning with the availability of the 2000 census data. Some data from the 2000 census was not compiled and available until 2005, so the Board published a proposed rule in 2006 to revise the list of nonrural areas recognized by the Board (71 FR 46416, August 14, 2006). The final rule published in the **Federal Register** on May 7, 2007 (72 FR 25688), and changed the rural determination for several communities or areas in Alaska. These communities had 5 years following the date of publication to come into compliance.

The Board met on January 20, 2012, and, among other things, decided to extend the compliance date of its 2007 final rule on rural determinations. A final rule published March 1, 2012 (77 FR 12477), that extended the compliance date until either the rural determination process and findings review were completed or 5 years, whichever came first. The 2007 regulations have remained in titles 36 and 50 of the CFR unchanged since their effective date.

The Board followed that action with a request for comments and announcement of public meetings (77 FR 77005; December 31, 2012) to receive public, Tribal, and Alaska Native Corporations input on the rural determination process. At their fall 2013 meetings, the Councils provided a public forum to hear from residents of their regions, deliberate on the rural determination process, and provide recommendations for changes to the Board. The Board also held hearings in Barrow, Ketchikan, Sitka, Kodiak, Bethel, Anchorage, Fairbanks, Kotzebue, Nome, and Dillingham to solicit comments on the rural determination process, and public testimony was

recorded. Government-to-government tribal consultations on the rural determination process were held between members of the Board and Federally recognized Tribes of Alaska. Additional consultations were held between members of the Board and Alaska Native Corporations.

Altogether, the Board received 475 substantive comments from various sources, including individuals, members of the Councils, and other entities or organizations, such as Alaska Native Corporations and borough governments. In general, this information indicated a broad dissatisfaction with the current rural determination process.

Based on this information, the Board at their public meeting held on April 17, 2014, elected to recommend a simplification of the process by determining which areas or communities are nonrural in Alaska; all other communities or areas would, therefore, be rural. The Board would make nonrural determinations using a comprehensive approach that considers population size and density, economic indicators, military presence, industrial facilities, use of fish and wildlife, degree of remoteness and isolation, and any other relevant material, including information provided by the public. The Board would rely heavily on the recommendations of the Councils. The Board developed a proposal that simplifies the process of rural determinations and submitted its recommendation to the Secretaries on August 15, 2014.

On November 24, 2014, the Secretaries requested that the Board initiate rulemaking to pursue the regulatory changes recommended by the Board. The Secretaries also requested that the Board obtain Council recommendations and public input, and conduct Tribal and Alaska Native Corporation consultation on the proposed changes.

The Departments published a proposed rule on January 28, 2015 (80 FR 4521), to revise the regulations governing the rural determination process in subpart B of 36 CFR part 242 and 50 CFR part 100. Following a process that involved substantial Council and public input, the Departments published the final rule that may be found elsewhere in today's **Federal Register**.

Direct Final Rule

During that process, the Board went on to address a starting point for nonrural communities and areas. The May 7, 2007 (72 FR 25688), final rule was justified by the Board's January 3,

1991, notice (56 FR 236) adopting final rural and nonrural determinations and the final rule of May 7, 2002 (67 FR 30559), amending 36 CFR 242.23(a) and 50 CFR 100.23(a) to add the Kenai Peninsula communities (Kenai, Soldotna, Sterling, Nikiski, Seldatof, Kalifornsky, Kasilof, Clam Gulch, Anchor Point, Homer, Kachemak City, Fritz Creek, Moose Pass, and Seward) to the list of areas determined to be nonrural. The 2007 rule added the village of Saxman and the area of Prudhoe Bay to the nonrural list and expanded the nonrural boundaries of the Kenai Area; the Wasilla/Palmer area; the Homer area; and the Ketchikan Area.

Since the 2007 final rule (72 FR 25688; May 7, 2007) was contentious, and so many comments were received objecting to the changes imposed by that rule, the Board has decided to return to the rural determinations prior to the 2007 final rule. The Board further decided that the most expedient method to enact their decisions was to publish this direct final rule adopting the pre-2007 nonrural determinations. As a result, the Board has determined the following areas to be nonrural:

Fairbanks North Star Borough; Homer area—including Homer, Anchor Point, Kachemak City, and Fritz Creek; Juneau area—including Juneau, West Juneau, and Douglas; Kenai area—including Kenai, Soldotna, Sterling, Nikiski, Seldatof, Kalifornsky, Kasilof, and Clam Gulch; Ketchikan area—including Ketchikan City, Clover Pass, North Tongass Highway, Ketchikan East, Mountain Point, Herring Cove, Saxman East, Pennock Island, and parts of Gravina Island; Municipality of Anchorage; Seward area—including Seward and Moose Pass, Valdez, and Wasilla area—including Palmer, Wasilla, Sutton, Big Lake, Houston, and Bodenbergs Butte.

These final regulations reflect Board review and consideration of Council recommendations, Tribal and Alaska Native Corporations government-to-government tribal consultations, and public comments. Based on concerns expressed by some of the Councils and members of the public, the Board went on to direct staff to develop options for the Board to consider and for presentation to the Councils, to address future nonrural determinations. These options will be presented to the Board and Chairs of each Council at the January 12, 2016, public meeting.

We are publishing this rule without a prior proposal because we view this action as an administrative action by the Federal Subsistence Board. This rule will be effective, as specified above in DATES, unless we receive significant

adverse comments on or before the deadline set forth in DATES. Significant adverse comments are comments that provide strong justifications why the rule should not be adopted or for changing the rule. If we receive significant adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. If no significant adverse comments are received, we will publish a document in the **Federal Register** confirming the effective date.

Because this rule concerns public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

Conformance With Statutory and Regulatory Authorities

Administrative Procedure Act Compliance

In compliance with Administrative Procedure Act, the Board has provided extensive opportunity for public input and involvement in its efforts to improve the rural determination process as described in the related final rule published elsewhere in today's **Federal Register**. In addition, anyone with concerns about this rulemaking action may submit comments as specified in **DATES** and **ADDRESSES**.

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The Final Environmental Impact Statement (FEIS) was published on February 28, 1992. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (Alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations.

A 1997 environmental assessment dealt with the expansion of Federal jurisdiction over fisheries and is available at the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with concurrence of the Secretary of Agriculture, determined that expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

Section 810 of ANILCA

An ANILCA section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final section 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

During the subsequent environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of this rule was conducted in accordance with section 810. That evaluation also supported the Secretaries' determination that the rule will not reach the "may significantly restrict" threshold that would require notice and hearings under ANILCA section 810(a).

Paperwork Reduction Act

An agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. This rule does not contain any new collections of information that require OMB approval. OMB has reviewed and approved the collections of information associated with the subsistence regulations at 36 CFR part 242 and 50 CFR part 100, and assigned OMB Control Number 1018-0075, which expires February 29, 2016.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public

where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that two million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of \$3.00 per pound, this amount would equate to about \$6 million in food value Statewide. Based upon the amounts and values cited above, the Departments certify that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of \$100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this Program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more

in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

Executive Order 12988

The Secretaries have determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132

In accordance with Executive Order 13132, the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

The Alaska National Interest Lands Conservation Act, Title VIII, does not provide specific rights to tribes for the subsistence taking of wildlife, fish, and shellfish. However, the Secretaries, through the Board, provided Federally recognized Tribes and Alaska Native corporations opportunities to consult on this rule. Consultation with Alaska Native corporations are based on Public Law 108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: “The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175.”

The Secretaries, through the Board, provided a variety of opportunities for consultation on the rural determination process: commenting on changes under consideration for the existing regulations; engaging in dialogue at the Council meetings; engaging in dialogue at the Board’s meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process.

Since 2007 multiple opportunities were provided by the Board for Federally recognized Tribes and Alaska Native Corporations to consult on the subject of rural determinations. Federally recognized Tribes and Alaska Native Corporations were notified by mail and telephone and were given the opportunity to attend in person or via teleconference.

Executive Order 13211

This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. However, this rule is not a significant regulatory action under E.O. 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

Drafting Information

Theo Matuskowitz drafted these regulations under the guidance of Eugene R. Peltola, Jr. of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by

- Daniel Sharp, Alaska State Office, Bureau of Land Management;
- Mary McBurney, Alaska Regional Office, National Park Service;
- Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Trevor T. Fox, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Thomas Whitford, Alaska Regional Office, U.S. Forest Service.

Authority

This rule is issued under the authority of Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126).

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, the Secretaries amend 36 CFR part 242 and 50 CFR part 100 as set forth below.

PART—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

- 1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart C—Board Determinations

- 2. In subpart C of 36 CFR part 242 and 50 CFR part 100, § __.23 is revised to read as follows:

§ __.23 Rural determinations.

(a) The Board has determined all communities and areas to be rural in accordance with § __.15 except the following: Fairbanks North Star Borough; Homer area—including Homer, Anchor Point, Kachemak City, and Fritz Creek; Juneau area—including Juneau, West Juneau, and Douglas; Kenai area—including Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifornsky, Kasilof, and Clam Gulch; Ketchikan area—including Ketchikan City, Clover Pass, North Tongass Highway, Ketchikan East, Mountain Point, Herring Cove, Saxman East, Pennock Island, and parts of Gravina Island; Municipality of Anchorage; Seward area—including Seward and Moose Pass, Valdez, and Wasilla/Palmer area—including Wasilla, Palmer, Sutton, Big Lake, Houston, and Bodenberg Butte.

(b) You may obtain maps delineating the boundaries of nonrural areas from the U.S. Fish and Wildlife Service at the Alaska Regional Office address provided at 50 CFR 2.2(g), or on the Web at <https://www.doi.gov/subsistence>.

Dated: September 30, 2015.

Eugene R. Peltola, Jr.,

Assistant Regional Director, U.S. Fish and Wildlife Service, Acting Chair, Federal Subsistence Board.

Dated: September 30, 2015.

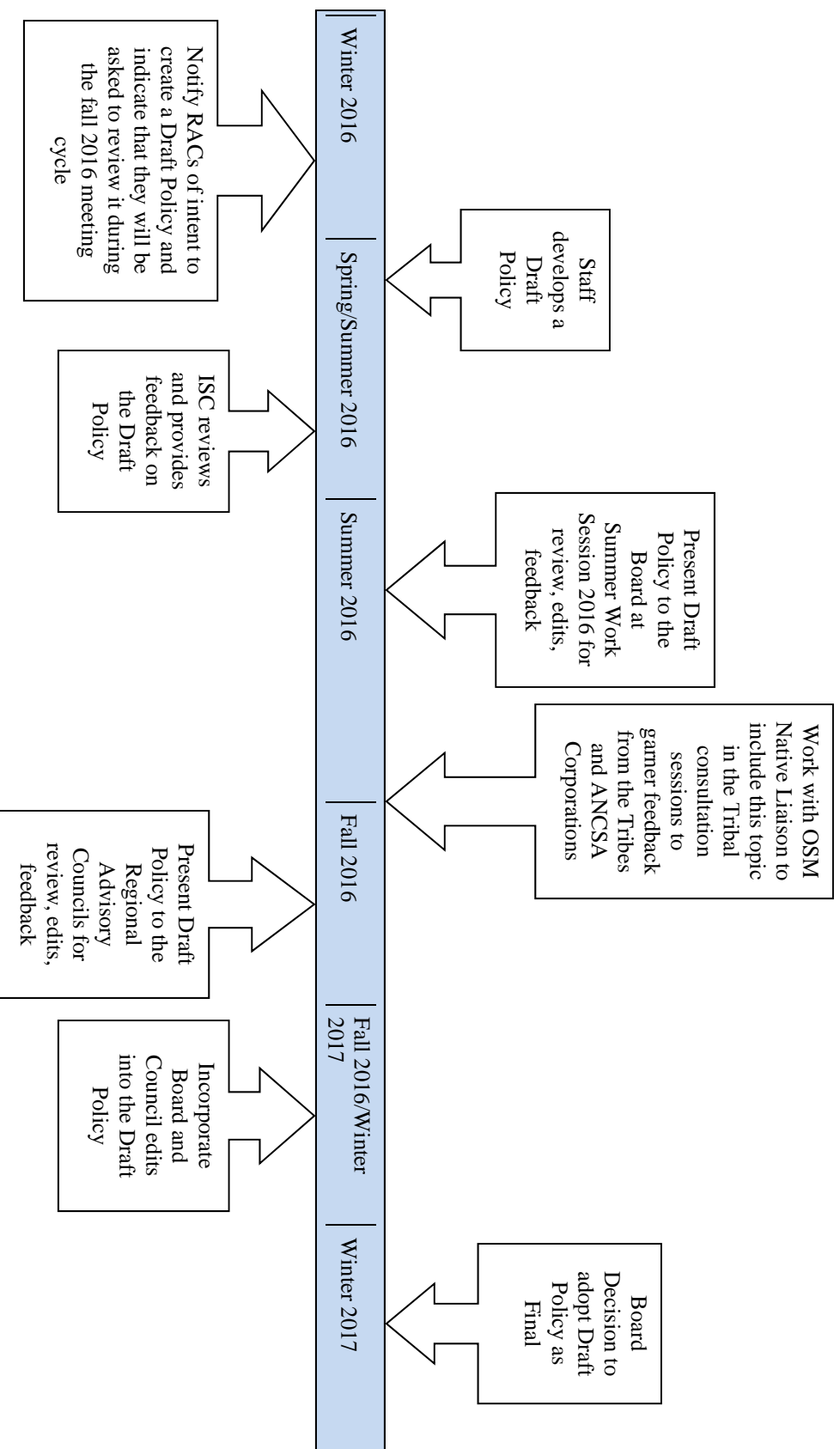
Thomas Whitford,

Subsistence Program Leader, USDA—Forest Service.

[FR Doc. 2015–27996 Filed 10–30–15; 8:45 am]

BILLING CODE 3410–11–4333–15–P

Draft Policy Timeline for Nonrural Determinations



**MAKHNATI ISLAND AREA HERRING AND HERRING SPAWN
THRESHOLD ANALYSIS
REQUEST FOR RECONSIDERATION RFR15-03**

ISSUE

The United Fishermen of Alaska (UFA) submitted a timely request for reconsideration dated March 17, 2015 (**Appendix A**). Specifically, the UFA requests that the Federal Subsistence Board (Board) reconsider and rescind its decision of January 22, 2015 to adopt Fisheries Proposal FP15-17. Fisheries Proposal FP15-17, submitted by the Sitka Tribe of Alaska, requested that the Board close Federal public waters in the Makhnati Island area, as defined in § __.3(b)(5) to the harvest of herring and herring spawn except by Federally qualified subsistence users. The UFA requests this reconsideration because it believes that the closure violates the *Federal Subsistence Board Policy on Closures to Hunting, Trapping and Fishing on Federal Public Lands and Waters in Alaska*, because the State is managing the fishery conservatively and herring biomass is currently healthy. Additionally, the UFA claims that the Board's action exceeded the original proposal, which only sought a commercial closure.

Background

Proposal FP15-17 was originally a request to the Board to close the Federal public waters in the Makhnati Island area near Sitka to the harvest of herring and herring spawn, except for sport and subsistence herring harvest and subsistence harvest of herring spawn.

Title VIII of Alaska National Interest Lands Conservation Act (ANILCA) provides that Federal public lands (and waters) can be closed to non-subsistence uses, if needed, to provide for subsistence, the priority consumptive use. However, Title VIII, associated regulations and case law do not provide the ability for the Federal Subsistence Management Program to regulate among the non-subsistence uses. After this was explained to the proponent, the proponent requested a change to the original proposal language. The revised proposal that was analyzed and deliberated by the Board requested the Board to close the Federal public waters in the Makhnati Island area near Sitka (**Map 2 Appendix B**) to the harvest of herring and herring spawn, except by Federally-qualified subsistence users.

The proponent stated that closure of these waters is necessary to provide a more reasonable harvest opportunity for Federally-qualified subsistence users to meet their subsistence needs, and that the Sitka Sound herring stock is depleted, so a closure would help protect the stock.

Federal Regulation prior to Board action on FP15-17

There were no specific Federal herring and herring spawn regulations for the Makhnati Island area prior to the Board's action. Therefore, all rural residents of Alaska were eligible to harvest herring and herring spawn from Federal public waters in the area, as well as the rest of southeast Alaska, per State of Alaska regulations. There were no closed seasons, harvest limits or closed areas in Federal regulation.

Current Federal Regulation, as a result of Board's January 2015 action

Southeast Alaska Area

§ __.27(i)(13)(xxi)

The Federal public waters in the Makhnati Island area, as defined in § __.3(b)(5) are closed to the harvest of herring and herring spawn except by Federally qualified users.

Relevant State Regulations

5 AAC 27.150. Waters closed to herring fishing in Southeastern Alaska Area.

(a)(7) District 13, in the waters north and west of the Eliason Harbor breakwater and Makhnati Island causeway from the western most tip of Makhnati Island to the eastern most point on Belie Rock to the southern-most tip of Gagarin Island to a point on the eastern shore of Crow Island at 57° 6.430' W. longitude to a point on the western shore of Middle Island at 57° 6.407' N. Latitude 135° 28.105' W. longitude to a point on the southeast shore of Middle Island at 57° 5.557' North latitude 135° 26.227' W. longitude to the green day marker northeast of Kasiana island, to the Baranof Island shore at 57° 5.258' N. latitude, 135° 22.951' W. longitude (**Map 4 Appendix B**).

Federal Lands and Waters affected by the proposal

§ __.3(b)(5)

*Southeastern Alaska—Makhnati Island Area: Land and waters beginning at the southern point of Fruit Island, 57°02'35" north latitude, 135°21'07" west longitude as shown on United States Coast and Geodetic Survey Chart No. 8244, May 21, 1941; from the point of beginning, by metes and bounds; S. 58° W., 2,500 feet, to the southern point of Nepovorotni Rocks; S. 83° W., 5,600 feet, on a line passing through the southern point of a small island lying about 150 feet south of Makhnati Island; N. 6° W., 4,200 feet, on a line passing through the western point of a small island lying about 150 feet west of Makhnati Island, to the northwestern point of Signal Island; N. 24° E., 3,000 feet, to a point, 57°03'15" north latitude, 134°23'07" west longitude; East, 2,900 feet, to a point in course No. 45 in meanders of U.S. Survey No. 1496, on west side of Japonski Island; southeasterly, with the meanders of Japonski Island, U.S. Survey No. 1,496 to angle point No. 35, on the southwestern point of Japonski Island; S. 60° E., 3,300 feet, along the boundary line of Naval reservation described in Executive Order No. 8216, July 25, 1939, to the point beginning, and that part of Sitka Bay lying south of Japonski Island and west of the main channel, but not including Aleutski Island as revoked in Public Land Order 925, October 27, 1953, described by metes and bounds as follows: Beginning at the southeast point of Japonski Island at angle point No. 7 of the meanders of U.S. Survey No. 1496; thence east approximately 12.00 chains to the center of the main channel; thence S. 45° E. along the main channel approximately 20.00 chains; thence S. 45° W. approximately 9.00 chains to the southeastern point of Aleutski Island; thence S. 79° W. approximately 40.00 chains to the southern point of Fruit Island; thence N. 60° W. approximately 50.00 chains to the southwestern point of Japonski Island at angle point No. 35 of U.S. Survey No 1496; thence easterly with the meanders of Japonski Island to the point of beginning including Charcoal, Harbor, Alice, Love, Fruit islands and a number of smaller unnamed islands (**Map 2 Appendix B**).*

Council Discussion and Recommendation on FP15-17

The Southeast Alaska Subsistence Regional Advisory Council (Council) conducted a public meeting in Wrangell on October 21-23, 2014. During that meeting, the Council was presented the staff analysis on FP15-17 (**Appendix B**). The Council engaged in a lengthy discussion with the analyst regarding the biology of herring and patterns of harvest. The Council also received recent information from the Juneau area biologist and the Sitka sac roe herring manager with the Alaska Department of Fish and Game. The Council also learned that a recent closure to commercial harvest in the area by the Board of Fisheries was to protect subsistence. The Council was informed of two written public comments in opposition to the proposal. Testimony from the Sitka Tribe noted decreased herring spawn, shortened duration of spawn, that a commercial test fishery had pushed herring away from the area where it spawned the heaviest, and that both State and Federal managers were taking action to protect herring. There was no public testimony in opposition to the proposal. During its deliberations, the Council noted there is a conservation concern for the Sitka Sound herring stock and that conduct of the commercial fishery displaces herring that would normally spawn in waters under Federal jurisdiction. The Council believed the staff analysis and public testimony provided substantial evidence of the need to close all the Federal Public waters in the Makhnati Island area to non-subsistence users for the continuation of subsistence use. The Council noted that Sitka Sound herring stock is much less abundant than it has been, and that there was a dramatic decrease in the last decade in subsistence harvest. The Council ultimately voted to support the proposal, with modification to close the Federal Public Waters of Sitka Sound to the harvest of herring with the use of commercial herring purse seine gear (SEAFSRAC 2014).

Federal Subsistence Board Discussion and Action on FP15-17

The Federal Subsistence Board held a public meeting on January 21-23, 2015, in Anchorage for the fisheries regulatory cycle. During that meeting, the Board was presented the OSM staff analysis, which included a conclusion to oppose the proposal. The OSM conclusion noted an increase in annual herring biomass and a lack of restrictions on subsistence users. The full written staff analysis of FP15-17, which includes the OSM conclusion and the full Council recommendation, were provided to the Board and the public in the Board Meeting Book, and is attached to this threshold analysis as **Appendix B**.

The Board was also given a Power Point presentation by Ms. Sherri Dressel, Statewide Herring Fisheries Scientist for the Alaska Department of Fish and Game (ADF&G), Commercial Fisheries Division, entitled *Stock Assessment of Sitka Sound herring and Preliminary guideline harvest level for the 2015 Sitka Sound sac roe herring fishery*. After the presentation, Ms. Dressel and Mr. Dave Gordon, ADF&G Sitka Area Management Biologist, answered two questions from Board members. Mr. Anthony Christianson asked whether there was any estimate on how much herring was harvested in 2014 in the area under consideration for closing. Mr. Gordon responded that a little over 4,000 tons were harvested in one commercial opening within the area and adjacent to the area. He was unable to say how much of the harvest came from within or outside of Federal public waters. Ms. Beth Pendleton then asked the presenters to expound on their statement that “there’s been low recruitment in recent years and some of

that appears to be climate driven.” Ms. Dressel responded by stating that the State takes age composition samples each year and that its forecast for recruitment “is essentially an average over time.”

Next, Mr. Robert Larson, Council Coordinator for the Southeast Alaska Subsistence Regional Advisory Council, presented the written public comments from the Petersburg Vessel Owners Association and the Southeast Herring Conservation Alliance; both in opposition to FP15-17.

The Board then heard public testimony from six individuals; five in favor of the proposal and one opposed. Ms. Jessica Gill from Sitka *supported* the proposal, stating that the Board should “err on the side of subsistence and to provide a small increase in harvest opportunity...” Ms. Gill also stated her belief that that the impact of the closure to non-Federally qualified users would be “pretty slim.” Mr. Steve Reifenhuth stated that he was “representing all the fishermen that fish in the Southeast herring fishery,” as well as the “tender men that transport ... fish to the processors,” and “five or six large processors that take the fish.” Mr. Reifenhuth *opposed* the proposal, stating that “there’s no conservation concern here, there’s no scientific basis for closing the area.” He also stated that subsistence needs are being met; there are plenty of herring eggs for the taking and that closing the affected area of the proposal “... will not help in any way subsistence harvesters.” In conclusion, Mr. Reifenhuth stated that “continuing to close small areas over and over and over and additions to it eventually will get to where I believe the proposers want to get, is to close the [commercial herring] fishery down.”

Mr. Jeff Feldpausch, Resource Protection Director, Sitka Tribe, *supported* the proposal and provided lengthy testimony. He noted: “Herring not only play a critical role as a forage fish in the marine food web but they have also been an integral part of the Native culture in Southeast Alaska for over 10,000 years. This once abundant ecological and cultural keystone species thrived throughout the region. Over-exploitation by the commercial fishing industry has eradicated herring from significant portions of the region's waters.” Mr. Feldpausch also told the Board, “The surviving herring stocks exist in a depleted state and are being managed under a shifted baseline. A shifted baseline is accepting current population levels as the norm or healthy, when in reality they are well below historic levels and are existing in a depleted state.” Mr. Feldpausch informed the Board about the state of other herring sac roe fisheries in Southeast Alaska. “It appears right now Sitka may be the only sac roe fishery taking place this year in Southeast. Seymour Canal has been closed down. That is a gillnet fishery. It is below threshold level. Hobart Bay, Port Houghton has been closed down. It is below threshold level. Kashakes, Cat Island fishery is closed down. It's below threshold level. West Behm Canal is closed down. It's below threshold level. The only remaining one that I don't have any information on is Lynn Canal fishery in the Auke Bay area.” He concluded his remarks by reiterating: “The Sitka Sound stock is the last stock in Southeast, and possibly all of Alaska, that can provide a viable subsistence harvest,” and adding, “A collapse of this stock would have an economic impact that cannot be measured in dollars. Since herring are such an integral part of the Native culture in Alaska, a loss of this magnitude would be devastating, immeasurable and irreplaceable to the Native culture.”

Mr. Harvey Kitka, Sitka Tribe, *supported* the proposal. Mr. Kitka spoke of the Sitka Tribe’s Herring Committee, which he chairs. He pointed out that the Sitka Tribe has worked for years with the

commercial fishery to “get an area closed for subsistence and conservation.” Mr. Kitka concluded his remarks by stating “We believe if the stock disappears not only will subsistence suffer, but the commercial industry will suffer and the community will suffer.”

Sam Thomas, Tribal Leader, Craig Tribal Association, *supported* the proposal. Mr. Thomas stated that there are some fishermen from his region that fish in Sitka Sound. He stated that one of his responsibilities as a tribal leader is to look after “our traditional and customary way of life,” and that adoption of this proposal will allow the Sitka Tribe to be able to do that.

Mr. Lee Wallace of Saxman *supported* the proposal. Mr. Wallace stated that Sitka is “really the last remaining big harvest area in Southeast Alaska.” He stated that this proposal was submitted to address both subsistence and conservation, and pointed out that “the biomass and the presence of herring in whole Southeast Alaska has declined.”

Mr. Michael Bangs, Chair, Southeast Alaska Subsistence Regional Advisory Council, informed the Board that the ADF&G has closed Whiting Harbor to fishing to prevent the spread of the invasive tunicate (sea squirt) species *Didemnum vexillum*. He also pointed out that Whiting Harbor makes up a large portion of the Federal public waters proposed for closure in FP15-17.

Ms. Jennifer Yuhas, ADF&G, Federal Subsistence Liaison Team, then informed the Board that the ADF&G was opposed to the proposal because it “eliminates a management tool that is necessary and eliminates it unnecessarily.”

The Board then deliberated on all the information and testimony provided, which included a discussion of the difference in conditions of the herring population and fisheries at present as compared to 2013, when the Board opted against putting a closure in place in the Makhnati Island area.

The Board then unanimously voted to adopt the proposal, citing multiple reasons for adoption, including conservation concerns related to significant declines in the herring populations throughout Southeast Alaska, recent low recruitment, the need to provide protection of the local spawning areas, and the need to ensure the continued subsistence use of the herring resource by Federally qualified subsistence users in the Sitka area. Finally, the Board concluded that the closure would have a “fairly small” impact to commercial fisheries in the area (FSB 2015).

Regulatory Language Regarding Requests for Reconsideration

The applicable regulatory language associated with requests for reconsideration can be found in **Appendix C**.

PRELIMINARY ASSESSMENT OF REQUESTOR’S CLAIMS

Criterion 1. Information previously not considered by the Board.

There were no claims by the United Fishermen of Alaska that there is new information that was not previously considered by the Board.

Criterion 2. The existing information used by the Board is incorrect.

There were no claims by the United Fishermen of Alaska that the existing information presented to, and utilized by the Board in making its decision, is/was incorrect.

Criterion 3. The Board's interpretation of information, applicable law, or regulation is in error or contrary to existing law.

Claim 3.1

The UFA claims that none of the criteria were met in the *Federal Subsistence Board Policy on Closures to Hunting, Trapping and Fishing on Federal Public Lands and Waters in Alaska* (Closure Policy), specifically citing one provision:

The Board will not restrict the taking of fish and wildlife by users on Federal public lands (other than national parks and park monuments) unless necessary for the conservation of healthy populations of fish and wildlife resources, or to continue subsistence uses of those populations, or for public safety or administrative reasons, or “pursuant to other public law.”

The UFA asserts, “We do not believe that any of these criteria are met with the Makhnati Island area closure,” and claims that recent closures by the Alaska Board of Fisheries were made to protect subsistence use and that the herring population in the area is “healthy.”

Thus, UFA's claim centers on an assertion that the Board's “interpretation of information ... is in error,” as it essentially disputes the Board's interpretation of data as applied to the closure criteria. As referenced in the Closure Policy, the authority to close Federal public lands and waters is based on Section 815 of the Alaska National Interest Lands Act (ANILCA) and the implementing Federal regulations 36 CFR 242.10 and 50 CFR 100.10. The UFA makes no claim that the Board has interpreted any applicable law or regulation in error, just the Closure Policy.

Preliminary assessment of claim 3.1

During the Board's January 2015 public meeting, the testimony and discussion centered on two aspects of the closure policy, conservation of healthy populations of fish and continuation of subsistence uses of those populations, which are straight from Section 815(3) of ANILCA. Testimony from the Sitka Tribe, both before the Council and the Board, centered on the decreasing availability of herring, its importance to subsistence activities, and how other herring populations in Southeast are dwindling. The data in the OSM analysis of FP15-17 noted that the biomass of herring returning to spawn dropped from a high of 119,049 tons in 2009 to 81,665 tons in 2014. It also noted a trend in decreasing subsistence harvest in

recent years. In its deliberations, the Board cited multiple reasons as justification for adoption of the proposal, including conservation concerns related to significant declines in the herring populations throughout Southeast Alaska, recent low recruitment, the need to provide protection of the local spawning areas, and the need to ensure the continued subsistence use of the herring resource by Federally qualified subsistence users in the Sitka area. Conservation of healthy populations of fish and continued subsistence uses of those populations are both identified in the ANILCA Section 815, implementing Federal regulations 36 CFR 242.10 and 50 CFR 100.10 and the Closure Policy as justification for closure. While some may disagree with the interpretation of the data, there was data and testimony on the record to support the Board's adoption of the proposal.

Conclusion: There appears to be no merit to this claim.

Claim 3.2

The UFA claims that “the Board’s closure of the area to all non-federally qualified users, including personal use and sport, is an unintended consequence beyond what was proposed in proposal FP15-17.” The UFA adds that the original “proposal as written was outside the Board’s authority” and provides ample reason to reconsider this action.

It is difficult to ascertain which of the three aspects of Criterion 3 are applicable: misinterpretation of information, misinterpretation of law, or misinterpretation of regulation. This appears to be a statement that the Board lacked authority to consider a proposal that would seek to exclude user groups in a manner the Board was not authorized to do. Thus, it will be treated for purposes of this analysis as a claim of misinterpreting law or regulation.

Preliminary assessment of claim 3.2

The Requestor incorrectly states the proposal that was ultimately put forth by the Sitka Tribe of Alaska was outside the Board’s authority. While the Tribe’s original proposal may have sought to limit harvest to only “sport and subsistence” users, it was modified as noted in the attached OSM analysis of FP15-17:

However, Title VIII, associated regulations and case law do not provide the ability for the Federal Subsistence Program to regulate among the non-subsistence uses. After this was explained to the proponent, a request was made to alter the original proposal language. The revised proposal that was analyzed seeks to close the Federal public waters in the Makhnati Island area near Sitka ... to the harvest of herring and herring spawn except by Federally-qualified subsistence users.

Additionally, the scope of a request for reconsideration is to ask for the Board to reconsider an “action” taken under subparts C and D of the Federal subsistence regulations. *See* __.20(a) & (d). A request for reconsideration does not apply to proposals as written, but action taken by the Board. Thus, it is immaterial that the original proposal may have asked for a regulatory action outside the Board’s authority; only the final action taken by the Board is subject to a request for reconsideration.

As the Requestor correctly notes, the Board does possess the authority to close Federal public lands and waters to non-Federally qualified users, and the final action taken in this case: “The Federal public waters in the Makhnati Island area, as defined in §100.3(b)(5) are closed to the harvest of herring and herring spawn except by Federally qualified users.” Thus, the proposal, as clarified by the proponent, and as adopted by the Board, were within the authority of the Board.

There appears to be no merit to this claim.

SUMMARY

The UFA requested that the Board reconsider and rescind its decision of January 22, 2015 that closed the Federal public waters in the Makhnati Island area to the harvest of herring and herring spawn except by Federally-qualified subsistence users. There were no claims by the requestor under Criteria 1 and 2. Under Criterion 3, the requestor’s two claims appear to not meet the requirements for accepting a request for reconsideration by the Board.

OSM PRELIMINARY CONCLUSION

Oppose request for reconsideration of **FRFR15-03**

Justification

The Board, per ANILCA Section 815, implementing Federal regulations 36 CFR 242.10 and 50 CFR 100.10, has the authority to close Federal public lands and waters to non-Federally qualified users. The Board cited multiple reasons as justification for closure of the Federal public waters in the Makhnati Island area to the harvest of herring and herring spawn except by Federally qualified subsistence users, including conservation concerns related to significant declines in the herring populations throughout Southeast Alaska, recent low recruitment, the need to provide protection of the local spawning areas, and the need to ensure the continued subsistence use of the herring resource by Federally qualified subsistence users in the Sitka area. Conservation of healthy populations of fish and continued subsistence uses of those populations are both identified in ANILCA Section 815 and implementing Federal regulations 36 CFR 242.10 and 50 CFR 100.10 as justification for closure.

LITERATURE CITED

FSB. 2015. Transcript of the Federal Subsistence Board meeting in Anchorage, Alaska. January 22, 2015. Pages 117-160. FWS, Office of Subsistence Management. Anchorage, AK.

OSM. 2015. Staff analysis FP15-17. Pages 216-242 *in* Federal Subsistence Board Meeting Materials. January 21-23, 2015. Office of Subsistence Management. USFWS. Anchorage, AK. 242 pp.

SEAFSRAC. 2014. Transcripts of the Southeast Alaska Federal Subsistence Regional Advisory Council proceedings, October 21-23, 2014 in Wrangell, Alaska. Office of Subsistence Management, FWS. Anchorage, AK.

Appendix A: The United Fisherman of Alaska Request for Reconsideration (2 pages)



UNITED FISHERMEN OF ALASKA

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March 17th, 2015

Office of Subsistence Management
U.S. Fish and Wildlife Service
1011 E. Tudor Rd, Mail Stop 121
Anchorage, AK 99503



RE: FSB action on Kenai, Kasilof and Makhnati Island subsistence fishing.

Dear members of the Federal Subsistence Board,

United Fishermen of Alaska (UFA) is the statewide commercial fishing trade association, representing 36 commercial fishing organizations and over 400 individual members participating in fisheries throughout the state and its offshore federal waters. It is highly likely that UFA members will be adversely affected by three recent actions taken by the Federal Subsistence Board.

UFA respectfully requests reconsideration of proposals FP15-10, FP15-11, and FP15-17 which were approved at the Federal Subsistence Board. Our comments on each action follow.

FP15-10 –new use of in-river gillnet by residents of Ninilchik in federal freshwaters of the Kenai River. Residents of Ninilchik have a priority over other users of salmon and trout in the Kenai river, and reasonable opportunity to meet the amount needed for subsistence under current federal subsistence as well as state sport and personal use regulations.

Kenai river king salmon are suffering a period of low abundance, and all users have taken significant cuts. We feel that additional pressure in upstream spawning areas with a new gillnet fishery will cause jeopardy to spawning of king salmon in the area, defeating the purpose of regulations that seek to restore king salmon in the Kenai.

All users including residents of Ninilchik are required to release rainbow trout and Dolly Varden over 18 inches in length. Allowing new use of an upriver gillnet is incompatible with the objective of releasing these large trout.

We do not feel that the community has had ample time to develop the fish wheel that was previously permitted for residents of Ninilchik in the Kenai River. It should be expected that it may take some trial and error before a location is found where a fish wheel will work adequately. The ability to safely release any non-target species such as large trout or king salmon is an important feature of the fish wheel. Fish wheels have been implemented successfully in other subsistence fisheries, and we encourage more due diligence in the fish wheel effort.

FP15-11 – new use of gillnet by residents of Ninilchik in federal freshwater of the Kasilof River. Residents of Ninilchik have a priority over other users of salmon and trout in

the Kasilof River, and reasonable opportunity to meet the amount needed for subsistence under current federal subsistence as well as state sport and personal use regulations. We do not feel that the community has had ample time to develop the fish wheel that was previously permitted for residents of Ninilchik in the Kenai River. It should be expected that it may take some trial and error before a location is found where a fish wheel will work adequately. The ability to safely release any non-target species such as large trout or king salmon is an important feature of the fish wheel. Fish wheels have been implemented successfully in other subsistence fisheries, and we encourage more due diligence in the fish wheel effort.

FP15-17 – UFA closure of Federal public waters to non-Federally qualified users in the Makhnati Island area to the harvest of herring and herring spawn. The Federal Subsistence Board Policy on Closures to Hunting, Trapping and Fishing on federal Public Lands and Waters in Alaska, adopted in 2007, states that:

“the Board will not restrict the taking of fish and wildlife by users on Federal public lands unless necessary for the conservation of healthy populations of fish and wildlife resources, or to continue subsistence uses of those populations, or for public safety or administrative reasons, or “pursuant to other public law.”

We do not believe that any of these criteria are met with the Makhnati Island area closure. The herring fishery is closely and conservatively managed by the Alaska Department of Fish and Game, and herring is the most researched species in Alaska. The Alaska Board of Fisheries closed a large area adjacent to Makhnati Island in 2012 to address concerns of local subsistence users. Although herring are well known to experience fluctuations, the biomass is healthy and supports an important commercial fishery that is constrained to 12 – 20 percent of total mature spawning biomass.

The Board’s closure of the area to all non-federally qualified users, including personal use and sport, is an unintended consequence beyond what was proposed in proposal FP15-17. ADF&G notes in its comment on jurisdiction that the Board’s authority would require this more far reaching closure rather than the proposed commercial-only closure, and is additionally outside the criteria for closure. The fact that the proposal as written was outside the Board’s authority is ample reason to reconsider this action.

Please consider this request and reconsider actions taken on these proposals.

Sincerely,



Julianne Curry
Executive Director

MEMBER ORGANIZATIONS

Alaska Bering Sea Crabbers • Alaska Independent Fishermen's Marketing Association
Alaska Independent Tendermen's Association • Alaska Longline Fishermen's Association • Alaska Scallop Association
Alaska Trollers Association • Alaska Whitefish Trawlers Association • Armstrong Keta • At-sea Processors Association • Bristol Bay Reserve
Cape Barnabas Inc. • Concerned Area "M" Fishermen • Cook Inlet Aquaculture Association • Cordova District Fishermen United
Douglas Island Pink and Chum • Freezer Longline Coalition • Golden King Crab Coalition • 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 • Southeast Alaska Herring Conservation Alliance • Southeast Alaska Fisherman's Alliance
Southeast Alaska Regional Dive Fisheries Association • Southeast Alaska Seiners • Southern Southeast Regional Aquaculture Association
United Catcher Boats • United Cook Inlet Drift Association • United Southeast Alaska Gillnetters • Valdez Fisheries Development Association

APPENDIX B: Staff Analysis of Proposal FP15-17

STAFF ANALYSIS FP15-17

ISSUES

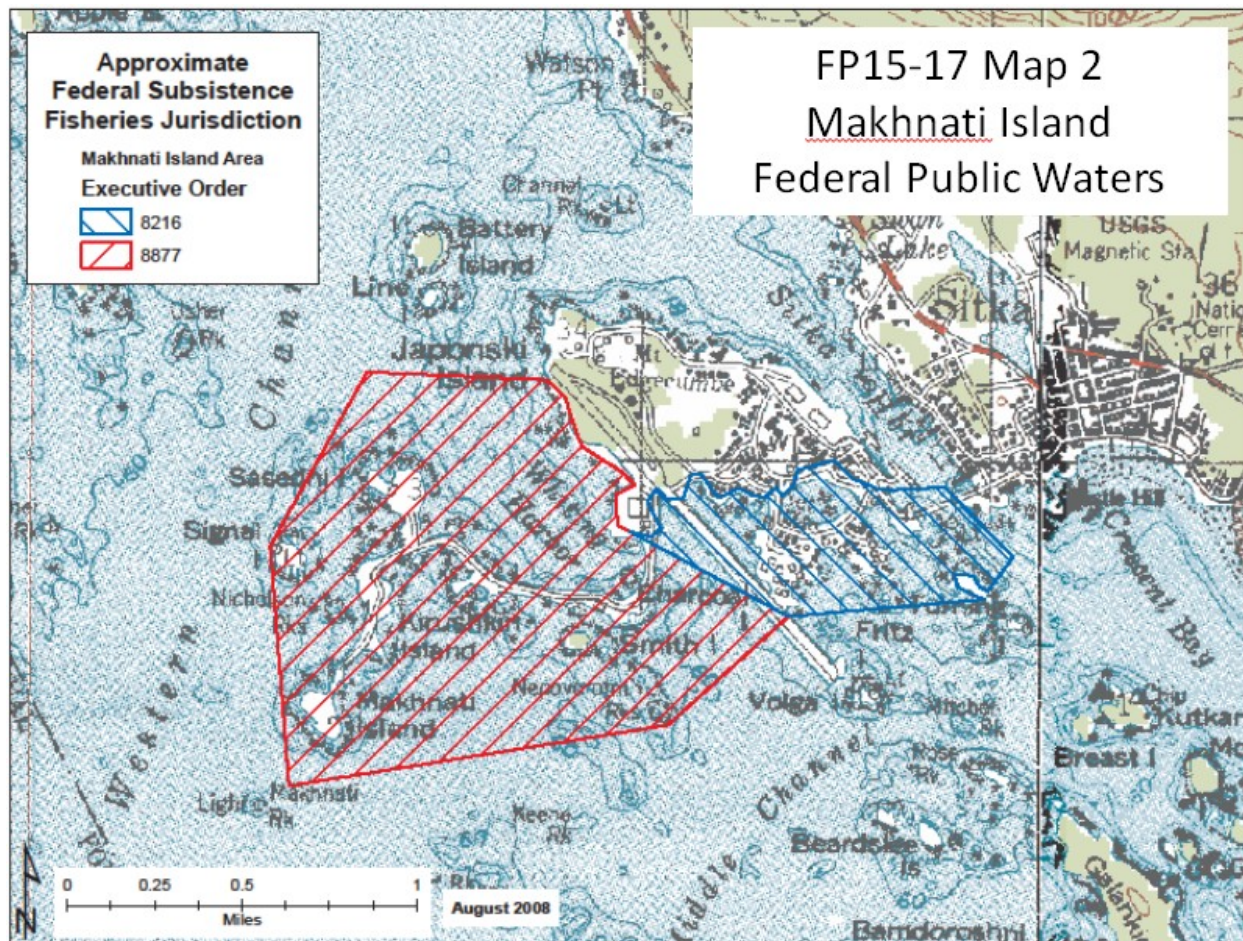
Proposal FP15-17, submitted by the Sitka Tribe of Alaska, seeks to close the Federal public waters in the Makhnati Island area near Sitka to the harvest of herring and herring spawn except for sport and subsistence herring harvest and subsistence harvest of herring spawn.

DISCUSSION

Title VIII of ANILCA provides that lands (and water) can be closed to non-subsistence uses to provide for the subsistence priority. However, Title VIII, associated regulations and case law do not provide the ability for the Federal Subsistence Program to regulate among the non-subsistence uses. After this was explained to the proponent, a request was made to alter the original proposal language. The revised proposal that was analyzed seeks to close the Federal public waters in the Makhnati Island area near Sitka (**Maps 1 and 2**) to the harvest of herring and herring spawn except by Federally-qualified subsistence users.

Proposal FP15-17
Map 1: Sitka Sound and Vicinity





The proponent believes a closure of these waters is necessary to provide a more reasonable opportunity for harvest by Federally qualified subsistence users to meet their subsistence needs. The proponent states that subsistence users have been unable to harvest the amount necessary for subsistence (ANS), as set by the Alaska Board of Fisheries, for more than half of the years since harvest surveys were initiated in 2002.

The proponent also believes the Sitka Sound herring stock is depleted and that the proposed closure would help protect the stock. The proponent states that scientific evidence and traditional ecological knowledge support the fact that herring populations in southeast Alaska, including Sitka Sound, were much larger prior to the existence of commercial herring fisheries. The proponent believes that the Alaska Department of Fish and Game (ADF&G) is currently managing a depleted herring stock in Sitka Sound, due to a shifted population baseline, resulting in substantial negative impacts to subsistence users. The proponent believes that fisheries managers are basing the perceived health of the stock on population numbers since the 1970s and not the true historical population.

The proponent believes that herring have not consistently spawned in traditional subsistence areas. The proponent states that traditional ecological knowledge and local observation support that the commercial harvest of herring displaces subsistence users from traditional harvesting sites; disrupts herring spawning, leading to poor quality deposition of herring eggs at traditional sites; causes herring to spawn away from subsistence sites; and may seriously reduce the biomass of spawning herring upon which subsistence users depend.

Existing Federal Regulation

Under existing Federal regulations, all rural residents of Alaska are eligible to harvest herring and herring spawn from Federal public waters in southeast Alaska. There are no closed seasons, harvest limits or closed areas in regulation.

Proposed Federal Regulation

36 CFR 242 and 50 CFR 100

§ __.27(i)(13)(xx) The Federal public waters in the Makhnati Island area, as defined in § __.3(b)(5) are closed to the harvest of herring and herring spawn except by Federally qualified subsistence users.

Existing State Regulations

See “State regulatory history” section below

Extent of Federal Public Waters

For purposes of this discussion, the phrase “Federal public waters” is defined as those waters described under 36 CFR 242.3 and 50 CFR 100.3.

The Federal subsistence program exerts jurisdiction of approximately 800 acres of marine waters near Makhnati Island as described in § __.3(b)(5) (**Map 2**). These waters are under the management authority of the Bureau of Land Management however the in-season manager is the local U.S. Forest Service, Sitka District Ranger.

Customary and Traditional Use Determinations

The Federal Subsistence Board (Board) has not made a customary and traditional use determination for herring in this area; therefore, all rural residents of Alaska may harvest herring and herring spawn under Federal subsistence regulations in this area.

Regulatory History

Federal regulatory history

In January 2007, the Board considered two proposals regarding the subsistence herring egg harvest in the Makhnati Federal public waters near Sitka (FSB 2007a). Proposal FP07-18,

submitted by the Southeast Alaska Subsistence Regional Advisory Council (Council) and FP07-19, submitted by the Sitka Tribe of Alaska both sought to close the Makhnati Federal public waters to commercial herring fishing during the months of March and April. The proponents believed the closure would be a constructive step toward ensuring adequate subsistence harvests of herring and herring spawn. The Board deferred action on proposal FP07-18 and took no action on FP07-19 (FSB 2007a). The Board asked the Council to form a subcommittee to recommend criteria which would govern decisions to open or close the commercial herring fishery in the Makhnati Federal public waters and possible alternate solutions. Although the subcommittee did not reach consensus on all recommendations, its report was presented to the Council in September 2007. The Council accepted the report and distributed it to the public. At its September 2007 meeting, the Council developed closure language for the Makhnati Island area based on the subcommittee report. The Council recommended the closure of Federal public waters near Makhnati Island to non-Federally qualified subsistence users when the forecast herring biomass is less than 35,000 tons for the Sitka Sound area or when ANS is not met for two consecutive years (SESRAC 2007). In comparison, ADF&Gs herring management plan used a threshold level of 20,000 tons, below which no commercial sac roe harvest would occur. The Board considered the Council's recommendation during a December 2007 public meeting as part of proposal FP07-18. Following considerable oral testimony from Tribal representatives, professional managers and staff, the Board rejected the Council's recommendation. The Board's rationale was that there was not substantial evidence of a conservation concern or a need for a closure to insure the continuance of subsistence uses (FSB 2007b).

On March 25, 2008, Special Action Request FSA07-03 was received by the Board from the Sitka Tribe of Alaska requesting that the Federal public waters in the Makhnati Island area, as defined in 36 CFR 242.3(b)(5) and 50 CFR §100.3(b)(5), be closed to the harvest of herring and herring spawn except for subsistence harvests by Federally qualified subsistence users from March 24, 2008 through April 30, 2008. The Board responded by letter dated April 3, 2008 informing the Sitka Tribe of Alaska that the commercial fishery was completed prior to the Board action and consequently the matter was moot.

Also on March 25, 2008 a letter was received by the Secretaries of Agriculture and the Interior (Secretaries) from the Sitka Tribe of Alaska requesting that they exert extra-territorial jurisdiction authority to close the commercial herring fishery in the area shown in **Map 3**. The Secretaries denied the Sitka Tribe of Alaska's request stating they can "only exercise their authority to impose Federal jurisdiction outside of Federal public land under extraordinary circumstances. The threshold for such a decision is extremely high, and is not met in this case. With such a healthy herring biomass, there is clearly no conservation concern with regard to the herring stocks and the associated fishery in Sitka Sound. Given the spawning characteristics of herring, closing State marine waters as is being requested would not significantly increase the

likelihood of Federally qualified subsistence users harvesting their desired amounts in the Makhnati Island Federal public waters.”



Proposal FP09-05, submitted by the Sitka Tribe of Alaska in 2008, requested the closure of Federal public waters in the Makhnati Island area near Sitka (**Map 2**) to the harvest of herring and herring spawn except for subsistence harvests by Federally qualified subsistence users. In January of 2009 (FSB

2009) and again in January of 2011 (FSB 2011), the Board deferred proposal FP09-05 until no later than the next fisheries regulatory cycle.

In January of 2009, the Board deferred this proposal until the next fisheries cycle to allow the Alaska Board of Fisheries on to act on a variety of proposals that could change State regulations for the Sitka Sound herring fisheries and to obtain results from two research projects.

One project, conducted by Heather Meuret-Woody of the Sitka Tribe of Alaska and Nate Bickford of the University of Great Falls, was based on the use of trace chemical signatures of adult herring otoliths to identify discrete spawning areas within Sitka Sound (Meuret-Woody and Bickford 2009). The Board was particularly interested in whether herring spawning in Federal waters are a distinct population or stock. While the sampling strategy was very limited, the investigators detected a difference between adult herring in Salisbury Sound and Sitka Sound, but not among spawning herring within Sitka Sound, which includes the Makhnati Federal public waters.

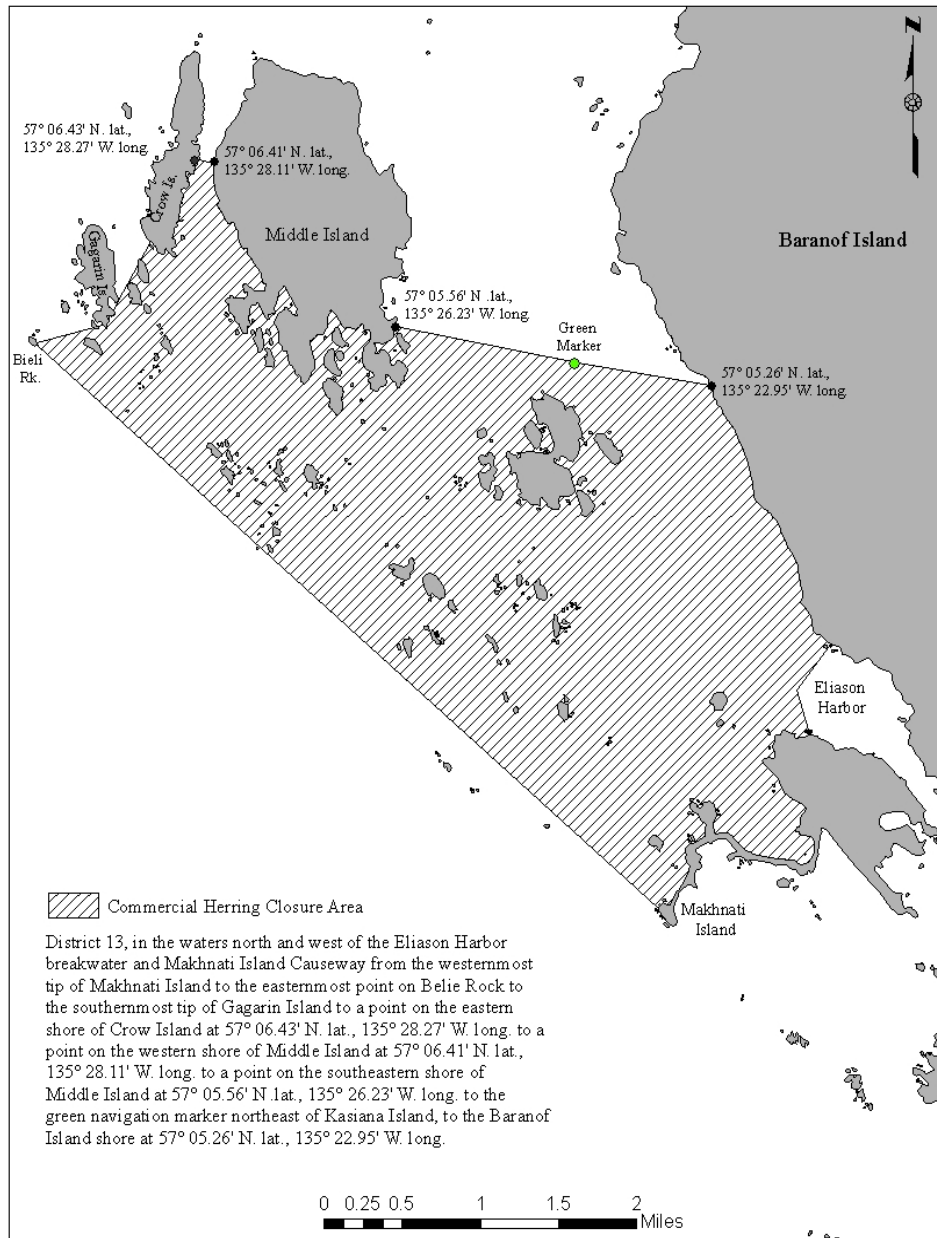
The other project, conducted by the Sitka Tribe of Alaska, was designed to determine the amount of subsistence use of herring roe in the Federal public waters near Makhnati Island (Fisheries Resource Monitoring Program project 08-651, Makhnati Island Subsistence Herring Fishing Assessment).

In 2010, immediately prior to the Council meeting, the Sitka Tribe of Alaska submitted a letter to Federal Subsistence Board Chairman Mr. Tim Towarak dated September 21, 2010 requesting FP09-05 be deferred. The Board agreed and deferred the proposal until no later than the next fisheries regulatory cycle. The Sitka Tribe of Alaska cited three reasons for requesting the deferral.

1. The Sitka Tribe of Alaska was conducting a study, commissioned by the Bureau of Indian Affairs, of current herring management in Sitka Sound. However, this study was not peer reviewed for publication and was not anticipated to be ready for review by the Council or by the Board before its January 2013 Board meeting (Feldpausch 2012, pers. comm.) To date, this report has not been peer reviewed.
2. The Sitka Tribe of Alaska wanted results of project 08-651 to be available to the Council and Board. According to Meuret-Woody et al. (2010), “the Makhnati area was once used by many subsistence users, but today is not used as frequently due to the development of the area and the ease of most subsistence herring egg gatherers to harvest in other areas”.

3. The Sitka Tribe of Alaska had formed a Herring Planning Research Priority Group, and the work of that group was not anticipated to be ready for review by the Council or by the Board before its January 2013 Board meeting (Feldpausch 2012, pers. comm.) To date, the group has not developed any products or recommendations.

In January 2013 the Board once again considered FP09-05 and rejected the proposal consistent with the recommendation of the Council. The Board's rationale was that since the last deferment in 2011 the Alaska Board of Fisheries took "significant action to reduce conflicts between the purse seine sac roe fishery and subsistence harvesting, including closing a large area important to subsistence harvesting to commercial fishing" (FSB 2013) (**Map 4**). This closed area already includes a large portion of the Makhnati Federal public waters. The Board also believed that a Federal closure would provide essentially no additional advantage for subsistence users (FSB 2013).



Map 4. January 2012 Board of Fisheries action to create a zone closed to commercial fishing for herring in Sitka Sound that includes part of the Makhnati Federal waters. (Gordon, 2014)

Federal fisheries managers have been delegated the authority to close or re-open Federal public waters to non-subsistence fishing. This delegation may be exercised only when it is necessary to conserve fish stocks or to continue subsistence uses. Although the ADF&G forecasts the herring biomass before the season starts, the actual return and spawning success of herring is not known until after the commercial and subsistence fisheries are completed. Therefore, Federal actions to close waters to non-Federal uses would only take place in years for which the herring biomass was forecasted to be below the threshold needed to support commercial uses. Otherwise, since

the commercial fishery usually takes place well before the subsistence fishery, managers would not know that subsistence harvests were poor until long after the commercial fishery ended.

State regulatory history

In response to a poor subsistence herring egg harvest in 2001, the Sitka Tribe of Alaska submitted a proposal to the Alaska Board of Fisheries in 2002. The proposal requested the herring sac roe fishery be dispersed to avoid concentrating the commercial harvest in traditional subsistence egg harvesting areas. The Alaska Board of Fisheries amended the proposal by removing a suggested requirement for a subsistence permit for all subsistence harvest in favor of face to face surveys to estimate subsistence herring egg harvest. The Alaska Board of Fisheries also established the ANS for herring roe in Sitka Sound, Section 13-A and 13-B north of the latitude of Aspid Cape at 105,000 to 158,000 pounds (5AAC 01.716(7) (b)) (Turek 2003). Regulations limit customary trade in herring roe on kelp (5AAC 01.717 and 5 AAC 01.730 (g)). Other than spawn on kelp, there are no harvest limits for herring or herring spawn. According to the conditions of a herring spawn on kelp subsistence fishing permit, the annual possession limit for herring spawn on kelp is 32 pounds for an individual or 158 pounds for a household of two or more persons. There are no regulations regarding subsistence reporting requirements, or specific allocations for subsistence (Turek 2006).

In November of 2002 a Memorandum of Agreement was signed by the Chairman of the Alaska Board of Fisheries, the Commissioner of the ADF&G and the Sitka Tribe of Alaska Chairman. The State and the Sitka Tribe of Alaska agreed to collaborate, communicate, and collect and share data (STA 2006). The Memorandum of Agreement contained provisions for in-season collaboration which included daily contact between the Sitka Tribe of Alaska and ADF&G and stipulated that the Sitka Tribe of Alaska would be consulted as to whether a proposed commercial opening might affect subsistence opportunity. If the Sitka Tribe of Alaska concluded there was a potential for the subsistence fishery to be adversely effected by a proposed opening, the Sitka Tribe of Alaska would provide this conclusion and rationale to ADF&G verbally and in writing. A formal objection to a proposed opening did not necessarily result in a commercial closure, as ADF&G maintained discretion as to whether or not to open the commercial fishery. In June 2009 ADF&G sent a letter to Sitka Tribe of Alaska withdrawing from the Memorandum of Agreement because of the perception that the Sitka Tribe of Alaska had access to information and input into decision making that was not readily available to the general public and other user groups.

ADF&G is required to “distribute the commercial harvest by fishing time and area if the department [ADF&G] determines that is necessary to ensure that subsistence users have a reasonable opportunity to harvest the amount of herring spawn necessary for subsistence uses” (5AAC27.195(a)(2)). Additionally, commercial herring vessels and crew members may not take

or possess herring for subsistence 72 hours prior to or following a commercial herring fishing period.

In February 2009 the Alaska Board of Fisheries created new regulations for the Sitka Sound herring fisheries effective beginning with the 2010 season. Descriptions of those actions follow:

1. Section 13-A south of the latitude of Point Kakul ($57^{\circ}21.75'$ N. lat) in Salisbury Sound will formally be included in the Sitka Sound sac roe seine area [5AAC 27.110(b)(1)(d)].
2. The mature biomass threshold, below which no fishery would occur in Sitka Sound, was increased from 20,000 tons to 25,000 tons. The harvest rate when the biomass is above 25,000 tons does not change from the harvest rate previously established in regulation except that the minimum harvest rate, when the forecast biomass is at 25,000 tons, will be 12% [5AAC 27.160(g)].
3. The range of the amount of herring roe reasonably necessary for subsistence in Section 13-A and Section 13-B north of Aspid Cape was increased from 105,000–158,000 pounds to 136,000–227,000 pounds [5AAC 01.716(b)].

On February 28, 2012, the Alaska Board of Fisheries passed a regulation to close an area to commercial herring fishing in Sitka Sound [5 AAC 27.150(a)(4)] to “reduce perceived conflict between the commercial fishery and the subsistence fishery” (Thynes et al. 2013). The area is defined as north and west of the Eliason Harbor breakwater and Makhnati Island causeway from the western most tip of Makhnati Island to the eastern most point on Belie Rock to the southern-most tip of Gagarin Island to a point on the eastern shore of Crow Island at $57^{\circ}6.430'$ W. longitude to a point on the western shore of Middle Island at $57^{\circ}6.407'$ N. Latitude $135^{\circ}28.105'$ W. longitude to a point on the southeast shore of Middle Island at $57^{\circ}5.557'$ North latitude $135^{\circ}26.227'$ W. longitude to the green day marker northeast of Kasiana island, to the Baranof Island shore at $57^{\circ}5.258'$ N. latitude, $135^{\circ}22.951'$ W. longitude (**Map 4**).

Biological Background

The following is excerpted from the ADF&G Wildlife Notebook Series (ADF&G 2000):

Pacific herring generally spawn during the spring. In Alaska, spawning is first observed in the southeastern archipelago during mid-March. Spawning is confined to shallow, vegetated areas in the intertidal and subtidal zones.

The eggs are adhesive, and survival is better for those eggs which stick to intertidal vegetation than for those which fall to the bottom. Milt released by the males drifts among the eggs and fertilizes them. The eggs hatch in about two weeks, depending on the temperature of the water.

Herring spawn every year after reaching sexual maturity at 3 or 4 years of age. The number of eggs varies with the age of the fish and averages 20,000 annually. Average life span for these fish is about 8 years in Southeast Alaska.

Mortality of the eggs is high. Young larvae drift and swim with the ocean currents and

are preyed upon extensively by other vertebrate and invertebrate predators. Following metamorphosis of the larvae to the juvenile form, they rear in sheltered bays and inlets and appear to remain segregated from adult populations until they are mature.

Herring are located in distinctly different environments during different periods of the year. After spawning, most adults leave inshore waters and move offshore to feed primarily on zooplankton such as copepods and other crustaceans. They are seasonal feeders and accumulate fat reserves for periods of relative inactivity. Herring schools often follow a diel vertical migration pattern, spending daylight hours near the bottom and moving upward during the evening to feed.

The annual biomass of herring returning to spawn in Sitka Sound (commercial purse seine catch + post season model estimates) has exhibited an increasing trend over the last 34 years of commercial fishing with a decline in 2012 (**Figure 1**). In 2012 the total estimate of herring biomass returning to Sitka Sound was estimated at 84,435 tons, down from a high of 119,049 tons in 2009. There was a slight increase in 2013 with an estimate of 88,341 tons. The 2014 pre fishery forecast was 81,665 tons (Coonradt 2014).

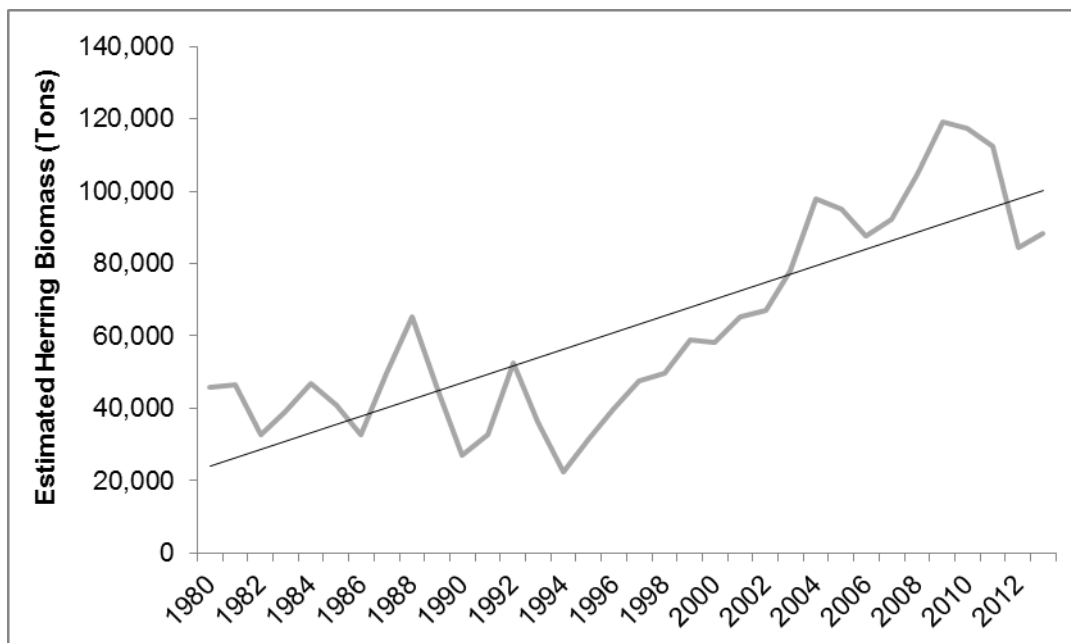


Figure 1. Annual estimated biomass of herring returning to Sitka Sound from 1980 - 2013, with trendline.

Harvest History

Subsistence harvest methods

The subsistence herring egg harvest is a complex and time intensive process. According to

Schroeder and Kookesh (1990), this customary and traditional harvest is conducted using a variety of egg deposition strata including hemlock branches and trees, kelp, seaweed and occasionally man-made materials. In the spring (late March–April) seal, sea lion, and sea gull feeding activity are indicators for subsistence harvesters that the herring have arrived in Sitka Sound. There are many “superhouseholds” who harvest herring eggs for multiple households in addition to their own. Herring eggs are a highly valued item in subsistence trade and sharing networks. Detailed examination of the subsistence herring egg harvest is described by Schroeder and Kookesh (1990).

Subsistence harvest

The ADF&G Division of Subsistence conducted research on the subsistence harvest of herring eggs in Sitka Sound as part of household harvest surveys conducted in Sitka in 1997 (ADF&G 2003). At the January 2002 meeting, the Alaska Board of Fisheries requested that ADF&G Division of Subsistence work with the Sitka Tribe of Alaska and conduct harvest surveys for the Sitka Sound herring egg fishery. In 2002 and 2003, the ADF&G provided field survey and interview project support, and data analysis. The Sitka Tribe of Alaska, working with ADF&G staff conducted interviews in person with harvesters and provided harvest data to ADF&G for analysis in 2002 and 2003. Research conducted by ADF&G and the Sitka Tribe of Alaska in 2002 and 2003 produced harvest estimates of the total pounds of herring eggs-on-hemlock-branches and the total pounds of herring eggs harvested on *Macrocystis*, hair seaweed and other substrate. The Sitka Tribe of Alaska also collected harvest data from 2004 through 2013 (STA 2006; Turek 2008 and Thynes 2014). In 2008 the Fisheries Resource Monitoring Program funded project 08-651, Makhnati Island Subsistence Herring Fishing Assessment, to determine the harvest patterns of herring spawn from Federal public waters in Sitka Sound. According to Meuret-Woody et al. (2010), “the Makhnati area was once used by many subsistence users, but today is not used as frequently due to the development of the area and the ease of most subsistence herring egg gatherers to harvest in other areas”.

Subsistence users are allowed to harvest herring and herring eggs anywhere in and around Sitka Sound. The location and intensity of herring spawn in Sitka Sound varies from year to year. From 1980 to 2014, the amount of spawn deposition has varied from 37 to 104 nautical miles averaging 59.4 nautical miles. Spawn deposition is more consistent in some areas, but spawning is not assured in any specific area every year. Some spawn and subsistence harvest occurs within Federal public waters in most years. However, where people harvest herring eggs is ultimately determined by where the herring spawn. In 2014, the observed spawn deposition was quite extensive in the preferred subsistence harvest areas (**Figure 2**).

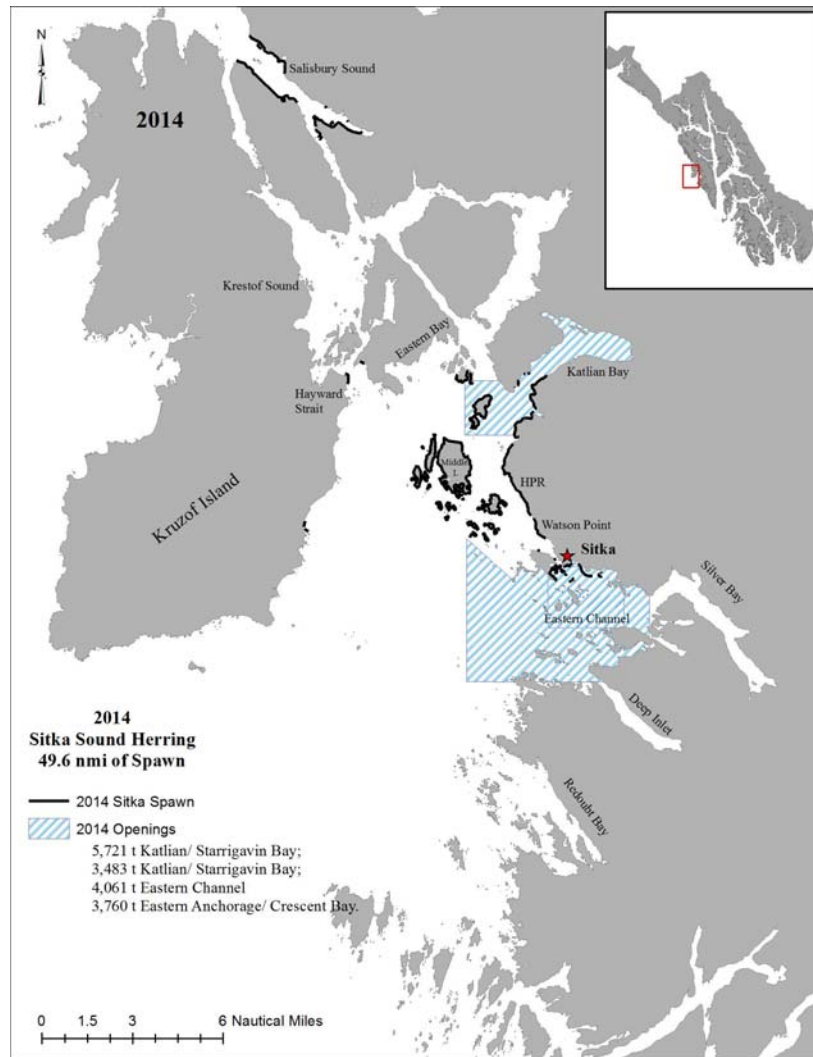


Figure 2. Cumulative herring spawn and commercial openings in Sitka Sound, 2014. (Coonradt 2014)

For the available years of data (2002–2013), the average annual total harvest of eggs in Sitka Sound on all substrates was 160,735 pounds (**Table 1**). When compared to the amounts necessary for subsistence established by the Alaska Board of Fisheries, reported harvest indicates that subsistence needs were not met in 2005, 2007, 2008 and 2011-2013 (Holen et al. 2011; Coonradt 2014). There is a positive correlation between the number of households harvesting herring roe annually and the total annual roe harvest (**Figure 3**). In recent years there has been a decline in participation that may have contributed to the decline in total annual roe harvest (**Table 1**).

Table 1. Subsistence harvest of herring roe on all substrates in Sitka Sound, 2002-2013, compared with minimum Amounts Necessary for Subsistence as set by the Alaska Board of Fisheries (Coonradt 2014).

Year	Number of Households Harvesting	Total Roe Harvest (lbs.)	ANS minimum (lbs.)
2002	77	151,717	105,000
2003	116	278,799	105,000
2004	118	381,226	105,000
2005	95	79,064	105,000
2006	88	219,356	105,000
2007	81	87,211	105,000
2008	54	71,936	105,000
2009	91	213,712	136,000
2010	40	154,620	136,000
2011	53	83,443	136,000
2012	47	115,799	136,000
2013	50	78,090	136,000
2014	Pending	Pending	136,000
Average	76	159,581	

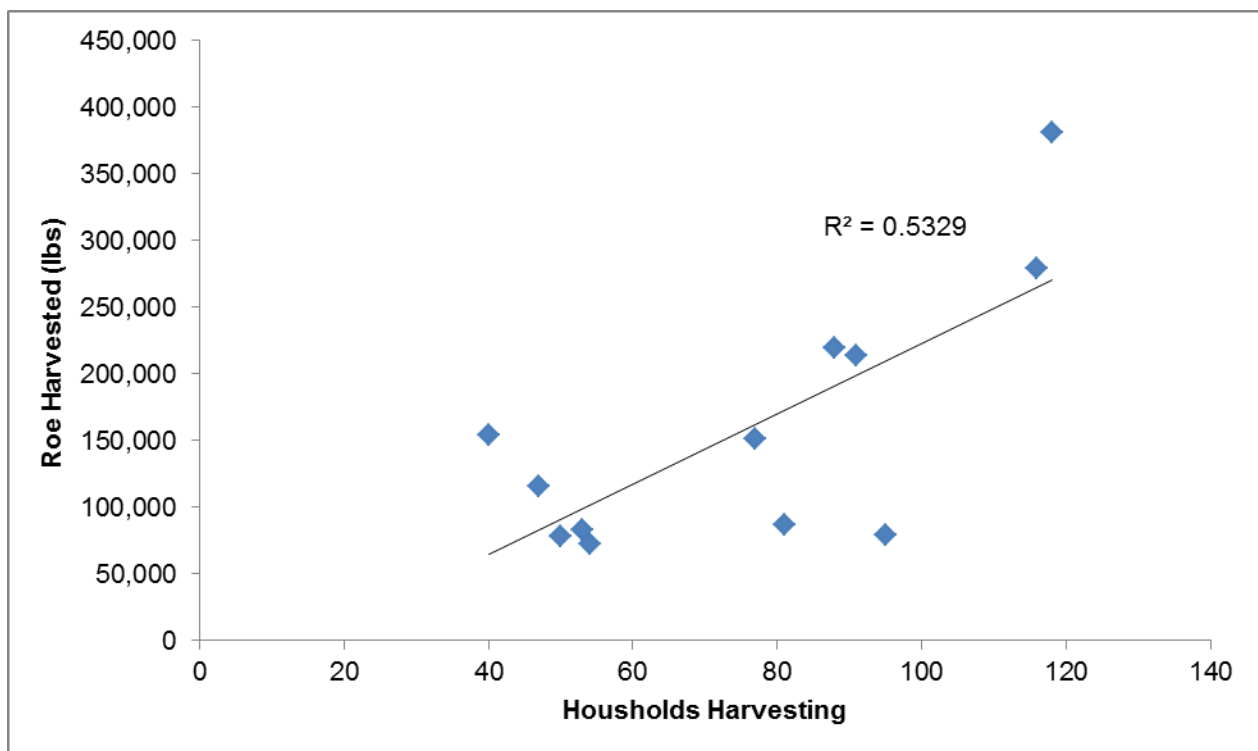


Figure 3. Plot illustrating the relationship between the number of households harvesting herring roe and the total subsistence herring roe harvest, 2002-2013.

Commercial harvest

The following is excerpted from Woodby et al. (2005):

Sac roe fisheries harvest herring just before spawning using either purse seine or gillnet. The roe is salted and packaged as a product that sometimes sells for over \$100/lb (\$220/kg) in Japan. In recent years the Alaska sac roe harvest has averaged about 50,000 tons (45,500 mt), almost all of which ends up in the Japanese marketplace.

The Southeast Alaska Sac Roe Herring Fishery is managed by ADF&G under a management plan (Thynes et al. 2013). **Table 2** displays the fisheries statistics for the Sitka Sound commercial sac roe herring fishery from 1980 through 2013 (Coonradt 2014). Although the guideline harvest level (GHL) for forecasted biomasses above 45,000 tons is 20%, the commercial fishery rarely reaches that level of harvest. The forecasted annual biomass has been greater than 45,000 tons 16 of the last 34 years and the commercial harvest during those years averaged 15.8%. Between 2004-2013 when the forecasted biomass has been greater than 45,000 tons and the GHL has been 20%, commercial harvest has averaged 12.7%.

Table 2. Commercial sac roe herring harvest and herring spawn information, Sitka Sound 1971-present (Coonradt 2014).

Sitka Sound Herring Sac Roe Fishery Data - 1971 to Present

Year	Forecast Biomass (tons)	Quota (tons)	Harvest (tons)	Model		Actual %	Roe Percent	2 Hr Notice In Effect	Fishing Dates	Exvessel Value (millions)	Price per Ton	Date of First Spawn	Nautical Miles of Spawn
				*Current Year ASA	Estimated Sac Roe Fishery Biomass (tons)	Harvest + Post-fishery biomass							
1971	-	750	278				8.3		-			6-Apr	9
1972	-	850	603				-		-			28-Apr	14
1973	-	600	537				8.5		-			11-Apr	10
1974	-	600	712				12.0		-			13-Apr	10
1975	6,400	550	1,484				11.0		-			18-Apr	8
1976	7,300	780	795				10.2		4/16			15-Apr	13
1977	5,650	0	0				-		-			8-Apr	11
1978	4,500	250	238				11.0		4/5			8-Apr	13
1979	20,300	2,000	2,559				9.3		4/12			13-Apr	41
1980	39,500	4,000	4,445				10.8		4/4, 4/5	\$2.15	\$483.69	3-Apr	63.0

1981	27,000	3,000	3,506	43,004	46,510	7.5%	11.0	10PM, 3/23	3/24, 3/26	\$2.38	\$678.84	22-Mar	60.0
1982	30,000	3,000	4,363	28,475	32,838	13.3%	11.7	2AM, 3/26	3/30	\$3.20	\$733.44	24-Mar	40.8
1983	32,850	5,500	5,416	33,718	39,134	13.8%	11.1	4AM, 3/23	3/26, 3/29	\$5.03	\$928.73	21-Mar	68.0
1984	30,550	5,000	5,830	41,012	46,842	12.4%	11.1	10PM, 3/22	3/26 - 3/28	\$3.73	\$639.79	21-Mar	65.0
1985	38,500	7,700	7,475	33,413	40,888	18.3%	11.3	6AM, 3/24	3/29, 4/1, 4/5	\$7.88	\$1,054.18	29-Mar	60.5
1986	30,950	5,029	5,443	27,128	32,571	16.7%	11.9	7AM, 3/28	4/2, 4/8	\$7.41	\$1,361.38	27-Mar	51.6
1987	24,750	3,600	4,216	45,597	49,813	8.5%	9.9	7AM, 3/23	3/31	\$4.40	\$1,043.64	21-Mar	86.0
1988	46,050	9,200	9,390	55,855	65,245	14.4%	9.5	7AM, 3/25	4/4 - 4/14	\$4.17	\$444.09	23-Mar	104.0
1989	58,500	11,700	11,831	33,431	45,262	26.1%	9.4	6AM, 3/22	3/31 - 4/8	\$1.18	\$99.74	19-Mar	65.5
1990	27,200	4,150	3,804	23,217	27,021	14.1%	10.6	6AM, 4/4	4/5 - 4/6	\$7.95	\$2,089.91	31-Mar	39.1
1991	22,750	3,200	1,838	30,986	32,824	5.6%	8.9	7AM, 3/29	4/10 - 4/13	\$0.21	\$114.25	1-Apr	44.5
1992	23,450	3,356	5,368	47,177	52,545	10.2%	9.4	8AM, 3/30	4/6	\$1.37	\$255.22	28-Mar	72.5
1993	48,500	9,700	10,186	26,164	36,350	28.0%	10.7	8AM, 3/26	3/27 - 4/3	\$3.48	\$341.65	24-Mar	55.3
1994	28,450	4,432	4,758	17,787	22,545	21.1%	11.0	8AM, 3/28	3/29, 3/31	\$3.63	\$762.93	28-Mar	58.1
1995	19,700	2,609	2,908	28,589	31,497	9.2%	11.8	8AM, 3/23	3/25, 3/27	\$3.93	\$1,351.44	21-Mar	37.3
1996	42,265	8,144	8,144	31,789	39,933	20.4%	9.6	8AM, 3/23	3/23, 3/31-4/8	\$14.35	\$1,762.03	22-Mar	45.6
1997	54,500	10,900	11,147	36,446	47,593	23.4%	11.5	2PM, 3/18	3/18-21, 23	\$4.73	\$424.33	19-Mar	41.0
1998	39,200	6,900	6,638	42,905	49,543	13.4%	10.2	8AM, 3/16	3/16,3/18,3/19	\$1.65	\$248.57	19-Mar	64.5
1999	43,600	8,476	9,217	49,632	58,849	15.7%	10.7	8AM, 3/19	3/22, 3/24, 3/26-27	\$4.91	\$532.71	22-Mar	59.5
2000	33,365	5,120	4,630	53,551	58,181	8.0%	9.9	8AM, 3/13	3/19, 3/22	\$2.67	\$576.67	19-Mar	54.5
2001	52,985	10,597	11,974	53,280	65,254	18.3%	11.3	8AM, 3/15	3/22, 3/26, 3/27	\$5.79	\$483.55	23-Mar	61.0
2002	55,209	11,042	9,788	57,359	67,147	14.6%	10.9	8AM, 3/25	3/27-4/15	\$4.44	\$453.62	24-Mar	42.6
2003	39,378	6,969	7,051	71,081	78,132	9.0%	10.7	8AM, 3/20	3/22,3/23,3/26	\$3.20	\$453.84	23-Mar	47.1
2004	53,088	10,618	10,490	87,505	97,995	10.7%	10.8	8AM, 3/19	3/21,3/25,3/27	\$5.16	\$491.90	27-Mar	79.8
2005	55,962	11,192	11,366	83,760	95,126	11.9%	11.5	8AM, 3/20	3/23,3/25,3/27-29	\$6.12	\$538.43	24-Mar	39.5
2006	52,059	10,412	9,967	77,482	87,449	11.4%	10.5	12PM, 3/22	3/24,3/26,3/27,3/29	\$2.64	\$264.87	23-Mar	57.4
2007	59,519	11,904	11,571	80,786	92,357	12.5%	11.4	8AM, 3/24	3/26,3/30,4/1,4/3	\$5.70	\$492.60	28-Mar	50.2
2008	87,715	14,723	14,386	90,285	104,671	13.7%	11.5	8AM, 3/24	3/25,3/26,3/31	\$8.90	\$620.00	27-Mar	55.3
2009	72,521	14,504	14,776	104,273	119,049	12.4%	11.8	8AM, 3/22	3/22,3/24,3/28,3/31,4/2	\$12.70	\$860.00	2-Apr	65.6
2010	91,467	18,293	17,874	99,489	117,363	15.2%	12.5	12PM, 3/19	3/24,3/27,3/30,4/2	\$12.15	\$690.00	2-Apr	87.7
2011	97,449	19,490	19,429	92,852	112,281	17.3%	13.3	8AM, 3/28	3/31,4/1,4/4,4/7,4/9	\$3.96	\$266.00	3-Apr	78.3
2012	144,143	28,829	13,231	71,204	84,435	15.7%	11.8	11AM, 3/27	3/31,4/2,4/7	\$8.87	\$630.00	31-Mar	55.9
2013	76,988	11,549	5,688	82,653	88,341	6.4%	13.0	11AM, 3/25	3/27,3/28,3/30,4/3	\$4.44	\$780.00	28-Mar	61.3
Average	49,415	8,966	8,475	53,626	62,101	14.1%	11.0			\$5.13	\$675.06	25-Mar	59.4

2013 exvessel value preliminary

*Pre-1980 Estimated Escapement based on either hydroacoustic surveys or applying a conversion of approximately 450-500 tons/lm of spawn
*1980 to present estimated escapement from current year ASA model.

The area where the commercial sac roe herring fishery occurs varies widely from year to year. From 1992 to 2014, the Federal public waters near Makhnati Island have made up part of the areas open to commercial sac roe herring fishing 8 out of 23 years (1993, 1999, 2001, 2003, 2005, 2006, 2011 and 2014). In 1993, the entire area was part of a larger area open to commercial fishing. In 1999, 2001 and 2005, only the Whiting Harbor side (north side) was included and in 2003, 2006 and 2011 only the Nepovorotni side (south side) was included. In 2011 one commercial opening occurred in the southern portion of the Makhnati Federal public waters (**Figure 4**). In 2012 all commercial sac roe harvest occurred well north of the Makhnati Federal waters (**Figure 5**). In 2013 one commercial opening included areas adjacent to but not including federal waters while all others occurred away from federal waters (**Figure 6**). In 2014 the first three commercial openings occurred well north of the Makhnati Federal waters while the fourth and final opening occurred on the south side of the Makhnati causeway including a portion of the Makhnati Federal waters (**Figure 2**). Since the area of Federal public waters has been part of larger areas open to commercial fishing, there is no way to apportion harvest from only Federal public waters. Most of the commercial harvest has been taken a significant distance away from Federal public waters and traditional subsistence harvest areas yet adequate subsistence harvests, in relation to Amounts Necessary for Subsistence set by the State, were not obtained in 2005, 2007, 2008 and 2011-2013.

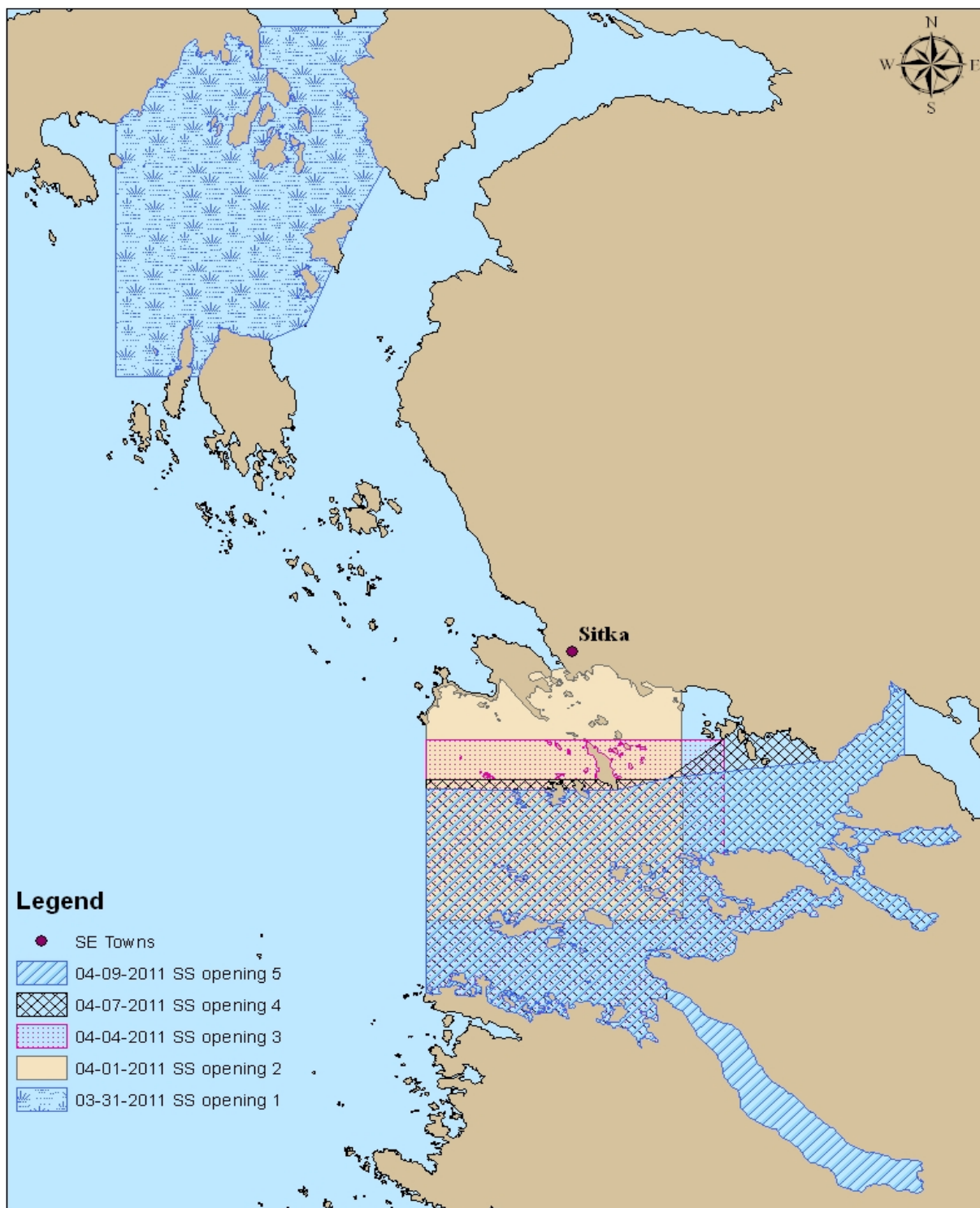


Figure 4. The second opening of the 2011 herring sac-rope fishery encompassing the southern portion of the Makhnati Federal public waters (Coonradt 2011).

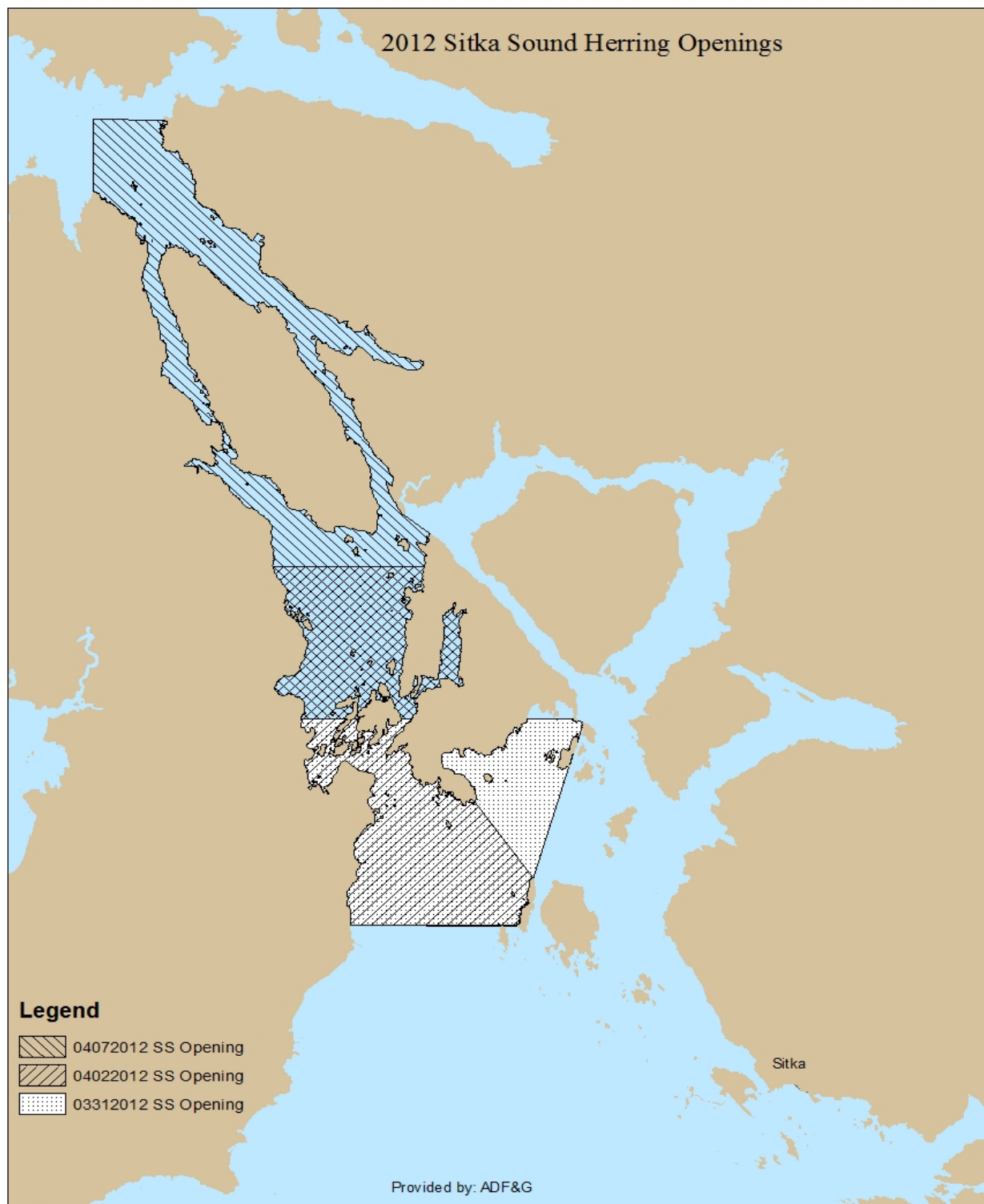


Figure 5. Sitka Sound commercial sac-ro herring openings, 2012 (Coonradt 2012).

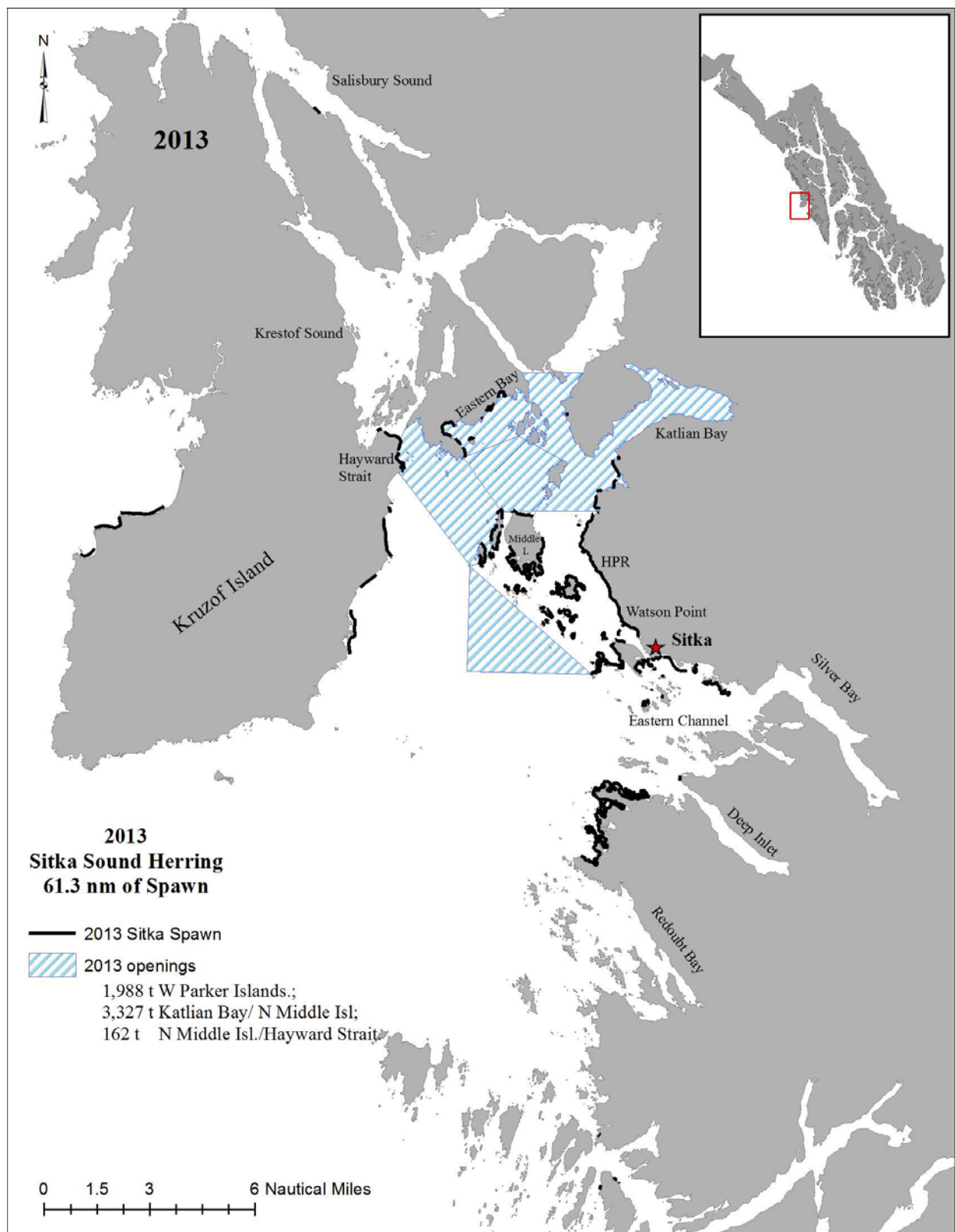


Figure 6. Cumulative herring spawn and commercial openings in Sitka Sound, 2013. (Coonradt 2014)

Effects of the Proposal

If this proposal is adopted it would close the Federal public waters in the Makhnati Island area near Sitka to all uses of herring and herring spawn except for subsistence harvest by Federally qualified subsistence users. All rural residents of Alaska would be eligible to harvest herring and herring spawn for subsistence purposes, but there would be no State subsistence, sport or commercial harvest in Federal public waters.

According to the ANS set by the Alaska Board of Fisheries, adequate subsistence harvests were obtained in 2002-2004, 2006, 2009 and 2010. In years when subsistence harvests were less than adequate, it is unlikely that a closure to other users in Federal public waters would have made a difference. For example, in the Federal public waters in 2008 and 2012, no commercial harvest occurred and the spawn deposition was extremely minimal; therefore, a closure would not have been effective. Spawn location is a prime factor affecting harvesters' success. Inclement weather, spawn timing, loss of sets, and the amount of participation by high harvesters are other likely contributors to subsistence harvesters not meeting their desired harvest level. The size of the stock, the commercial harvest levels, and the effective dispersion of the commercial fishery necessitates identifying alternative factors responsible for subsistence harvesters not meeting their desired harvest level. Closing Federal marine waters, as is being requested, would do little to help Federally qualified subsistence users meet their desired harvest levels for herring.

Commercial sac roe herring openings rarely include Makhnati Federal Public waters. If this proposal is adopted the possibility remains that commercial sac roe herring openings would occur in adjacent waters potentially harvesting herring that were destined to spawn in Makhnati Federal Public waters. Furthermore, the annual commercial sac roe quota would be unaffected and the fleet may still harvest the full quota in other areas of Sitka Sound. The final spawning destination of herring harvested anywhere in Sitka Sound in the commercial sac roe fishery is unknown. Adoption of this proposal would do little to increase the biomass of herring spawning in Makhnati Federal Public waters or Sitka Sound because the commercial sac roe quota would remain unchanged and there is no way of knowing where the commercially harvested herring were destined to spawn.

OSM CONCLUSION

Oppose Proposal FP15-17

Justification

This proposal is similar to proposals considered by the Board in 2007 and 2013. At both times the Board determined there was no conservation concern in this area for herring and that closing Federal public waters to non-Federally qualified users would not benefit subsistence users. The biomass in Sitka Sound has been trending higher since 1971, and the greatest estimated biomass occurred in 2009. Since 2009 the annual biomass returning to Sitka Sound has remained above

80,000 tons or over three times the 25,000 ton threshold needed to conduct a commercial fishery.

Federal public waters have not been included in commercial openings from 2007 through 2010 and 2012 and 2013. Most of the commercial harvest has occurred well away from Federal public waters and there have been no restrictions on subsistence uses. In years when subsistence harvests were not adequate it is unlikely that a closure to other users in the Makhnati Federal Public waters would have made a difference in the amount of roe harvested for subsistence use.

Recent actions by the Alaska Board of Fisheries have already closed the northern portion of the Makhnati Federal Public waters to commercial sac roe herring fishing. Adoption of this proposal would result in further area closures to non-Federally qualified subsistence users, which do not appear to be needed for either conservation purposes or to protect Federally qualified subsistence uses.

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SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATION

SOUTHEAST ALASKA SUBSISTENCE REGIONAL ADVISORY COUNCIL

Recommendation: Support FP15-17 with modification to close the Federal Public Waters of Sitka Sound to the harvest of herring with the use of commercial herring purse seine gear.

Recommended language:

36 CFR 242 and 50 CFR 100

§____.27(i)(13)(xx) The Federal public waters in the Makhnati Island area, as defined in §____.3(b)(5) are closed to the harvest of herring with the use of commercial herring purse seine gear.

Justification: There is a conservation concern for the Sitka Sound herring stock and the conduct of the commercial fishery displaces herring that would normally spawn in waters under Federal jurisdiction. Substantial evidence of the need to close all the Federal Public waters in the Makhnati Island area to the use of commercial purse seine gear was provided in public testimony. Specifically:

- Subsistence harvest in Sitka Sound in recent years has been lower.
- Conservation concern with herring stocks in Southeast Alaska.
- Commercial activity near subsistence spawn gathering areas reduces harvest by subsistence users.

INTERAGENCY STAFF COMMITTEE COMMENTS

FP15-17

The Interagency Staff Committee found the staff analysis to be a thorough and accurate evaluation of the proposal and that it provides sufficient basis for the Regional Council's recommendation and Federal Subsistence Board action on the proposal.

Appendix C. Federal Subsistence Management Program regulatory language regarding Requests for Reconsideration.

Subsistence management regulations at 36 CFR Part 242 and 50 CFR Part 100, dated May 7, 2002, state the following regarding requests for reconsideration.

§ _____.20 Request for reconsideration.

- (a) Regulations in subparts C and D of this part published in the Federal Register are subject to requests for reconsideration.*
- (b) Any aggrieved person may file a request for reconsideration with the Board.*
- (c) To file a request for reconsideration, you must notify the Board in writing within sixty (60) days of the effective date or date of publication of the notice, whichever is earlier, for which reconsideration is requested.*
- (d) It is your responsibility to provide the Board with sufficient narrative evidence and argument to show why the action by the Board should be reconsidered. The Board will accept a request for reconsideration only if it is based upon information not previously considered by the Board, demonstrates that the existing information used by the Board is incorrect, or demonstrates that the Board's interpretation of information, applicable law, or regulation is in error or contrary to existing law. You must include the following information in your request for reconsideration:*
 - (1) Your name, and mailing address;*
 - (2) The action which you request be reconsidered and the date of Federal Register publication of that action;*
 - (3) A detailed statement of how you are adversely affected by the action;*
 - (4) A detailed statement of the facts of the dispute, the issues raised by the request, and specific references to any law, regulation, or policy that you believe to be violated and your reason for such allegation;*
 - (5) A statement of how you would like the action changed.*
- (e) Upon receipt of a request for reconsideration, the Board shall transmit a copy of such request to any appropriate Regional Council and the Alaska Department of Fish and Game (ADFG) for review and recommendation. The Board shall consider any Regional Council and ADFG recommendations in making a final decision.*
- (f) If the request is justified, the Board shall implement a final decision on a request for reconsideration after compliance with 5 U.S.C. 551–559 (APA).*
- (g) If the request is denied, the decision of the Board represents the final administrative action.*

**KASILOF RIVER COMMUNITY GILLNET
THRESHOLD ANALYSIS
REQUEST FOR RECONSIDERATION RFR15-02**

ISSUE

In response to Fisheries Proposal FP15-11 submitted by the Ninilchik Traditional Council (NTC) and supported by the Southcentral Alaska Subsistence Regional Advisory Council (Council), the Federal Subsistence Board (Board) approved an experimental community gillnet fishery for Sockeye, Chinook, Coho, and Pink salmon in the Kasilof River for the community of Ninilchik. Subsequently, the Board received 479 requests for reconsideration. A majority of the correspondence received was in a form letter format that combined requests related to both the Kasilof and Kenai River community gillnet fisheries.

The Office of Subsistence Management (OSM) collected, organized, and reviewed each letter to identify substantive claims that meet the criteria outlined in 36 CFR 242.20(d) and 50 CFR 100.20(d): (1) provides information not previously considered by the Board, (2) demonstrates that existing information used Board is incorrect, and (3) demonstrates that the Board's interpretation of information, applicable law, or regulation is in error or contrary to existing law. A list of the Requests for Reconsideration is included in Appendix A. Copies of individual letters are available upon request from OSM.

In an effort to efficiently respond to and address these requests for reconsideration, all claims were reviewed and substantive claims were consolidated and sorted into two groups according to their relevancy to the Kasilof River or the Kenai River and then analyzed in a separate document for each group. A total of 20 substantive claims were identified and summarized in relation to the community gillnet fishery in the Kasilof River (Appendix B).

BACKGROUND

In submitting FP15-11, NTC requested the establishment of a community gillnet fishery in the Kasilof River to provide additional subsistence harvest opportunities for residents of Ninilchik. NTC stated that only one community gillnet would be utilized in the Kasilof River. The community gillnet would be limited to 10 fathoms in length. In addition, NTC would develop an operational plan that would be considered by the Federal in-season manager for approval. The proposed fishing season was from Jun. 16 to Aug. 15 with household limits being the same as the Kasilof River dip net/rod and reel fishery at §____.27(e)(10)(A) and harvest being included in the annual harvest limits: 25 Sockeye Salmon per permit holder plus 5 additional fish for each additional household member with the total annual harvest limit of 4,000 fish; 10 Chinook Salmon per permit holder plus two additional fish for each additional household member with a total annual harvest limit of 500 fish; 10 Coho Salmon per permit holder plus two additional fish for each additional household member with a total annual harvest limit of 500 fish; and 10 Pink Salmon per permit holder plus two additional fish for each additional household member with a total annual harvest limit of 500 fish.

NTC asserted that the currently allowed harvest methods of dip net, fish wheel, and rod and reel in the Kasilof River did not allow for sufficient subsistence fishing opportunities for Ninilchik residents. NTC

further asserted that efforts to establish a meaningful Federal subsistence fishery on the Kasilof River using a fish wheel have been unsuccessful. NTC expressed that, historically, fish wheels were not used in lower Cook Inlet, because they never worked well enough to be used as a traditional gear type. NTC also expressed that they had made a good faith effort to operate the fish wheel under the current Federal subsistence regulations and Ninilchik residents had not yet been successful in harvesting salmon using this method.

Federal Regulation prior to Board action on FP15-11

§____.27(i)(10)(iv)

You may take only salmon, trout, Dolly Varden, and other char under authority of a Federal subsistence fishing permit. Seasons, harvest and possession limits, and methods and means for take are the same as for the taking of those species under Alaska sport fishing regulations (5 AAC 56 and 5 AAC 57) unless modified herein. Additionally for Federally managed waters of the Kasilof and Kenai River drainages:

(A) Residents of Ninilchik may take sockeye, Chinook, coho, and pink salmon through a dip net and a rod and reel fishery on the upper mainstem of the Kasilof River from a Federal regulatory marker on the river below the outlet of Tustumena Lake downstream to a marker on the river approximately 2.8 miles below the Tustumena Lake boat ramp. Residents using rod and reel gear may fish with up to two baited single or treble hooks. Other species incidentally caught during the dip net and rod and reel fishery may be retained for subsistence uses, including up to 200 rainbow/steelhead trout taken through August 15. After 200 rainbow/steelhead trout have been taken in this fishery or after August 15, all rainbow/steelhead trout must be released unless otherwise provided for in this section. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing site.

(1) Fishing for sockeye and Chinook salmon will be allowed June 16-August 15.

(2) Fishing for coho and pink salmon will be allowed June 16-October 31.

(3) Fishing for sockeye, Chinook, coho, or pink salmon will end prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action.

(4) Each household may harvest their annual sockeye, Chinook, coho, or pink salmon limits in one or more days, and each household member may fish with a dip net or a rod and reel during this time. Salmon taken in the Kenai River system dip net and rod and reel fishery will be included as part of each household's annual limit for the Kasilof River.

(i) For sockeye salmon—annual total harvest limit of 4,000; annual household limits of 25 for each permit holder and 5 additional for each household member;

(ii) For Chinook salmon—annual harvest limit of 500; annual household limit of 10 for each permit holder and 2 additional for each household member;

(iii) For coho salmon—annual total harvest limit of 500; annual household limits of 10 for each permit holder and 2 additional for each household member; and

(iv) For pink salmon—annual total harvest limit of 500; annual household limits of 10 for each permit holder and 2 additional for each household member.

(H) Residents of Ninilchik may harvest sockeye, Chinook, coho, and pink salmon with a fishwheel in the Federal public waters of the upper mainstem of the Kasilof River. Residents of Ninilchik may retain other species incidentally caught in the Kasilof River except for rainbow/steelhead trout, which must be released and returned unharmed to the water.

(1) Only one fish wheel can be operated on the Kasilof River. The fish wheel must have a live box, must be monitored when fishing, must be stopped from fishing when it is not being monitored or used, and must be installed and operated in compliance with any regulations and restrictions for its use within the Kenai National Wildlife Refuge.

(2) One registration permit will be available and will be awarded by the Federal in-season fishery manager, in consultation with the Kenai National Wildlife refuge manager, based on the merits of the operation plan. The registration permit will be issued to an organization that, as the fish wheel owner, will be responsible for its construction, installation, operation, use, and removal in consultation with the Federal fishery manager. The owner may not rent or lease the fish wheel for personal gain. As part of the permit, the organization must:

(i) Prior to the season, provide a written operation plan to the Federal fishery manager including a description of how fishing time and fish will be offered and distributed among households and residents of Ninilchik;

(ii) During the season, mark the fish wheel with a wood, metal, or plastic plate at least 12 inches high by 12 inches wide that is permanently affixed and plainly visible, and that contains the following information in letters and numerals at least 1 inch high: registration permit number; organization's name and address; and primary contact person name and telephone number;

(iii) After the season, provide written documentation of required evaluation information to the Federal fishery manager including, but not limited to, persons or households operating the gear, hours of operation and number of each species caught and retained or released.

(3) People operating the fish wheel must:

(i) Have a valid Federal subsistence fishing permit in their possession;

(ii) If they are not the fish wheel owner, attach an additional wood, metal or plastic plate at least 12 inches high by 12 inches wide to the fish wheel that is plainly visible, and that contains their fishing permit number, name, and address in letters and numerals at least 1 inch high;

(iii) Remain on site to monitor the fish wheel and remove all fish at least every hour;

(iv) Before leaving the site, mark all retained fish by removing their dorsal fin and record all retained fish on their fishing permit; and

(v) *Within 72 hours of leaving the site, report their harvest to the Federal fisheries manager.*

(4) *The fish wheel owner (organization) may operate the fish wheel for subsistence purposes on behalf of residents of Ninilchik by requesting a subsistence fishing permit that:*

(i) *Identifies a person who will be responsible for operating the fish wheel;*

(ii) *Includes provisions for recording daily catches, the household to whom the catch was given, and other information determined to be necessary for effective resource management by the Federal fishery manager.*

(5) *Fishing will be allowed from June 16 through October 31 on the Kasilof River unless closed or otherwise restricted by Federal special action.*

(6) *Salmon taken in the fish wheel fishery will be included as part of dip net/rod and reel fishery annual total harvest limits for the Kasilof River and as part of dip net/rod and reel household annual limits of participating households.*

(7) *Fishing for each salmon species will end and the fishery will be closed by Federal special action prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action.*

Current Federal Regulation, as a result of Board's January 2015 action

§____.27(e)(10)(iv)(I)

(I) *Residents of Ninilchik may harvest Sockeye, Chinook, Coho, and Pink salmon through an experimental community gillnet fishery in the Federal public waters of the upper mainstem of the Kasilof River from a Federal regulatory marker on the river below the outlet of Tustumena Lake downstream to the Tustumena Lake boat launch July 1-31. The experimental community gillnet fishery will expire 5 years after approval of the first operational plan.*

(1) *Only one community gillnet can be operated on the Kasilof River. The gillnet cannot be over 10 fathoms in length, and may not obstruct more than half of the river width with stationary fishing gear. Subsistence stationary gillnet gear may not be set within 200 feet of other subsistence stationary gear.*

(2) *One registration permit will be available and will be awarded by the Federal in-season fishery manager, in consultation with the Kenai National Wildlife Refuge manager, based on the merits of the operational plan. The registration permit will be issued to an organization that, as the community gillnet owner, will be responsible for its use in consultation with the Federal fishery manager. The experimental community gillnet will be subject to compliance with Kenai National Wildlife Refuge regulations and restrictions.*

(i) *Prior to the season, provide a written operational plan to the Federal fishery manager including a description of fishing method, mesh size requirements, fishing time and location, and how fish will be offered and distributed among households and residents of Ninilchik;*

(ii) After the season, provide written documentation of required evaluation information to the Federal fishery manager including, but not limited to, persons or households operating the gear, hours of operation, and number of each species caught and retained or released.

(3) The gillnet owner (organization) may operate the net for subsistence purposes on behalf of residents of Ninilchik by requesting a subsistence fishing permit that:

(i) Identifies a person who will be responsible for fishing the gillnet;

(ii) Includes provisions for recording daily catches, the household to whom the catch was given, and other information determined to be necessary for effective resource management by the Federal fishery manager.

(4) Fishing for Sockeye, Chinook, Coho and Pink salmon will be closed by Federal Special Action prior to the operational plan end dates if the annual total harvest limits for any salmon species is reached or suspended.

(5) Salmon taken in the gillnet fishery will be included as part of dip net/rod and reel fishery annual total harvest limits for the Kasilof River. All fish harvested must be reported to the in-season manager within 72 hours of leaving the fishing location.

(i) A portion of the total annual harvest limits for the Kasilof River will be allocated to the experimental community gillnet fishery.

(ii) The gillnet fishery will be closed once the allocation limit is reached.

(6) Salmon taken in the experimental community gillnet fishery will be included as part of the dip net/rod and reel fishery annual household limits for the Kasilof River.

(7) Residents of Ninilchik may retain other species incidentally caught in the Kasilof River. When the retention of rainbow/steelhead trout has been restricted under Federal subsistence regulations, the gillnet fishery will be closed.

(8) Before leaving the site, all harvested fish must be marked by removing their dorsal fin, and all retained fish must be recorded on the fishing permit.

(9) Failure to respond to reporting requirements or return the completed harvest permit by the due date listed on the permit may result in issuance of a violation notice and will make you ineligible to receive a subsistence permit during the following regulatory year.

Federal Public Lands and Waters affected by FP15-11

Federal public waters are defined and described under 36 CFR 242.3 and 50 CFR100.3. For the Kasilof River, Federal public waters under consideration include all waters of the Kasilof River within and adjacent to the exterior boundaries of the Kenai National Wildlife Refuge. This includes approximately the upper 7 miles of the Kasilof River from the outlet of Tustumena Lake downstream to Silver Salmon Rapids.

Relevant State Regulations

No existing State regulations apply.

Council Recommendation on FP15-11

The Council supported FP15-11 and stated,

The proposal, if enacted into regulation, would provide for a meaningful subsistence preference. Chinook [Salmon] and rainbow trout harvest will be limited and conservation concerns can be addressed through an operational plan. The operational plan, with review by the in-season manager, would require prior approval with the land managing agency prior to any fishing.

Federal Subsistence Board Action on FP15-11

In response to Fisheries Proposal FP15-11 submitted by NTC and supported by the Council, the Board decided that the operational plan should include conservation measures to avoid or minimize bycatch of other species, deployment locations, fishing time, and a methodology for distributing the catch. The Board also modified the regulatory language to be experimental, meaning the fishery would expire after 5 years, unless subsequently extended or adopted into permanent regulation. Through comprehensive deliberation during the 2015 Fisheries Regulatory Public Meeting, the Board unanimously approved a community gillnet fishery for Sockeye, Chinook, Coho, and Pink salmon in the Kasilof River for the community of Ninilchik adopting FP15-11 with modification.

Regulatory Language Regarding Requests for Reconsideration

The regulatory language associated with requests for reconsideration can be found in Appendix D.

PRELIMINARY ASSESSMENT OF REQUESTORS' CLAIMS

The Board will accept a request for reconsideration only if the request meets one or more of the following criteria from 36 CFR 242.20(d) and 50 CFR. 100.20(d) (Appendix D.):

1. Provides information not previously considered by the Board
2. Demonstrates that existing information used by the Board is incorrect
3. Demonstrates that the Board's interpretation of information, applicable law, or regulation is in error or contrary to existing law

Criterion 1. Information previously not considered by the Board.

Only one substantive claim was submitted under this criterion in relation to the Kasilof River.

Claim 1.1

Combining State & Federal fisheries data indicates that the annual harvest limit of 4,000 sockeye for Hope, Cooper Landing, and Ninilchik is being exceeded. This claim was summarized from two separate comments found in form letters.

Excerpt from Letter # 7, dated May 25, 2015:

Cook Inlet Area Subsistence Fishing regulations for the Kenai Peninsula – Special Regulations indicate that a person may not accumulate harvest limits for a particular

species under Federal subsistence regulations with any other harvest limits specified in State regulations for that species. The annual total harvest limit for the communities of Hope, Cooper Landing and Ninilchik is 4,000 sockeye salmon. Existing fishery data of sockeye salmon for these three communities using just dipnet as the harvest method indicates that more than the annual total harvest limit of 4,000 sockeye are being harvested in the combined federal and state managed sockeye fisheries for these communities.

Excerpt from Letter # 5, dated June 14, 2015:

Cook Inlet Area Subsistence Fishing regulations for the Kenai Peninsula – Special Regulations state that a person may not accumulate any harvest limits for a particular species under Federal subsistence regulations with any other harvest limits specified in State regulations for that species. Since harvest limits may not be accumulated for sockeye salmon under Federal subsistence regulations with sockeye harvest limits in State regulations, it is fair and reasonable to look at the combined harvest totals for dip net fisheries for residents of Hope, Cooper Landing, and Ninilchik in both federal and state managed dip net fisheries.

Preliminary assessment of Claim 1.1

Claim 1.1 suggests that the Board should have considered the total harvest for State and Federal dip net fisheries for the entire Kenai Peninsula and surmised from those numbers that residents of Ninilchik, Hope, and Cooper Landing harvest in excess of the total annual harvest limit associated with the Federal subsistence fisheries. According to Federal subsistence regulations, “*Harvest Limits. (1) Harvest limits authorized by this Section and harvest limits established in State regulations may not be accumulated unless specified otherwise in §__.26, §__.27, or §__.28*” (§__.25(c)).

The Board has authority over Federal subsistence regulations which state, “*Each household may harvest their annual Sockeye, Chinook, Coho, or Pink salmon limits in one or more days, and each household member may fish with a dip net or a rod and reel during this time. Salmon taken in the Kenai River system dip net and rod and reel fishery will be included as part of each household's annual limit for the Kasilof River*” (§__.27(e)(10)(iv)(A)(4)), thereby limiting harvest by Ninilchik residents. The regulations add, “*For sockeye salmon—annual total harvest limit of 4,000; annual household limits of 25 for each permit holder and 5 additional for each household member*” (§__.27(e)(10)(iv)(A)(4)(i)). Also, “*Salmon taken in the gillnet fishery will be included as part of dip net/rod and reel fishery annual total harvest limits for the Kasilof River.*” In addition, only residents of Ninilchik have a customary and traditional use determination for salmon in the Kasilof River drainage, so only the subsistence harvests reported by residents of Ninilchik would count towards the annual total harvest limits.

The FP15-11 Staff Analysis and the harvest data for the Kasilof River Federal subsistence fishery that was provided to the Board noted, “For the period of 2007 through 2013, the total harvest of sockeye has ranged from 1 to 108 fish” (FP15-11 Staff Analysis, Appendix C). This corroborated NTC’s assertion that there was limited subsistence harvest for the Kasilof River and illustrated that harvest was well below the annual total harvest limit of 4,000 Sockeye Salmon. The intent of the proposal from NTC was to provide a meaningful Federal subsistence fishery opportunity on the Kasilof River for residents of

Ninilchik. The Board examined a thorough staff analysis that presented available harvest information concerning the Kasilof River. This information provided a sound basis for Board decision making.

Conclusion: There appears to be no merit to this claim.

Criterion 2. The existing information used by the Board is incorrect.

Two substantive claims under Criterion 2 were submitted in relation to the Kasilof River.

Claim 2.1

The Board and OSM used older, out of date studies of Kasilof River Chinook Salmon to make their decision.

Claim 2.2

The Board should have considered an ADF&G 2005-2008 Telemetry Study of Kasilof River Chinook Salmon.

Excerpt from Letter # 481, dated July 17, 2015:

Significantly, on the morning of the board hearing, ADF&G learned that OSM staff had just revised its recommendation from opposing FP15-11 to supporting it with modifications. During the hearing, Matt Miller, an ADF&G biologist, advised the board that OSM staff had relied on older studies of Chinook activity in the Kasilof to support changing its recommendations, and that data was no longer accurate. Instead, ADF&G had done a telemetry study in 2005 – 2008 of Chinook in the Kasilof. This study was published but OSM staff did not rely on it, as an analysis of the data to compare it to the previous study had not yet been completed. According to the ADF&G, it had determined the more recent study showed that the later in the season the fishery prosecuted, the greater the chance the Ninilchik Community gillnet would harvest Chinook Salmon on the Kasilof River.

Preliminary assessment of Claim 2.1 and Claim 2.2

As both of these claims are interrelated, they are assessed together.

The Board relied on the OSM Staff Analysis of FP15-11 that utilized the best available data when deliberating on the proposal. The lead analyst from OSM along with the Federal in-season manager, the affected Refuge Manager, the affected Council Chairs, and staff from the State of Alaska were available and answered inquiries from the Board during the public meeting. There was no testimony received from the public, nor was there any indication from the subject matter experts, that the studies of Kasilof River Chinook Salmon utilized during the Board deliberation were out of date.

Testimony given by Matt Miller, Regional Fisheries Management Coordinator for ADF&G Sport Fish Division during the Board's public meeting indicated that he had received a copy of the ADF&G 2005-2008 Telemetry Study on January 22, 2016 (day of Board deliberation) and that it was the first time he had seen it. In contrast, OSM was familiar with the ADF&G 2005-2008 Telemetry Study prior to the public meeting and referenced the data it provided when developing an analysis of FP15-11.

Mr. Miller also stated at the beginning of his testimony on January 22, 2016:

[W]e [ADF&G] just found out there was some discussion and a change in the position [OSM conclusion] this morning, so we're kind of trying to get this together here a little bit. I do appreciate this morning when I came in Mr. Anderson [USFWS] took some time to go over with me what this proposal, what the change of the opinion would do, the position would do. One point that he mentioned earlier [that morning] was the 2005-2008 study that the ADF&G did on the Kasilof with the kings. That has been published.

Mr. Miller went on to state that he had only just received a copy of the study at lunch. Mr. Miller then mistakenly implied that the Board did not know of the study by stating, "I'm not trying to blindside you. I just found out about this myself." In fact, the ADF&G 2005-2008 Telemetry Study was published in October 2012 and the study was utilized by the Board prior to the January 22, 2016 public meeting and is cited in the FP15-11 analysis as, "Reimer, A. M., and S. J. Fleischman. 2012. Abundance of late-run Kasilof River Chinook salmon, 2005-2008. Alaska Department of Fish and Game, Fishery Data Series No. 12-63, Anchorage."

It is beyond the scope of this analysis to assess the extent to which this particular study contributed to the Board's decision on FP15-11. However, the administrative record of the decision demonstrates the Board utilized the best available information, including a thorough staff analysis that presented available information concerning Kasilof River Chinook Salmon. This information provided a sound basis for Board decision making.

Conclusion: There appears to be no merit to these claims.

Criterion 3. The Board's interpretation of information, applicable law, or regulation is in error or contrary to existing law.

There were 17 substantive claims submitted under Criterion 3 in relation to the Kasilof River community gillnet fishery.

Claims 3.1 and 3.2

These claims both reference the comment period associated with the regulation adoption process:

Claim 3.1 - The comment period on FP-11 was not adequate.

Excerpts from Letter # 5, dated June 14, 2015:

The Board failed to notice or cooperate with local land owners (Kenai Peninsula Borough, City of Soldotna, and City of Kenai), local organizations, sportsman's groups, fishing and river guides, and other users, in violation of ANILCA Section 803 and 50 CFR 100.18, and 5 U.S.C. 552-559 et seq. I did not hear of any public notice about allowing gillnetting in the Kenai and Kasilof Rivers. There was a failure to provide adequate public notice and allow timely public comments by users adversely affected...

Claim 3.2 - The Board failed to cooperate with or provide adequate notice to the public.

Excerpts from Letter # 4, dated July 07, 2015:

The Board failed to notice or cooperate with local land owners (Kenai Peninsula Borough, City of Soldotna, and City of Kenai), local organizations, sportsman's groups, fishing and

river guides, and other users, in violation of ANILCA Section 803 and 50 CFR 100.18, and 5 U.S.C. 552-559 et seq.

I and many residents of the Kenai Peninsula, did NOT receive ANY public notice of the proposed and drastic changes to the subsistence regulations to allow gillnetting in the Kenai River and Kasilof River, and that affect my use of the rivers. The public comment period was grossly inadequate and failed to inform me of the opportunity to comment on the changes in regulations that affect my use, in violation of 50 CFR 100.18; ANILCA 803, and Administrative Procedures Act (APA) 5 U.S.C. 552-555 et seq.

Preliminary assessment of claims 3.1 and 3.2

In responding to FP15-11, the Board followed the process set forth in 36 CFR 242.18 and 50 CFR 100.18, which states:

(a) The Board will accept proposals for changes to the Federal subsistence regulations in subparts C or D of this part according to a published schedule, except for proposals for emergency and temporary special actions, which the Board will accept according to procedures set forth in §100.19. The Board may establish a rotating schedule for accepting proposals on various sections of subpart C or subpart D regulations over a period of years. The Board will develop and publish proposed regulations in the FEDERAL REGISTER, publish notice in local newspapers, and distribute comments on the proposed regulations in the form of proposals for public review.

(1) Proposals shall be made available for at least a thirty (30) day review by the Regional Councils. Regional Councils shall forward their recommendations on proposals to the Board. Such proposals with recommendations may be submitted in the time period as specified by the Board or as a part of the Regional Council's annual report described in §100.11, whichever is earlier.

(2) The Board shall publish notice throughout Alaska of the availability of proposals received.

(3) The public shall have at least thirty (30) days to review and comment on proposals.

(4) After the comment period the Board shall meet to receive public testimony and consider the proposals. The Board shall consider traditional use patterns when establishing harvest levels and seasons, and methods and means. The Board may choose not to follow any recommendation which the Board determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation approved by a Regional Council is not adopted by the Board, the Board shall set forth the factual basis and the reasons for its decision in writing to the Regional Council.

(5) Following consideration of the proposals the Board shall publish final regulations pertaining to subparts C and D of this part in the FEDERAL REGISTER.

(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.

The Board provided extensive opportunity for public input and involvement in compliance with the Administrative Procedure Act and the Federal Advisory Committee Act, including publishing a proposed

rule in the Federal Register, participation in multiple Regional Advisory Council meetings, additional public review and comment on all proposals for regulatory change, and an opportunity for additional public comments during the Board meeting prior to deliberation. The full public process for soliciting public comment on fisheries proposals is outlined below.

The Departments of both the Interior and Agriculture published a proposed rule on January 10, 2014 (79 FR 1791), to amend the fish section of subparts C and D of 36 CFR 242 and 50 CFR 100. The proposed rule opened a comment period to accept proposed changes to the Subsistence Fisheries regulations, which closed on March 28, 2014. The Departments advertised the proposed rule by mail, radio, and newspaper, and comments on proposed changes to the regulations (proposals) were submitted via www.regulations.gov to Docket No. FWS-R7-SM-2013-0065. During that period, the Regional Advisory Councils also met and, in addition to other Council business, received suggestions for proposals from the public.

The Board received a total of 18 proposals for changes to subparts C and D; this included one proposal that the Board had deferred from the previous regulatory cycle. After the comment period to accept proposals closed, the Board prepared a booklet describing the proposals and distributed it to the public and was also available online. In June of 2014, the Fishery Proposal book was distributed statewide and posted on the Federal Subsistence Management Program website, again asking for public comment. The public then had an additional 30 days in which to comment on the proposals for changes to the regulations.

The following Kenai Peninsula agencies and organizations were mailed the Fishery Proposal book: Kenai River Sportfishing Association, Kenai Peninsula Borough, Kenai Peninsula Fishermen's Association, Kenai Peninsula Resource Management Coalition, City of Kenai, Kenai Chamber of Commerce, Village of Salamatoff, Peninsula Clarion, and Kenaitze Indian Tribe. From August through October of 2014 newspaper ads and public service announcements ran statewide to notify the public of upcoming Regional Advisory Council Meetings where public comments on the fishery proposals were also welcomed. Proposal FP15-11 was a specific agenda item for the Southcentral Alaska Subsistence Regional Advisory Council, and the full proposal analysis was available for viewing in the Council's meeting book, which was posted on the Federal Subsistence Program website and available in hard copy format at the Council meeting.

In November of 2014, a statewide radio campaign was launched with Alaska Public Media to announce the Federal Subsistence Board public meeting held January 21-23, 2015, during which the public was offered additional opportunities to comment on all submitted proposals prior to the Board's decision(s). All news releases, book materials, call for proposals documents and many other informational items were posted to the Federal Subsistence Management Program website in a timely manner.

Conclusion: There appears to be no merit to these claims.

Claim 3.3

The Board ignored staff and agency (ADF&G, USFWS) recommendations presented at the Board meeting.

Excerpt from Letter # 6, dated May 14, 2015:

The proposals passed by the Board ignored and are contrary to comments made by experts from the US Fish & Wildlife Service and the Alaska Department of Fish and Game, who stated that there existed a conservation concern with the use of nonselective gear, such as gillnets.

Excerpt from Letter # 420, dated May 20, 2015:

The Board failed to allow adequate and timely public comment, and ignored expertise review comments including Alaska Department of Fish & Game, Federal Wildlife Service, and Kenai National Reserve management recommendations and comments against allowing subsistence gill netting on the Kenai and Kasilof Rivers.

Preliminary assessment of claim 3.3

The Board was presented with a thorough analysis of FP15-11 that utilized the best available data to consider when deliberating on the proposal. The lead analyst from OSM, along with the Federal in-season manager, the affected Refuge Manager, the affected Council Chairs, and staff from the State of Alaska, were available and answered inquiries from the Board during the Public Meeting. These specialists also participated in a detailed discussion with the Board, where the USFWS Board Member made the motion to amend the proposed regulatory language to address concerns identified in the OSM Staff Analysis and expressed by the Federal in-season manager and the Refuge manager. This information and the substantial discussion was captured for the administrative record and provided a sound basis for Board decision making. That there were opinions contrary to the Board's decision on FP15-11 does not establish that the Board's decision was "in error or contrary to existing law."

Conclusion: There appears to be no merit to this claim.

Claim 3.4 through 3.12

These claims principally express conservation concerns associated with the use of gillnets on the Kasilof River.

Claim 3.4 - Long time professional and local consensus is that gillnets should not be used on Kenai/Kasilof Rivers because they are non-selective.

Excerpt from Letter # 25, dated May 13, 2015:

Over the past 15 years, thorough discussions between subsistence, personal use, sport and commercial user groups in addition to land management agencies and fishery biologists have led to a general consensus that use of gillnets on the Kenai and Kasilof rivers should not be used, as it is a non-selective gear type. Authorization to use gillnets in federally managed fisheries will limit the ability of fisheries managers to address conservation and use issues in areas of high use.

Claim 3.5 - The gillnetting regulation increases the conservation concern for Chinook on the Kasilof River.

Excerpt from Letter # 130, dated February 02, 2015:

I am sympathetic to the needs of people who depend on the fish of the Kenai Peninsula rivers. But at a time when some of those species are at risk of loss unless strict conservation measures are taken, use of non-selective gill netting is a step backward.

Claim 3.6 - Incidental harvest of Chinook could lead to a high rate of mortality.

Excerpt from Letter # 480, dated June 8, 2015:

The introduction of this nonselective gear type will also impact populations of already endangered king salmon as well as resident species.

Claim 3.7 - Gillnetting of Chinook will harvest larger and more fecund breeders.

Excerpt from Letter # 481, dated July 17, 2015:

For the Kasilof River proposal FP15-11, the ADF&G indicated there are conservation issues with early-run Chinook Salmon, older Chinook Salmon are no longer at historic levels, and the slot limit prevents the harvest of those size and age classes.

Claim 3.8 - Gillnetting will be detrimental to salmon spawning beds and habitat.

Excerpt from Letter # 420, dated January 29, 2015:

Allowing subsistence gill netting on the Kenai and Kasilof River will interfere with the conservation of healthy fish and wildlife populations, will be detrimental to spawning beds, will add to the decline or extinction of the Kenai River king salmon species, be detrimental to all salmon spawning habit and to trout, dolly varden, flounder, halibut, hooligan, and to marine-mammal species (seals, beluga whales, pilot whales), and numerous birds (eagles, sea gulls, ducks, hawks), that all thrive in the estuary and entire Kenai River and Kasilof River regions. Environmental assessment must be complete and thorough prior to any gill netting approvals on the Kenai River and Kasilof River.

Claim 3.9 - The gillnetting regulation increases the conservation concern for incidentally caught resident species.

Excerpt from Letter # 358, dated July 10, 2015:

There is a very clear conservation concern with the introduction of in-river gillnetting, as it will add to the stress upon our already troubled king salmon populations, as well as intercepting non-targeted species such as rainbow trout, lake trout, Dolly Varden, and steelhead.

Claim 3.10 - Incidental harvest of trout/char longer than 18 inches could lead to a high rate of mortality.

Excerpts from Letter #123, dated March 17, 2015:

All users including residents of Ninilchik are required to release rainbow trout and Dolly Varden over 18 inches in length. Allowing new use of an upriver gillnet is incompatible with the objective of releasing these large trout.

The ability to safely release any non-target species such as large trout or king salmon is an important feature of the fish wheel.

Claim 3.11 - Non-selective nature of gillnet harvest is wasteful.

Excerpt from Letter # 358, dated July 10, 2015:

As a non-selective means of harvest, gillnetting, by its very nature, is wasteful when implemented in a freshwater environment, where several varieties of salmon are spawning, and where non-targeted resident species will be needlessly harmed.

Claim 3.12 - Gillnetting will be detrimental to long-term subsistence and non-subsistence uses.

Excerpt from Letter # 6, dated May 14, 2015:

As a non-selective gear group, the introduction of gillnets as a harvest type is a radical departure from past fishery management practices. Use of gillnets will handicap resource managers to regulate fisheries in heavily used areas on Peninsula rivers.

Excerpt from Letter # 420, dated January 29, 2015:

Gillnetting will be detrimental to the long-term subsistence use, to sustained yield management, and to thousands of non-subsistence users who exercise their use of fish and wildlife resources from the Kenai River and Kasilof River.

Preliminary assessment of claims 3.4 through 3.12

According to the FP15-11 analysis:

Given the Chinook Salmon and steelhead trout conservation concerns, a community gillnet would need to be fished in the Kasilof River during a window in July when the Sockeye Salmon harvest can be maximized while minimizing the harvest of late run Chinook Salmon and steelhead trout. OSM's recommendation is to support Proposal 15-11 with modification. The operation plan can address Chinook Salmon and steelhead trout conservation, concerns with timing, quotas, mesh size and depth restrictions.

During the January 22, 2015 Public Meeting, the Federal in-season manager, Mr. Jeff Anderson stated, "...gillnets are not appropriate for selective harvest of species or stocks. Using a gillnet on known spawning grounds goes against the principals of fisheries conservation." In relation to that concern, Mr. Anderson later offered a modification stating, "...we recommend a cautious approach for this fishery and suggest initiating the fishery in an experimental manner." Mr. Anderson continued with the following rationale:

We recommend establishing the experimental community gillnet fishery upstream of the Tustumena Boat Launch and limiting the fishery dates to July 1st through July 31st. This will provide an opportunity for Ninilchik residents to harvest Sockeye Salmon, but will avoid fishing a gillnet on a known Chinook Salmon spawning population and will protect spawned out steelhead as they're passing through the system.

It is worth reiterating that the Board's action on the regulatory proposal required approval of an operational plan for the community gillnet fishery by the Federal in-season manager prior to the use of the community gillnet.

Mr. Ralph Lohse, Chair of the Southcentral Alaska Subsistence Regional Advisory Council, stated, “Conservation concerns can be addressed and I would have to add will be addressed through an operational plan.” (FSB January 2015)

Mr. Geoff Haskett, Regional Director for USFWS stated:

The amended proposal that we’ve come up with provides additional opportunity for residents of Ninilchik to harvest Sockeye Salmon, and we clarified that before that it’s Sockeye that we’re talking about here, with a traditional, more efficient method, but would also limit the fishery and time and area to reduce impacts of species or stocks of concern. (FSB January 2015)

Regional Director Haskett went on to state:

Gillnets are not a selective gear type. I don’t think anybody is going to argue that. We should proceed with some caution because of that, especially with the current status of Chinook Salmon and the small steelhead population in the system. The time and area restrictions follow recommendations of the Refuge Manager and our Federal in-season manager to reduce impacts on Chinook Salmon and steelhead. (FSB January 2015)

Additionally, the Board approved the Kasilof subsistence gillnet fishery as an experimental, 5-year, fishery to allow managers time to observe how the fishery works and if there are any adverse impacts to Chinook Salmon or other resident species populations. Regional Director Haskett stated:

The idea behind setting an expiration date gives the Board the ability to review the fishery after five years where we can then determine where the opportunity could be further expanded or restricted, so we leave for the possibility of building on this. (FSB January 2015)

The Board examined a thorough staff analysis that presented the available data and supported FP15-11 with modifications, many of which addressed conservation concerns. The information presented to the Board, requirement of an approved Operational Plan with ongoing coordination between the proponent, the Federal in-season manager, and the Refuge manager and the thorough discussion with extensive consideration of all possible conservation concerns related to the use of a community gillnet during the public meeting provided a sound basis and substantial evidence for Board decision making.

Conclusion: There appears to be no merit to these claims.

Claim 3.13

There already exists sufficient opportunity for subsistence harvest of salmon that is selective, including dipnet and fishwheel on the Kasilof River.

Excerpts from Letter # 7, dated May 25, 2015:

The federally recognized rural communities of Hope, Cooper Landing and Ninilchik already have significant opportunities to harvest salmon in the Kenai River, including dipnetting from a boat on nearly five miles of the river that are off-limits to non-subsistence dipnet users and to dipnet exclusively below the Russian River Falls, a tributary of the Kenai. Additionally the community of Ninilchik has an exclusive opportunity to use a fish

wheel and dipnets on 2.8 miles of the Kasilof River between Tustumena Lake and Silver Salmon Rapids.

Preliminary assessment of claim 3.13

Claim 3.14 suggests that there exists sufficient opportunity on the Kenai Peninsula for subsistence harvest of salmon for the communities of Hope, Cooper Landing, and Ninilchik. FP15-11 was submitted solely by NTC for the community of Ninilchik, the only community with a customary and traditional use determination for the Kasilof River drainage, and through their proposal NTC gave testimony that they were unable to achieve a meaningful harvest opportunity using the methods and means that were permitted in Federal subsistence regulations for the Kenai Peninsula, and specifically for the Kasilof River. This testimony was not disputed on the record.

The FP15-11 analysis and the harvest data for the Kasilof River Federal subsistence fishery that was reported during the OSM presentation noted, “For the period of 2007 through 2013, the total harvest of sockeye has ranged from 1 to 108 fish” (Appendix C). This corroborated NTC’s assertion that there was limited subsistence harvest for the Kasilof River utilizing the available harvest opportunities authorized in Federal subsistence regulations and illustrated that harvest was well below the annual total harvest limit of 4,000 fish. No other evidence was provided to the Board regarding the actual level of harvest (as opposed to what was permitted under State and Federal regulations) by Ninilchik residents. The Board examined a thorough staff analysis that presented available harvest information and current methods and means authorized on the Kasilof River. This information provided a sound basis for Board decision making.

Conclusion: There appears to be no merit to this claim.

Claim 3.14

Gillnetting is not traditional and customary or a “long-time continuous use” on the Kenai and Kasilof rivers – the Board has no authority to create a “new” method.

Excerpt from Letter # 6, dated May 14, 2015:

Gillnetting is not a necessary subsistence method where it is NOT traditional and customary, not a “long-time continuous use” on the Kenai or Kasilof [r]iver. The Board has no authority to grant or create a NEW subsistence method and means of gillnetting that is an extremely wasteful subsistence use do to its non-selective nature of harvest.

Preliminary assessment of claim 3.14

This claim conflates two aspects of the Board’s authority – making customary and traditional use determinations to recognize subsistence uses and authorizing gear types. A customary traditional use determination is used to determine *who* is eligible for the Federal subsistence priority, not *how* harvest may take place. When making a customary and traditional use determination, Federal subsistence regulations state, “*a community or area shall generally exhibit the following factors, which exemplify customary and traditional use*” (§__.16(b)). One of the factors that may be considered by the Board is “*a long-term consistent pattern of use, excluding interruptions beyond the control of the community or area*” (§__.16(b)(1)). In the claim, the use of the phrase “long-time continuous use” suggests a relationship between the Board’s decision on FP15-11 and customary and traditional use determinations. No such

relationship exists. The Board’s decision on FP15-11 specifically authorized a methods and means of harvest for residents of a community that already had a customary and traditional use determination for salmon in the Kasilof River drainage. ANILCA Title VIII does not require “long-time continuous use” of authorized methods and means.

When adopting regulations, the Board may consider “*traditional use patterns when adopting new methods and means*” (§__.18(a)(4)). Since the regulations governing customary and traditional use determinations refer to patterns of use, they offer some guidance and emphasize the importance of “efficiency and economy of effort and cost”: “*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*” (§__.16(b)(3)). This guidance was considered by the Board when reaching a decision about the methods and means proposed in FP15-11. The proponent of FP15-11 claimed that other authorized methods and means of harvest, such as dip net, rod and reel, and fish wheel, were inefficient and not yielding sufficient harvest to meet their subsistence needs. The Board examined a thorough staff analysis that included the best available data related to the issue. This information and a thorough discussion during the public meeting provided a sound basis and substantial evidence for Board decision making.

Conclusion: There appears to be no merit to this claim.

Claim 3.15

There is no shortage of red salmon – ANILCA 804 does not apply.

Excerpt from Letter # 6, dated May 14, 2015:

In that there is no shortage of red salmon, such that the ANILCA 804(a) mandate of ‘when it is necessary to restrict the taking of a population of fish...,’ does not apply, does not trigger the new 804 subsistence rural priority preference of gillnetting, in violation of ANILCA and equal rights in times of plenty.

Excerpt from Letter # 358, dated July 10, 2015:

With no shortage of Sockeye Salmon, there is no reason to implement any method that inadvertently targets other species, especially species of concern, such as King Salmon.

Preliminary assessment of claim 3.15

Similar to Claim 3.13, Claim 3.15 suggests that there exists sufficient opportunity or “no shortage” on the Kenai Peninsula for subsistence harvest of salmon for the communities of Hope, Cooper Landing, and Ninilchik. It is important to note that “sufficient opportunity” for the continuation of subsistence uses has as much to do with method and means of harvest (e.g. gear type) and traditional practices of processing, preservation, and distribution, as it does with having access to a productive resource. FP15-11 was submitted solely by NTC for the community of Ninilchik, which is the only community with a customary and traditional use determination for salmon in the Kasilof River drainage and therefore the only community subject to Federal subsistence regulations governing salmon harvest in Federal public waters on the Kasilof River. Through their proposal, NTC provided testimony that the residents of Ninilchik were unable to achieve a meaningful harvest opportunity in Federal public waters for salmon using the

methods and means currently authorized in Federal subsistence regulations for the Kenai Peninsula, and specifically for the Kasilof River.

Section 804 of ANILCA establishes a subsistence prioritization process often triggered by conservation concerns or increased competition among users and uses. Once initiated, the Section 804 Prioritization Process first closes Federal public lands or waters to all but Federally qualified subsistence users and then, if further restrictions are required due to a shortage of resource, further prioritizes among Federally qualified users. NTC made no claims relative to abundance or scarcity of the resource, nor did the proponent request that non-subsistence uses or non-Federally qualified users be restricted by invoking the ANILCA Section 804 subsistence prioritization process. As such, no Section 804 analysis was included in the proposal or discussed by the Board during its deliberations.

The FP15-11 analysis and the harvest data for the Kasilof River Federal subsistence fishery provided during the OSM presentation noted, “For the period of 2007 through 2013, the total harvest of sockeye has ranged from 1 to 108 fish” (Appendix C). This data corroborated NTC’s assertion that there was limited subsistence salmon harvest in the Kasilof River drainage and illustrated that harvest was well below the annual total harvest limit of 4,000 fish. The intent of FP15-11 was to provide a meaningful Federal subsistence fishery opportunity to Federally qualified subsistence users on the Kasilof River. The Board examined a thorough staff analysis that presented available harvest and methods and means data related to the Kasilof River drainage. This information provided a sound basis for Board decision making.

Conclusion: There appears to be no merit to this claim.

Claim 3.16 and 3.17

Claim 3.16 - The Board passed proposals without an EIS, in violation of 50 CFR 100.18.

Claim 3.17 - The proposed regulation did not have required NEPA and Clean Water Act reviews.

Excerpts from Letter # 420, dated January 29, 2015:

The Board passed proposals are without any environmental assessment (“EA”) or environmental impact statements (“EIS”), or any long-term environmental or environmental-social-impact consideration of the passed proposals, in clear violation of the National Environmental Policy Act (NEPA) 42 U.S.C. §4321 *et seq*, where federal regulatory actions of the U.S. Department of Interior Federal Subsistence Board are imposed, which requires the EA and EIP reviews and approvals of federal “public lands” [i.e., “public waters”. Compare *Alaska v. Babbitt*, 72 F.3d 698 (9th Cir. 1995) (“Katie John D”)].

The Clean Water Act 33 U.S.C. §1251 *et seq*, requires review of any stationary in-river placement to determine whether it will be an acceptable point-source or non-point pollution source in order to uphold the biological integrity of the waters and will provide adequate species and habitat protection and conservation.

Preliminary assessment of claim 3.16 and 3.17

The Board followed the process stipulated in 36 CFR 242.18 and 50 CFR 100.18 which states:

(a) The Board will accept proposals for changes to the Federal subsistence regulations in subparts C or D of this part according to a published schedule, except for proposals for emergency and temporary special actions, which the Board will accept according to procedures set forth in §100.19. The Board may establish a rotating schedule for accepting proposals on various sections of subpart C or subpart D regulations over a period of years. The Board will develop and publish proposed regulations in the FEDERAL REGISTER, publish notice in local newspapers, and distribute comments on the proposed regulations in the form of proposals for public review.

(1) Proposals shall be made available for at least a thirty (30) day review by the Regional Councils. Regional Councils shall forward their recommendations on proposals to the Board. Such proposals with recommendations may be submitted in the time period as specified by the Board or as a part of the Regional Council's annual report described in §100.11, whichever is earlier.

(2) The Board shall publish notice throughout Alaska of the availability of proposals received.

(3) The public shall have at least thirty (30) days to review and comment on proposals.

(4) After the comment period the Board shall meet to receive public testimony and consider the proposals. The Board shall consider traditional use patterns when establishing harvest levels and seasons, and methods and means. The Board may choose not to follow any recommendation which the Board determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation approved by a Regional Council is not adopted by the Board, the Board shall set forth the factual basis and the reasons for its decision in writing to the Regional Council.

(5) Following consideration of the proposals the Board shall publish final regulations pertaining to subparts C and D of this part in the FEDERAL REGISTER.

(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.

A programmatic Environmental Impact Statement (EIS) for Subsistence Management for Federal Public Lands in Alaska was finalized in 1992, which included the regulation adoption process and provided draft regulations that were later adopted and amended by the Secretaries and by the Board. Programmatic EIS reviews are implemented when agencies are establishing policies, plans, and programs and can effectively frame the scope of subsequent Federal actions. They provide the general approach for subsequent decision making, providing broad programmatic decisions and the parameters for subsequent analyses. Such programmatic EIS reviews are authorized by the National Environmental Policy Act (NEPA). The 1992 EIS satisfies the NEPA requirements pertaining to adopting new regulations for subsistence management on Federal public lands in Alaska.

The Clean Water Act (CWA) does not apply to methods and means authorized for use in a subsistence fishery. According to the Environmental Protection Agency (EPA), the CWA establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters.¹ Such discharges of pollutants are governed by the National Pollutant Discharge Elimination System (NPDES). Under that system, a “pollutant” is defined as industrial, municipal or agricultural waste. Currently, the State of Alaska, Department of Environmental

¹ Summary of the Clean Water Act 33 U.S.C. §1251 et seq. (1972), www.epa.gov

Conservation, manages the NPDES permit system under the Clean Water Act. There is nothing in the record to suggest that gillnets discharge pollutants as defined by law.

Conclusion: There appears to be no merit to these claims.

SUMMARY

The claims presented in this threshold analysis are not sufficient to meet the criteria established to constitute reconsideration by the Board. No new information was presented for the Board's consideration. No information the Board relied on was shown to be factually incorrect. There was no demonstration that the Board's interpretation of information, applicable law, or regulation was in error or contrary to existing law.

OSM PRELIMINARY CONCLUSION

Oppose the requests to reconsider FP 15-11.

Justification

The requestors' substantive claims individually and collectively fail to reach the threshold to trigger a reconsideration of FP15-11, as required by the Subsistence Management Regulations for Public Lands in Alaska (36 CFR 242.20(d) and 50 CFR 100.20(d)).

LITERATURE CITED

FSB. 2015. Transcript of the Federal Subsistence Board meeting in Anchorage, Alaska. January 22, 2015, Office of Subsistence Management. Anchorage, AK.

USFWS. 2015. Staff Analysis FP 15-11. Pages 120-131 *in* Federal Subsistence Board Meeting Materials Jan. 21-22, 2015. Office of Subsistence Management, USFWS. Anchorage, AK. 263 pages.

Reimer, A. M., and S. J. Fleischman. 2012. Abundance of late-run Kasilof River Chinook salmon, 2005-2008. Alaska Department of Fish and Game, Fishery Data Series No. 12-63, Anchorage.

APPENDIX A: Request for Reconsideration – List of Letters Received (Copies of individual letters are available upon request from the Office of Subsistence Management).

Letter #	Name	Date	Subject	Organization
1	Abrams, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
2	Adams, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
3	Addendum RFR Kenai Gillnets - State of AK RFR	17-Jul-15	Kenai	State of AK
4	Adelmann, T	7-Jul-15	Kenai, Kasilof	
5	Allange, R	14-Jun-15	Kenai, Kasilof	
6	Alamandinger, R	5-May-15	Kenai, Kasilof	
7	Almanrode, J	25-May-15	Kenai, Kasilof	Cooper Landing and Hope Federal Subsistence Community
8	Amos, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
9	Anderson, D	13-May-15	Kenai, Kasilof	
10	Anderson, G	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
11	Anderson, J	5-Jun-15	Kenai, Kasilof	
12	Anderson, J	11-Jul-15	Kenai, Kasilof	
13	Anderson, J	19-Jun-15	Kenai, Kasilof	
14	Appling, S	5-Jul-15	Kenai, Kasilof	
15	Ash, C	27-Jun-15	Kenai, Kasilof	
16	Askren, J	8-Jun-15	Kenai, Kasilof	
17	Atkmisa, B	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
18	Augustine, R	2-Jul-15	Kenai, Kasilof	
19	Baird, D	8-Jun-15	Kenai, Kasilof	
20	Baker, J	3-Jul-15	Kenai, Kasilof	
21	Baker, J	27-Jun-15	Kenai, Kasilof	

22	Bakic, M	10-Jun-15	Kenai, Kasilof	
23	Bakic, N	10-Jun-15	Kenai, Kasilof	
24	Barchers, B	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
25	Barrett, M	13-May-15	Kenai, Kasilof	
26	Barron, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
27	Barry, K	13-May-15	Kenai, Kasilof	
28	Barry, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
29	Bartholomew, C	20-May-15	Kenai, Kasilof	
30	Bartlett, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
31	Basinger, R	2-Jul-15	Kenai, Kasilof	
32	Bauer, B	12-Jun-15	Kenai, Kasilof	
33	Bauer, D	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
34	Bauer, T	13-Jul-15	Kenai, Kasilof	
35	Baur, S	8-Jun-15	Kenai, Kasilof	
36	Baxter, R	11-May-15	Kenai, Kasilof	
37	Bear, E	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
38	Bear, R	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
39	Becker, R	2-Jul-15	Kenai, Kasilof	
40	Bellanger, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
41	Bellinger, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
42	Bencik, R	3-Jul-15	Kenai, Kasilof	
43	Benkert, J	19-May-15	Kenai, Kasilof	

44	Benkert, J	13-May-15	Kenai, Kasilof	
45	Benson, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
46	Bentley, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
47	Binder, R	16-May-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
48	Binder, R	19-May-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
49	Birch, B	3-Jul-15	Kenai, Kasilof	
50	Bishop, J	2-Jul-15	Kenai, Kasilof	
51	Black, J	2-Jul-15	Kenai, Kasilof	
52	Blaine, J	26-Jan-15	Kenai	
53	Blevins, B	11-May-15	Kenai, Kasilof	
54	Blough, C	16-Jun-15	Kenai, Kasilof	
55	Blubaugh, J	14-May-15	Kenai, Kasilof	
56	Bond, A	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
57	Booton, E	29-Jan-15	Kenai	
58	Borchers, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
59	Boswell, D	2-Jul-15	Kenai, Kasilof	
60	Bowman, C	2-Jul-15	Kenai, Kasilof	
61	Bowman, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
62	Bowman, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
63	Boyer, R	13-May-15	Kenai, Kasilof	
64	Braden, A	18-Jun-15	Kenai, Kasilof	
65	Brantley, B	2-Jul-15	Kenai, Kasilof	

66	Bray, P	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
67	Brennan, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
68	Heim, G	21-May-15	Kenai, Kasilof	Cooper Landing Advisory Committee
69	Balfany, M	2-Jul-15	Kenai, Kasilof	
70	Brewer, R	5-Jun-15	Kenai, Kasilof	
71	Bromiley, P	11-Jul-15	Kenai, Kasilof	
72	Bronga, T	16-Jun-15	Kenai, Kasilof	
73	Brooks, J	2-Jul-15	Kenai, Kasilof	
74	Brooks, J	17-May-15	Kenai, Kasilof	
75	Broom,D	5-Jul-15	Kenai, Kasilof	
76	Brophy, J	16-May-15	Kenai, Kasilof	
77	Brophy, K	16-May-15	Kenai, Kasilof	
78	Brown, B	19-May-15	Kenai, Kasilof	
79	Brown, J	5-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
80	Brown, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
81	Bruce, D	6-Jul-15	Kenai, Kasilof	
82	Bryant, T	14-May-15	Kenai, Kasilof	
83	Bucy, D	22-May-15	Kenai, Kasilof	
84	Bucy, R	5-Jun-15	Kenai, Kasilof	
85	Bundalo, N	2-Jul-15	Kenai, Kasilof	
86	Bureau, T	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
87	Burgin, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
88	Burlingame, R	21-May-15	Kenai, Kasilof	
89	Burton, R	14-May-15	Kenai, Kasilof	
90	Bussen, A	14-May-15	Kenai, Kasilof	
91	Butler, D	7-Jun-15	Kenai, Kasilof	

92	Calip, L	13-Jun-15	Kenai, Kasilof	
93	Carlson, D	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
94	Carlson, D	10-Jun-15	Kenai, Kasilof	
95	Carlson, W.	13-May-15	Kenai, Kasilof	
96	Carroll, H	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
97	Carter, P.	21-May-15	Kenai	
98	Cavallo, A.	4-Jul-15	Kenai, Kasilof	
99	Chadwick, A	16-May-15	Kenai, Kasilof	
100	Chapman, P	17-May-15	Kenai, Kasilof	
101	Cho, J	21-May-15	Kenai, Kasilof	
102	Ciapponi, B	2-Jul-15	Kenai, Kasilof	
103	Coburn, J	7-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
104	Coburn, J	12-Jul-15	Kenai, Kasilof	
105	Coe, T.	13-May-15	Kenai, Kasilof	
106	Cooper Landing	30-May-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
107	Corbey, B	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
108	Corbey, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
109	Corbey, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
110	Corp, L	23-Jun-15	Kenai, Kasilof	
111	Cosgrove, B	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
112	Cosgrove, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
113	Cotton, S	20-Jul-15	Kenai	ADF&G

114	Cowan, T	12-Jul-15	Kenai, Kasilof	
115	Cox, S	21-May-15	Kenai, Kasilof	
116	Crim, B	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
117	Cross, P	2-Jul-15	Kenai, Kasilof	
118	Crowell, D	2-Jul-15	Kenai, Kasilof	
119	Crumrine, B	2-Jul-15	Kenai, Kasilof	
120	Cummingham, T	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
121	Cummins, B	2-Jul-15	Kenai, Kasilof	
122	Cunningham, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
123	Curry, J	17-May-15	Kenai, Kasilof, Makhnati	United Fishermen of Alaska
124	France, D	27-Jan-15	Kenai	
125	Daberkow, R	2-Jul-15	Kenai, Kasilof	
126	Dandrand, D	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
127	Dandrand, A	13-May-15	Kenai, Kasilof	
128	Davenport, M	2-Jul-15	Kenai, Kasilof	
129	Davidson, R	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
130	Davis, S	2-Feb-15	Kenai, Kasilof	
131	Davis, F	2-Jul-15	Kenai, Kasilof	
132	Davis, J	12-Jun-15	Kenai, Kasilof	
133	Dawson, D	10-Jul-15	Kenai, Kasilof	
134	Dawson, T	13-May-15	Kenai, Kasilof	
135	Defrance, R	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
136	Degernes, C	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
137	Delarm, T	5-Jun-15	Kenai, Kasilof	
138	Deliman, S	5-Jun-15	Kenai, Kasilof	

139	Demattia, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
140	Demattia, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
141	Dennis, J	19-May-15	Kenai, Kasilof	
142	Dicken, J	5-Jun-15	Kenai, Kasilof	
143	Dickinson, L	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
144	Dickinson, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
145	Dietzel, D	21-May-15	Kenai, Kasilof	
146	Dingle, J	5-Jun-15	Kenai, Kasilof	
147	Diumenti, J	14-Jun-15	Kenai, Kasilof	
148	Dixon, G	21-May-15	Kenai, Kasilof	
149	Donahue, C	5-Jun-15	Kenai, Kasilof	
150	Donahue, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
151	Donahue, T	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
152	Pitts, D	18-Jun-15	Kenai, Kasilof	
153	Ventrice, D	2-Jul-15	Kenai, Kasilof	
154	Donelson, P	5-May-15	Kenai, Kasilof	
155	Donnally, J	20-Jun-15	Kenai, Kasilof	
156	Doroff, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
157	Douglass, S	2-Jul-15	Kenai, Kasilof	
158	Dragseth, J	8-Jun-15	Kenai, Kasilof	
159	Drake, D	20-May-15	Kenai, Kasilof	
160	Drath, J	20-May-15	Kenai, Kasilof	
161	Drath, JJ	20-May-15	Kenai, Kasilof	
162	Dreifuerst, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community

163	Dreifuerst, R	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
164	Drummer, M	2-Jul-15	Kenai, Kasilof	
165	Duarte, A	2-Jul-15	Kenai, Kasilof	
166	Dugan, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
167	Ecklund, C	8-Jun-15	Kenai, Kasilof	
168	Eckroth, D	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
169	Eichelberger, D	11-Jun-15	Kenai, Kasilof	
170	Elicerio, A	16-Jun-15	Kenai, Kasilof	
171	Elie, K	6-Jul-15	Kenai	
172	Elkins, R	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
173	Ellison, Z	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
174	Engoars, A	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
175	Ennis, S	20-May-15	Kenai, Kasilof	
176	Erickson, J	13-May-15	Kenai, Kasilof	
177	Erickson, J	14-Jun-15	Kenai, Kasilof	
178	Erickson, M	13-May-15	Kenai, Kasilof	
179	Erkeneff, R	20-May-15	Kenai, Kasilof	
180	Erni, J	2-Jul-15	Kenai, Kasilof	
181	Everingham, C	5-Jun-15	Kenai, Kasilof	
182	Fagnani, M	9-Jun-15	Kenai, Kasilof	
183	Farrington, T	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
184	Farrington, Thomas	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
185	Faust, M	17-May-15	Kenai, Kasilof	

186	Feichtiroger, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
187	Ferry, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
188	Ferguson, S	2-Jul-15	Kenai, Kasilof	
189	Fetko, M	14-Jun-15	Kenai, Kasilof	
190	Field-Sloan, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
191	Field-Sloan, S	10-Jun-15	Kenai, Kasilof	
192	Fischer, S	22-May-15	Kenai, Kasilof	
193	Fish, E	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
194	Fish, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
195	Fishbach, R	16-May-15	Kenai, Kasilof	
196	Fiske, R	2-Jul-15	Kenai, Kasilof	
197	Fitzgerald, G	21-May-15	Kenai, Kasilof	
198	Fiutem, C	2-Jul-15	Kenai, Kasilof	
199	Fleetwood, A	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
200	Flothe, C	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
201	Flothe, G	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
202	Fluke, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
203	Fontana, M	3-Jul-15	Kenai, Kasilof	
204	Forbush, C	11-Jun-15	Kenai, Kasilof	
205	Fortin, S	5-Jun-15	Kenai	Cooper Landing and Hope Federal Subsistence Community

206	Foster, A	14-May-15	Kenai, Kasilof	
207	Foster, B	6-Jun-15	Kenai, Kasilof	
208	Fowler, A	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
209	Fowler, C	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
210	Fowler, J	5-Jul-15	Kenai, Kasilof	
211	Francisco, D	6-Jun-15	Kenai	
212	Frawner, E	8-Jun-15	Kenai, Kasilof	
213	Fritts, J	10-Jul-15	Kenai, Kasilof	
214	Frygier, E	3-Jul-15	Kenai, Kasilof	
215	Fugere, J	13-Jul-15	Kenai, Kasilof	
216	Furtin, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
217	Galbozaith, G	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
218	Galbraith, Y	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
219	Gales, C	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
220	Gales, L	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
221	Gall, L	6-Jun-15	Kenai, Kasilof	
222	Gall, T	5-Jun-15	Kenai, Kasilof	
223	Gambini, Y	26-Jun-15	Kenai, Kasilof	
224	Gonzales, O	22-Jun-15	Kenai, Kasilof	
225	Gara, L	26-Jan-15	Kenai	Alaska State Legislature
226	Gaskins, M	2-Jul-15	Kenai, Kasilof	
227	Gaston, D	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
228	Gease, R	5-May-15	Kenai, Kasilof	
229	Geeson, R	11-Jun-15	Kenai, Kasilof	

230	Geppert, D	9-May-15	Kenai, Kasilof	
231	Gerace, C	17-May-15	Kenai, Kasilof	
232	Gillam, G	20-May-15	Kenai, Kasilof	
233	Gleadon, J	19-Jun-15	Kenai, Kasilof	
234	Glenboski, D	2-Jul-15	Kenai, Kasilof	
235	Glover, S	5-Jun-15	Kenai, Kasilof	
236	Glover, S	7-Jun-15	Kenai, Kasilof	
237	Gonzales, D	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
238	Good, K	11-Jul-15	Kenai, Kasilof	
239	Gordon, W	6-Jul-15	Kenai, Kasilof	
240	Gottfredson, T	21-May-15	Kenai, Kasilof	
241	Gottfredson, T	21-May-15	Kenai, Kasilof	
242	Graham, B	17-May-15	Kenai, Kasilof	
243	Graham, C	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
244	Graham, L	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
245	Graham, T	17-May-15	Kenai, Kasilof	
246	Gravenhorst, M	6-Jul-15	Kenai	
247	Gravenhorst, R	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
248	Graves, W	3-Jul-15	Kenai, Kasilof	
249	Gravenhorst, R	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
250	Green, J	2-Jul-15	Kenai, Kasilof	
251	Green, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
252	Green, P	8-Jun-15	Kenai, Kasilof	
253	Green, Rebecca	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community

254	Green, Rudy	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
255	Greenman, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
256	Griesbaum, M	8-Jun-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
257	Griess, B	22-May-15	Kenai, Kasilof	
258	Grimes, J	2-Jul-15	Kenai, Kasilof	
259	Grimmond, E	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
260	Groeneweg, B	5-Jun-15	Kenai, Kasilof	
261	Groeneweg, G	21-May-15	Kenai, Kasilof	
262	Groves, C	14-Jun-15	Kenai, Kasilof	
263	Gruenberg, M	2-Feb-15	Kenai, Kasilof	Alaska State Legislature
264	Gullicks, G	13-May-15	Kenai, Kasilof	
265	Gvant, L	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
266	Haesche, D	9-Jun-15	Kenai, Kasilof	
267	Hall, D	12-Jun-15	Kenai, Kasilof	
268	Hall, K	21-May-15	Kenai, Kasilof	
269	Hankle, K	21-May-15	Kenai, Kasilof	
270	Hanson, A	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
271	Hanson, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
272	Hanson, L	2-Jul-15	Kenai, Kasilof	
273	Harpe, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
274	Harpe, J	13-May-15	Kenai, Kasilof	
275	Harpe, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community

276	Harris, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
277	Harrison, H	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
278	Hart, T	5-Jun-15	Kenai, Kasilof	
279	Hartig, E	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
280	Hartig, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
281	Hastings, J	16-May-15	Kenai, Kasilof	
282	Hawley, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
283	Heinen, Z	13-May-15	Kenai, Kasilof	
284	Heiskell, J	13-May-15	Kenai, Kasilof	
285	Hellingson, C	2-Jul-15	Kenai, Kasilof	
286	Helm, J	2-Jul-15	Kenai, Kasilof	
287	Helms, S	20-May-15	Kenai, Kasilof	
288	Helyn, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
289	Henley, C	22-May-15	Kenai, Kasilof	
290	Henley, C	22-May-15	Kenai, Kasilof	
291	Herbert, L	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
292	Herrod, J	13-May-15	Kenai, Kasilof	
293	Hidalgo, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
294	Higginbotham, B	2-Jul-15	Kenai, Kasilof	
295	Hilbrunel, P	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
296	Hillyer, J	18-May-15	Kenai, Kasilof	
297	Hilty, T	12-Jul-15	Kenai, Kasilof	

298	Hiner, T	21-May-15	Kenai, Kasilof	
299	Hippert, D	13-May-15	Kenai, Kasilof	
300	Hite, P	22-May-15	Kenai, Kasilof	
301	Hodges, D	7-Jun-15	Kenai, Kasilof	
302	Hogate, A	2-Jul-15	Kenai, Kasilof	
303	Holbrook, W	6-Jun-15	Kenai, Kasilof	
304	Holladay, J	6-Jun-15	Kenai, Kasilof	
305	Holland, D	16-Jun-15	Kenai, Kasilof	
306	Holley, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
307	Hollstein, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
308	Holsten, E	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
309	Holsten, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
310	Hood, S	2-Jul-15	Kenai, Kasilof	
311	Hopley, M	5-Jun-15	Kenai, Kasilof	
312	Homer, B	7-Jun-15	Kenai, Kasilof	
313	Hoy, D	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
314	Hudson, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
315	Huginin, G	19-May-15	Kenai, Kasilof	
316	Hull, D	6-Jun-15	Kenai, Kasilof	
317	Humphreys, T	7-Jun-15	Kenai, Kasilof	
318	Huston, M	20-May-15	Kenai, Kasilof	
319	Inman, R	21-Jun-15	Kenai, Kasilof	
320	Ismael, D	22-May-15	Kenai, Kasilof	
321	Ivy, E	18-Jun-15	Kenai, Kasilof	
322	Iwinski, T	18-Jun-15	Kenai, Kasilof	
323	Jackson, M	13-May-15	Kenai, Kasilof	
324	Jackson, M	13-May-15	Kenai, Kasilof	

325	James, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
326	James, K	7-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
327	James, O	8-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
328	James, W	2-Jul-15	Kenai, Kasilof	
329	Janes, R	8-May-15	Kenai, Kasilof	
330	Jeffords, T	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
331	Jenkins, M	10-Jun-15	Kenai, Kasilof	
332	Jensen, A	14-May-15	Kenai, Kasilof	
333	Jensen, J	13-May-15	Kenai, Kasilof	
334	Jensen, J	18-May-15	Kenai, Kasilof	
335	Joe, C	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
336	Johnson, B	9-Jun-15	Kenai, Kasilof	
337	Johnson, D	21-May-15	Kenai, Kasilof	
338	Johnson, Dennis	5-Jun-15	Kenai, Kasilof	
339	Johnson, Donald	5-Jun-15	Kenai, Kasilof	
340	Johnson, J	9-Jun-15	Kenai, Kasilof	
341	Johnson, L	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
342	Johnston, R	22-Jun-15	Kenai, Kasilof	
343	Jones, D	2-Jul-15	Kenai, Kasilof	
344	Jordan, T	4-Jul-15	Kenai, Kasilof	
345	Joyce, C	5-Jun-15	Kenai, Kasilof	
346	Junker, J	25-May-15	Kenai, Kasilof	
347	Kamp, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
348	Karpik, D	30-Jan-15	Kenai, Kasilof	

349	Kaup, R	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
350	Kenworthy, J	1-Jun-15	Kenai, Kasilof	
351	Kerr, G	12-Jul-15	Kenai, Kasilof	
352	Kiffmeyer, R	2-Jul-15	Kenai, Kasilof	
353	Kiball, K	13-May-15	Kenai, Kasilof	
354	King, J	22-May-15	Kenai, Kasilof	
355	King, W	17-May-15	Kenai, Kasilof	
356	Kirr, B	13-May-15	Kenai, Kasilof	
357	Kirr, V	13-May-15	Kenai, Kasilof	
358	Kiser, K	10-Jul-15	Kenai, Kasilof	
359	Kittle, C	10-Jun-15	Kenai, Kasilof	
360	Klosiewski-Ellis	15-Jul-15	Kenai	US Fish and Wildlife Service
361	Knlock, T	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
362	Knustson, A	2-Jul-15	Kenai, Kasilof	
363	Koecher, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
364	Kogstad, P	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
365	Komperda, M	11-Jul-15	Kenai, Kasilof	
366	Kondra, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
367	Konopasek, D	13-May-15	Kenai, Kasilof	
368	Koppert, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
369	Koskovich, R	6-Jun-15	Kenai, Kasilof	
370	Kramer, B	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
371	Kramer, D	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community

372	Kramer, R	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
373	Krammen, M	4-Jul-15	Kenai, Kasilof	
374	Kreitel, C	20-May-15	Kenai, Kasilof	
375	Kroll, H	5-May-15	Kenai, Kasilof	
376	Krumm, G	9-Jun-15	Kenai, Kasilof	
377	Labrec, G	20-May-15	Kenai, Kasilof	
378	Lamberson, A	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
379	Lannet, S	16-May-15	Kenai, Kasilof	
380	LaRock, B	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
381	LaRock, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
382	Larsen, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
383	Larson, F	18-May-15	Kenai, Kasilof	
384	Latschaw, C	6-Jun-15	Kenai, Kasilof	
385	LaVon, G	5-Jun-15	Kenai, Kasilof	
386	Leaders, C	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
387	Leaders, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
388	Lee, R	6-Jun-15	Kenai, Kasilof	
389	LeMieux, E	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
390	LeMieux, N	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
391	LeMieux, V	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community

392	Leonard, R	11-Jun-15	Kenai, Kasilof	
393	Lesmeister, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
394	Lessard, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
395	Lewallen, M	9-Jun-15	Kenai, Kasilof	
396	Lewis, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
397	Libbey, R	1-Feb-15	Kenai	
398	Liepitz, G	22-Jun-15	Kenai, Kasilof	
399	Ling, L	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
400	Linn, M	7-Jun-15	Kenai, Kasilof	
401	Lisonbee, D	11-Jul-15	Kenai, Kasilof	
402	Little, J	22-May-15	Kenai, Kasilof	
403	Locker, P	7-Jun-15	Kenai, Kasilof	
404	Long, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
405	Longley, G	2-Jul-15	Kenai, Kasilof	
406	Longworth, J	13-May-15	Kenai, Kasilof	
407	Lorantas, R	6-Jun-15	Kenai, Kasilof	
408	Lowe, C	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
409	Lowe, D	19-May-15	Kenai, Kasilof	
410	Lowery, G	20-May-15	Kenai, Kasilof	
411	Lujan, J	7-Jun-15	Kenai, Kasilof	
412	Lund, M	13-May-15	Kenai, Kasilof	
413	Lupo, M	2-Jul-15	Kenai, Kasilof	
414	Mackie, V	25-May-15	Kenai, Kasilof	
415	Mader, T	26-Jan-15	Kenai, Kasilof	
416	Malindzak, S	2-Jul-15	Kenai, Kasilof	
417	Malone, P	5-Jun-15	Kenai, Kasilof	
418	Malone, P	16-May-15	Kenai, Kasilof	

419	Mangum, R	14-May-15	Kenai, Kasilof	
420	Manning, K	29-Jan-15	Kenai, Kasilof	
421	Manning, K	20-May-15	Kenai, Kasilof	
422	Montey, K	21-May-15	Kenai, Kasilof	
423	Marinucci, C	11-Jun-15	Kenai, Kasilof	
424	Markkey, J	2-Jul-15	Kenai, Kasilof	
425	Masneri, S	8-Jun-15	Kenai, Kasilof	
426	Mazzolini, D	8-Jun-15	Kenai, Kasilof	
427	Mazzolini, N	18-Jun-15	Kenai, Kasilof	
428	McCabe, G	10-Jul-15	Kenai, Kasilof	
429	McCall, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
430	McCartney, A	10-Jun-15	Kenai, Kasilof	
431	McCormick, P	11-Jun-15	Kenai, Kasilof	
432	McCormick, P	5-Jun-15	Kenai, Kasilof	
433	McDaniel, M	12-Jul-15	Kenai, Kasilof	
434	McDaniel, T	10-Jul-15	Kenai, Kasilof	
435	McDonald, v	28-Jan-15	Kenai, Kasilof	
436	McDonald, C	11-Jun-15	Kenai, Kasilof	
437	McDonald, F	2-Jul-15	Kenai, Kasilof	
438	McFarlin, K	3-Jul-15	Kenai, Kasilof	
439	Mcglahn, T	5-Jun-15	Kenai, Kasilof	
440	McMaster, J	15-Jun-15	Kenai, Kasilof	
441	McNeal, J	22-May-15	Kenai, Kasilof	
442	McReynolds, T	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
443	Medrma, T	15-May-15	Kenai, Kasilof	
444	Mei, S	5-May-15	Kenai, Kasilof	
445	Meinkoth, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
446	Mendieta, v	2-Jul-15	Kenai, Kasilof	
447	Meredith, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community

448	Merritt, G	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
449	Metz, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
450	Micciche Dunleavy	6-Feb-15	Kenai	Alaska State Legislature
451	Michels, D	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
452	Middleton, S	9-Jun-15	Kenai, Kasilof	
453	Mikoleit, J	14-May-15	Kenai, Kasilof	
454	Miller, M	29-Jan-15	Kenai, Kasilof	Department of Fish and Game
455	Miller, K	5-Jul-15	Kenai, Kasilof	
456	Miller,, M	8-Jun-15	Kenai, Kasilof	
457	Millikin, C	2-Jul-15	Kenai, Kasilof	
458	Milliron, J	13-May-15	Kenai, Kasilof	
459	Milne, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
460	Milne, R	2-Jul-15	Kenai, Kasilof	
461	Mincher, B	21-May-15	Kenai, Kasilof	
462	Miner, S	13-May-15	Kenai, Kasilof	
463	Mitcher, C	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
464	Mitchell, G	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
465	Mitchell, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
466	Mitchell, W	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
467	Montana, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
468	Montoya, D	2-Jul-15	Kenai, Kasilof	
469	Moore, M	21-May-15	Kenai, Kasilof	

470	Morales, S	14-May-15	Kenai, Kasilof	
471	Morgan, B	5-May-15	Kenai, Kasilof	
472	Morgan, C	14-May-15	Kenai, Kasilof	
473	Morris, C	13-May-15	Kenai, Kasilof	
474	Morrissey, S	13-May-15	Kenai, Kasilof	
475	Moseley, E	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
476	Moubray, M	2-Jul-15	Kenai, Kasilof	
477	Moyer, N	13-May-15	Kenai, Kasilof	
478	Mundy, T	24-Jun-15	Kenai, Kasilof	
479	Murdoch, T	18-May-15	Kenai, Kasilof	
480	Myhell, L	8-Jun-15	Kenai, Kasilof	
481	Navarre, M	17-Jul-15	Kenai, Kasilof	Kenai Peninsula Borough
482	Neal, M	8-Jun-15	Kenai, Kasilof	
483	Neal, M	8-Jun-15	Kenai, Kasilof	
484	Neeno, B	14-Jun-15	Kenai, Kasilof	
485	Neeser, K	18-Jun-15	Kenai, Kasilof	
486	Neis, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
487	Nelson, C	21-May-15	Kenai, Kasilof	
488	Nelson, D	7-May-15	Kenai, Kasilof	
489	Nelson, M	6-Jun-15	Kenai, Kasilof	
490	Neuberger, P	21-Jun-15	Kenai, Kasilof	
491	Newhouse, J	10-Jul-15	Kenai, Kasilof	
492	Newman, D	12-Jul-15	Kenai, Kasilof	
493	Newman, M	5-Jul-15	Kenai, Kasilof	
494	Nguyen, C	13-Jun-15	Kenai, Kasilof	
495	Nichols, G	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
496	Nichols, N	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
497	Niederhauser, W	21-May-15	Kenai, Kasilof	
498	Niederhauser, J	13-May-15	Kenai, Kasilof	

499	Nierenberg, A	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
500	Nievenberg, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
501	Nobles, W	2-Jul-15	Kenai, Kasilof	
502	Noethlick, D	5-Jun-15	Kenai, Kasilof	
503	Norberg, R	26-Jun-15	Kenai, Kasilof	
504	Norman, S	6-Jun-15	Kenai, Kasilof	
505	Norris, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
506	Norris, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
507	Norris, T	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
508	Norhtrop, J	18-Jun-15	Kenai, Kasilof	
509	Nuttall, C	14-Jul-15	Kenai, Kasilof	
510	Nyman, J	5-Jun-15	Kenai, Kasilof	
511	Oakes, A	2-Jul-15	Kenai, Kasilof	
512	Odgers, R	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
513	Ogan, W	19-Jun-15	Kenai, Kasilof	
514	Ogilvie, E	2-Jul-15	Kenai, Kasilof	
515	O'Hara, S	20-May-15	Kenai, Kasilof	
516	Ohnemus, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
517	Oiye, T	22-Jun-15	Kenai, Kasilof	
518	Okamoto, C	31-May-15	Kenai, Kasilof	
519	Olmstead, D	12-Jul-15	Kenai, Kasilof	
520	Olmstead, D	18-May-15	Kenai, Kasilof	
521	Olness, P	9-May-15	Kenai, Kasilof	
522	Olthois, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community

523	Opalenik, C	2-Jul-15	Kenai, Kasilof	
524	Orr, T	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
525	Osborn, D	5-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
526	O'shea, V	2-Jul-15	Kenai, Kasilof	
527	Osowiecki, C	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
528	Osterman, D	12-Jun-15	Kenai, Kasilof	
529	Ott, E	9-Jun-15	Kenai, Kasilof	
530	Otto, T	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
531	Owens C	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
532	Paddock, R	22-May-15	Kenai, Kasilof	
533	Painter, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
534	Panetta, J	2-Jul-15	Kenai, Kasilof	
535	Parnakian, T	2-Jul-15	Kenai, Kasilof	
536	Parsons, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
537	Parsons, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
538	Parsons, W	3-Jul-15	Kenai, Kasilof	
539	Patrick, J	2-Jul-15	Kenai, Kasilof	
540	Pearce, D	21-May-15	Kenai, Kasilof	
541	Pearcy, C	21-Jun-15	Kenai, Kasilof	
542	Pearson, H	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
543	Pederson, T	2-Jul-15	Kenai, Kasilof	
544	Pennell, J	13-May-15	Kenai, Kasilof	

545	Perkerson, L	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
546	Peterson, A	8-Jun-15	Kenai, Kasilof	
547	Peterson, G	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
548	Peterson, G	7-Jun-15	Kenai, Kasilof	
549	Peterson, T	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
550	Phelps, D	12-Jun-15	Kenai, Kasilof	
551	Phoenix, J	20-Jun-15	Kenai, Kasilof	
552	Pierce, E	5-Jun-15	Kenai, Kasilof	
553	Plummer, C	2-Jul-15	Kenai, Kasilof	
554	Podgorski, M	2-Jul-15	Kenai, Kasilof	
555	Polonowski, J	18-Jun-15	Kenai, Kasilof	
556	Prause, B	2-Jul-15	Kenai, Kasilof	
557	Pride, J	8-Jun-15	Kenai, Kasilof	
558	Prophet, J	14-May-15	Kenai, Kasilof	
559	Quinn, D	14-May-15	Kenai, Kasilof	
560	Rainey, E	21-May-15	Kenai, Kasilof	
561	Raiskums, P	21-May-15	Kenai, Kasilof	
562	Rand, D	21-May-15	Kenai, Kasilof	
563	Randall, S	13-Jul-15	Kenai, Kasilof	
564	Rankins, A	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
565	Rash, J	19-Jun-15	Kenai, Kasilof	
566	Rasmussen, M	2-Jul-15	Kenai, Kasilof	
567	Rauchenstein, D	14-May-15	Kenai, Kasilof	
568	Recken, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
569	Reger, L	5-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
570	Reid, P	21-Jun-15	Kenai, Kasilof	
571	Reins, D	4-Jul-15	Kenai, Kasilof	

572	Sackett, I	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
573	Reischach, S	18-May-15	Kenai, Kasilof	
574	Renck, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
575	Repasky, D	27-Jan-15	Kenai, Kasilof	
576	Reynoldson, P	9-Jun-15	Kenai, Kasilof	
577	Rice, J	14-May-15	Kenai, Kasilof	
578	Richardson, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
579	Richardson, P	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
580	Ridderman, E	23-Jun-15	Kenai, Kasilof	
581	Robinson, R	15-Jun-15	Kenai, Kasilof	
582	Robinson, T	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
583	Roebuck, A	2-Jul-15	Kenai, Kasilof	
584	Rogers, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
585	Rogers, Julie	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
586	Rogers, M	5-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
587	Roggenbuck, R	26-Jan-15	Kenai, Kasilof	
588	Romig, H	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
589	Rounsaville, L	2-Jul-15	Kenai, Kasilof	
590	Rouise, J	13-May-15	Kenai, Kasilof	
591	Route, C	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community

592	Route, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
593	Ruggio, C	5-Jun-15	Kenai, Kasilof	
594	Rumph, J	5-Jun-15	Kenai, Kasilof	
595	Russ, A	5-May-15	Kenai, Kasilof	
596	Ryan, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
597	Salazar, A	21-Jun-15	Kenai, Kasilof	
598	Saniat, A	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
599	Saniat, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
600	Scarborough, D	16-Jun-15	Kenai, Kasilof	
601	Schelske, D	2-Jul-15	Kenai, Kasilof	
602	Schelske, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
603	Schilling, G	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
604	Schlieve, B	7-Jun-15	Kenai, Kasilof	
605	Schneider, J	2-Jul-15	Kenai, Kasilof	
606	Schofield, R	5-Jun-15	Kenai, Kasilof	
607	Scott, B	2-Jul-15	Kenai, Kasilof	
608	Scott, P	23-Apr-15	Kenai, Kasilof	
609	Sears, G	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
610	Sellers, R	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
611	Service, B	28-Jun-15	Kenai, Kasilof	
612	Sether, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community

613	Sevamar, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
614	Shontz, D	20-May-15	Kenai, Kasilof	
615	Short, M	2-Jul-15	Kenai, Kasilof	
616	Shower, M	5-Jun-15	Kenai, Kasilof	
617	Simpson, S	5-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
618	Sims, N	6-Jun-15	Kenai, Kasilof	
619	Simsek, D	3-Jul-15	Kenai, Kasilof	
620	Singer, E	22-Jun-15	Kenai, Kasilof	
621	Sjogren, J	13-May-15	Kenai, Kasilof	
622	Skaaren, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
623	Skagstad, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
624	Skye, D	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
625	Sloan, R	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
626	Smart, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
627	Smith, J	8-Jun-15	Kenai, Kasilof	
628	Smith, L	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
629	Smith, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
630	Smith, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
631	Sparrow, N	7-Jun-15	Kenai, Kasilof	
632	Stabile, P	12-Jul-15	Kenai, Kasilof	

633	Stancil, D	20-May-15	Kenai, Kasilof	
634	Stanton, T	14-May-15	Kenai, Kasilof	
635	Stearing, P	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
636	Stehn, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
637	Stevens, g	2-Jul-15	Kenai, Kasilof	
638	Stevens, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
639	Stevens, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
640	Stewart, J	9-Jun-15	Kenai, Kasilof	
641	Stoney, M	13-May-15	Kenai, Kasilof	
642	Story, D	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
643	Story, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
644	Strawn, T	5-Jun-15	Kenai, Kasilof	
645	Strobbe, L	8-May-15	Kenai, Kasilof	
646	Stroh, T	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
647	Stroll, A	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
648	Stromstad, A	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
649	Stubbs, J	5-May-15	Kenai, Kasilof	
650	Sturm, M	17-Jun-15	Kenai, Kasilof	
651	Stutzenburg, D	5-Jul-15	Kenai, Kasilof	
652	Sullivan, A	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community

653	Sullivan, R	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
654	Sutherlin, J	14-May-15	Kenai, Kasilof	
655	Sweeney, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
656	Tappan, A	20-May-15	Kenai, Kasilof	
657	Tappan, B	20-May-15	Kenai, Kasilof	
658	Taylor, J	5-Jun-15	Kenai, Kasilof	
659	Terlingo, J	2-Jul-15	Kenai, Kasilof	
660	Terry, L	16-Jun-15	Kenai, Kasilof	
661	Tewle, L	5-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
662	Thomas, D	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
663	thomas, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
664	Thomas, K	5-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
665	Thomas-Wolf, M	24-Jun-15	Kenai, Kasilof	
666	Thompson, M	19-May-15	Kenai, Kasilof	
667	Thompson, R	8-Jun-15	Kenai, Kasilof	
668	Thompson, S	19-May-15	Kenai, Kasilof	
669	Toms, K	5-Jun-15	Kenai, Kasilof	
670	Tonione, J	6-Jun-15	Kenai, Kasilof	
671	Torchick, J	2-Jul-15	Kenai, Kasilof	
672	Trafican, J	2-Jul-15	Kenai, Kasilof	
673	Travers-Smyre, N	13-May-15	Kenai, Kasilof	
674	Troy	21-Jun-15	Kenai, Kasilof	
675	Trueblood, C	12-May-15	Kenai, Kasilof	
676	Trueblood, S	13-May-15	Kenai, Kasilof	
677	Trupiano, J	2-Jul-15	Kenai, Kasilof	
678	VanderHoff, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community

679	Vandusen, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
680	Vandusen, P	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
681	VanKooten, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
682	Venot, C	16-Jun-15	Kenai, Kasilof	
683	Verman, B	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
684	Vermillion, D	18-May-15	Kenai, Kasilof	
685	Vilwock, A	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
686	Vohs, R	18-Jun-15	Kenai, Kasilof	
687	Vos, J	14-May-15	Kenai, Kasilof	
688	Waack, L	13-May-15	Kenai, Kasilof	
689	Wait, E	13-May-15	Kenai, Kasilof	
690	Walker, M	2-Jul-15	Kenai, Kasilof	
691	Wallick, R	5-Jun-15	Kenai, Kasilof	
692	Wallin, G	6-Jun-15	Kenai, Kasilof	
693	Wallin, G	10-Jul-15	Kenai, Kasilof	
694	Walters, Z	15-May-15	Kenai, Kasilof	
695	Ward, A	9-Jun-15	Kenai, Kasilof	
696	Waters, D	13-May-15	Kenai, Kasilof	
697	Waters, D	14-May-15	Kenai, Kasilof	
698	Watt, J	21-May-15	Kenai, Kasilof	
699	Weber, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
700	Weber, P	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
701	Weis, S	29-Jan-15	Kenai, Kasilof	
702	Weisberg, R	2-Jul-15	Kenai, Kasilof	

703	Weldin, L	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
704	Wellman, T	20-May-15	Kenai, Kasilof	
705	Wellman, T	26-Feb-15	Kenai, Kasilof	
706	Wells, R	13-May-15	Kenai, Kasilof	
707	Wells, R	14-May-15	Kenai, Kasilof	
708	Wereda, B	8-Jun-15	Kenai, Kasilof	
709	Ereda, B	8-Jun-15	Kenai, Kasilof	
710	Gles, S	2-Jul-15	Kenai, Kasilof	
711	Tern, D	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
712	Wheat, A	10-Jul-15	Kenai, Kasilof	
713	White, C	20-Jun-15	Kenai, Kasilof	
714	White, J	4-Jul-15	Kenai, Kasilof	
715	White, M	8-Jun-15	Kenai, Kasilof	
716	White, W	8-Jun-15	Kenai, Kasilof	
717	Wielechowski, B	10-Mar-15	Kenai	Alaska State Legislature
718	Wight, J	2-Jul-15	Kenai, Kasilof	
719	Wilkes, R	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
720	Willems, D	2-Jul-15	Kenai, Kasilof	
721	Williams, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
722	Williams, R	2-Jul-15	Kenai, Kasilof	
723	Willumsen, S	17-May-15	Kenai, Kasilof	
724	Wilmoth, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
725	Wilson, D	26-Jun-15	Kenai, Kasilof	
726	Wilson, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
727	Winkle, K	13-May-15	Kenai, Kasilof	
728	Wisdorf, g	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community

729	Witman, M	12-Jul-15	Kenai, Kasilof	
730	Woods, R	5-Jun-15	Kenai, Kasilof	
731	Yates, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
732	Young, C	27-Jun-15	Kenai, Kasilof	
733	Young, G	2-Jul-15	Kenai, Kasilof	
734	Young, P	5-Jun-15	Kenai, Kasilof	
735	Zervas, G	2-Jul-15	Kenai, Kasilof	
736	Zimmerman, J	16-May-15	Kenai, Kasilof	
737	Zirkle, J	13-May-15	Kenai, Kasilof	
738	Ziv, J	22-May-15	Kenai, Kasilof	
739	ZumBrunnen, S	12-Jul-15	Kenai, Kasilof	
740	Zurba, N	24-Jun-15	Kenai, Kasilof	

APPENDIX B: List of Summarized Claims relevant to the Kasilof River

Claim Number	Description	Criterion 1	Criterion 2	Criterion 3
1.1	Combining State and Federal fishery data indicates that the annual harvest limit of 4,000 Sockeye for Hope, Cooper Landing, and Ninilchik is being exceeded.	X		
2.1	The Board and OSM used older, out of date studies of Kasilof River Chinook Salmon to make their decision.		X	
2.2	The Board should have considered an ADF&G 2005-2008 telemetry study of Kasilof River Chinook Salmon.		X	
3.1	The comment period on FP15-11 was not adequate.			X
3.2	The Board failed to cooperate with or provide adequate notice to the public.			X
3.3	The Board ignored staff and agency (ADF&G, USFWS) recommendations presented at the Board meeting.			X
3.4	Long time professional and local consensus is that gillnets should not be used in Kenai/Kasilof Rivers because they are non-selective.			X
3.5	The gillnetting regulation increases the conservation concern for Chinook on the Kasilof River.			X
3.6	Incidental harvest of Chinook could lead to a high rate of mortality.			X
3.7	Gillnetting of Chinook will harvest larger and more fecund breeders.			X
3.8	Gillnetting will be detrimental to salmon spawning beds and habitat.			X
3.9	The gillnetting regulation increases the conservation concern for incidentally caught resident species.			X
3.10	Incidental harvest of trout/char longer than 18 inches			X

	could lead to a high rate of mortality.			
3.11	Non-selective nature of gillnet harvest is wasteful.			X
3.12	Gillnetting will be detrimental to long-term subsistence and non-subsistence uses.			X
3.13	There already exists sufficient opportunity for subsistence harvest of salmon that is selective including dipnet and fishwheel on the Kasilof River.			X
3.14	Gillnetting is not traditional and customary or a “long-time continuous use” on the Kenai and Kasilof Rivers – the Board has no authority to create a “new” method.			X
3.15	There is no shortage of red salmon – ANILCA 804 does not apply.			X
3.16	The Board passed proposals without an EIS, in violation of 50 CFR 100.18.			X
3.17	The proposed regulation did not have required NEPA and Clean Water Act reviews.			X

APPENDIX C: Staff Analysis of Proposal FP15-11**STAFF ANALYSIS
FP15-11****ISSUES**

Proposal FP15-11, submitted by Ninilchik Traditional Council requests a community set gillnet fishery be established within the Kasilof River for salmon. Currently, Kasilof River salmon may be harvested with dip net, rod and reel and fish wheel from the outlet of Tustumena Lake to Silver Salmon Rapids. An operational plan would be submitted to and approved by the Federal in-season fishery manager. Salmon harvested from the gillnet fishery will be included as part of each household's annual limit for the Kasilof River. Gillnet catches would be reported to the Federal in-season manager within 72 hours of leaving the fishing location.

DISCUSSION

The proponent requests establishment of a community set gillnet fishery in the Kasilof River to add additional subsistence harvest opportunities for residents of Ninilchik. The proponent states that only one community gillnet would be utilized in the Kasilof River. The community gillnet will be limited to 10 fathoms in length or less. An operational plan would be developed and approved by the Federal in-season fishery manager. This operational plan would include deployment locations, fishing time and a methodology for distributing the catch. All salmon taken in the Kasilof River gillnet fishery would be included as part of each households' limit. Currently the household limit for Chinook salmon is 10 for the permit holder and two additional fish for each additional household member with a total annual harvest limit of 500 fish. The fishing season is from June 16th through August 15th. The household limit for sockeye salmon is 25 for the permit holder and each additional household member is allowed five additional fish. The total annual harvest limit for sockeye salmon is 4,000 and the season runs from June 16th through August 15th.

The proponent asserts that harvest by dip net, fish wheel and rod and reel in the Kasilof River does not allow sufficient subsistence fishing opportunities for Ninilchik residents. Efforts to establish a meaningful Federal subsistence fishery on the Kasilof River using a fish wheel have not been successful. The proponent states that historically fish wheels were not used in lower Cook Inlet, because they never worked well enough to be used as a traditional gear type. While the Ninilchik Traditional Council has made a good faith effort to operate the fish wheel under the current Federal subsistence regulations, Ninilchik residents have not yet been successful in harvesting salmon using this method.

Existing Federal Regulation

§ _____.27(i)(10)(iv) You may take only salmon, trout, Dolly Varden, and other char under authority of a Federal subsistence fishing permit. Seasons, harvest and possession limits, and

methods and means for take are the same as for the taking of those species under Alaska sport fishing regulations (5 AAC 56 and 5 AAC 57) unless modified herein. Additionally for Federally managed waters of the Kasilof and Kenai River drainages:

(A) Residents of Ninilchik may take sockeye, Chinook, coho, and pink salmon through a dip net and a rod and reel fishery on the upper mainstem of the Kasilof River from a Federal regulatory marker on the river below the outlet of Tustumena Lake downstream to a marker on the river approximately 2.8 miles below the Tustumena Lake boat ramp. Residents using rod and reel gear may fish with up to two baited single or treble hooks. Other species incidentally caught during the dip net and rod and reel fishery may be retained for subsistence uses, including up to 200 rainbow/steelhead trout taken through August 15. After 200 rainbow/steelhead trout have been taken in this fishery or after August 15, all rainbow/steelhead trout must be released unless otherwise provided for in this section. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing site.

(1) Fishing for sockeye and Chinook salmon will be allowed June 16-August 15.

(2) Fishing for coho and pink salmon will be allowed June 16-October 31.

(3) Fishing for sockeye, Chinook, coho, or pink salmon will end prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action.

(4) Each household may harvest their annual sockeye, Chinook, coho, or pink salmon limits in one or more days, and each household member may fish with a dip net or a rod and reel during this time. Salmon taken in the Kenai River system dip net and rod and reel fishery will be included as part of each household's annual limit for the Kasilof River.

(i) For sockeye salmon—annual total harvest limit of 4,000; annual household limits of 25 for each permit holder and 5 additional for each household member;

(ii) For Chinook salmon—annual harvest limit of 500; annual household limit of 10 for each permit holder and 2 additional for each household member;

(iii) For coho salmon—annual total harvest limit of 500; annual household limits of 10 for each permit holder and 2 additional for each household member; and

(iv) For pink salmon—annual total harvest limit of 500; annual household limits of 10 for each permit holder and 2 additional for each household member.

(H) Residents of Ninilchik may harvest sockeye, Chinook, coho, and pink salmon with a fishwheel in the Federal public waters of the upper mainstem of the Kasilof River. Residents of Ninilchik may retain other species incidentally caught in the Kasilof River except for rainbow/steelhead trout, which must be released and returned unharmed to the water.

- (1) Only one fish wheel can be operated on the Kasilof River. The fish wheel must have a live box, must be monitored when fishing, must be stopped from fishing when it is not being monitored or used, and must be installed and operated in compliance with any regulations and restrictions for its use within the Kenai National Wildlife Refuge.*
- (2) One registration permit will be available and will be awarded by the Federal in-season fishery manager, in consultation with the Kenai National Wildlife refuge manager, based on the merits of the operation plan. The registration permit will be issued to an organization that, as the fish wheel owner, will be responsible for its construction, installation, operation, use, and removal in consultation with the Federal fishery manager. The owner may not rent or lease the fish wheel for personal gain. As part of the permit, the organization must:*
 - (i) Prior to the season, provide a written operation plan to the Federal fishery manager including a description of how fishing time and fish will be offered and distributed among households and residents of Ninilchik;*
 - (ii) During the season, mark the fish wheel with a wood, metal, or plastic plate at least 12 inches high by 12 inches wide that is permanently affixed and plainly visible, and that contains the following information in letters and numerals at least 1 inch high: registration permit number; organization's name and address; and primary contact person name and telephone number;*
 - (iii) After the season, provide written documentation of required evaluation information to the Federal fishery manager including, but not limited to, persons or households operating the gear, hours of operation and number of each species caught and retained or released.*
- (3) People operating the fish wheel must:*
 - (i) Have a valid Federal subsistence fishing permit in their possession;*
 - (ii) If they are not the fish wheel owner, attach an additional wood, metal or plastic plate at least 12 inches high by 12 inches wide to the fish wheel that is plainly visible, and that contains their fishing permit number, name, and address in letters and numerals at least 1 inch high;*
 - (iii) Remain on site to monitor the fish wheel and remove all fish at least every hour;*
 - (iv) Before leaving the site, mark all retained fish by removing their dorsal fin and record all retained fish on their fishing permit; and*
 - (v) Within 72 hours of leaving the site, report their harvest to the Federal fisheries manager.*

- (4) *The fish wheel owner (organization) may operate the fish wheel for subsistence purposes on behalf of residents of Ninilchik by requesting a subsistence fishing permit that:*
- (i) *Identifies a person who will be responsible for operating the fish wheel;*
 - (ii) *Includes provisions for recording daily catches, the household to whom the catch was given, and other information determined to be necessary for effective resource management by the Federal fishery manager.*
- (5) *Fishing will be allowed from June 16 through October 31 on the Kasilof River unless closed or otherwise restricted by Federal special action.*
- (6) *Salmon taken in the fish wheel fishery will be included as part of dip net/rod and reel fishery annual total harvest limits for the Kasilof River and as part of dip net/rod and reel household annual limits of participating households.*
- (7) *Fishing for each salmon species will end and the fishery will be closed by Federal special action prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action.*

Proposed Federal Regulation

§ __.27(i)(10)(iv) *You may take only salmon, trout, Dolly Varden, and other char under authority of a Federal subsistence fishing permit. Seasons, harvest and possession limits, and methods and means for take are the same as for the taking of those species under Alaska sport fishing regulations (5 AAC 56 and 5 AAC 57) unless modified herein. Additionally for Federally managed waters of the Kasilof and Kenai River drainages:*

- (I) Residents of Ninilchik may harvest sockeye, Chinook, coho, and pink salmon through a community gillnet in the Federal public waters of the upper mainstem of the Kasilof River. Residents of Ninilchik may retain other species incidentally caught in the Kasilof River.**
- (1) ***Only one community gillnet can be operated on the Kasilof River. The gillnet cannot be over 10 fathoms in length, and may not obstruct more than half of the river width with stationary fishing gear. Subsistence stationary gillnet gear may not be set within 200 feet of other subsistence stationary gear.***
- (2) ***One registration permit will be available and will be awarded by the Federal in-season fishery manager, in consultation with the Kenai National Wildlife refuge manager, based on the merits of the operation plan. The registration permit will be issued to an organization that, as the community gillnet owner, will be responsible for its use in consultation with the Federal fishery manager.***

- (i) Prior to the season, provide a written operation plan to the Federal fishery manager including a description of fishing method, fishing time and how fish will be offered and distributed among households and residents of Ninilchik;*
- (ii) After the season, provide written documentation of required evaluation information to the Federal fishery manager including, but not limited to, persons or households operating the gear, hours of operation and number of each species caught and retained or released.*
- (3) The gillnet owner (organization) may operate the net for subsistence purposes on behalf of residents of Ninilchik by requesting a subsistence fishing permit that:**
 - (i) Identifies a person who will be responsible for fishing the gillnet;*
 - (ii) Includes provisions for recording daily catches, the household to whom the catch was given, and other information determined to be necessary for effective resource management by the Federal fishery manager.*
- (4) Fishing for sockeye, Chinook, coho and pink salmon will be closed by Federal Special Action prior to the operational plan end dates if the annual total harvest limits for that species is reached or suspended.**
- (5) Salmon taken in the gillnet fishery will be included as part of dip net/rod and reel fishery annual total harvest limits for the Kasilof River. All fish harvested must be reported to the in-season manager within 72 hours of leaving the fishing location.**
- (6) After 200 rainbow/steelhead trout have been taken in the dip net and gillnet fishery, or after August 15, all rainbow/steelhead trout must be released unless otherwise provide.**
- (6) Failure to respond to reporting requirements or return the completed harvest permit by the due date listed on the permit may result in issuance of a violation notice and will make you ineligible to receive a subsistence permit during the following regulatory year.**

Existing State Regulations

No existing State regulations apply.

Extent of Federal Public Water

Federal public waters are defined and described under 36 CFR 242.3 and 50 CFR100.3. For the Kasilof River, Federal public waters under consideration include all waters of the Kasilof River within and adjacent to the exterior boundaries of the Kenai National Wildlife Refuge (**Cook Inlet Area Map**). This includes approximately the upper 7 miles of the Kasilof River from the outlet of Tustumena Lake downstream to Silver Salmon Rapids.

Customary and Traditional Use Determinations

Only Residents of the community of Ninilchik have a positive customary and traditional use determination for all fish in the Kasilof River.

Regulatory History

Pre- and Early Statehood Fisheries

Until 1952 freshwater streams in the Kenai Peninsula were open to subsistence fishing, but poorly managed commercial fisheries decimated salmon runs. In 1952, as part of efforts to rebuild salmon runs, all streams and lakes of the Kenai Peninsula were closed to subsistence fishing under Territory of Alaska regulations. Only rod and reel fishing was allowed for “personal use” (Fall et al. 2004).

Contemporary State Fisheries

A State regulatory management plan for Upper Cook Inlet salmon (5 AAC 21.363) provides the Alaska Board of Fisheries guiding principles and provisions to use when adopting management plans for specific stocks. The State classified most of the Cook Inlet Area, including the Kenai and Kasilof River drainages, as a nonsubsistence area in 1992 (5AAC 99.015(3)). The only State subsistence fisheries in Cook Inlet occur in areas that are not accessible from the road system, including the Tyonek, Windy Bay, Port Chatham, Kyuktolik, and Port Graham subdistricts, as well as portions of Seldovia Bay and the Yentna River drainage.

Commercial and sport fisheries are complex and intensively managed by the State of Alaska. There are six management plans that apply to Kenai and Kasilof river salmon stocks: *Upper Cook Inlet Salmon Management Plan* (5 AAC 21.363), *Kenai River and Kasilof River Early-Run King Salmon Conservation Management Plan* (5 AAC 57.160), *Kenai River Late-Run King Salmon Management Plan* (5 AAC 21.359), *Kenai River Late-Run Sockeye Salmon Management Plan* (5 AAC 21.360), *Kasilof River Salmon Management Plan* (5 AAC 21.365) and *Kenai River Coho Salmon Management Plan* (5 AAC 57.170). These plans provide State of Alaska management goals for sustained yield, guidance for mixed-species and mixed-stock fisheries, and instructions for allocation between competing fisheries.

The State also has a regulatory management plan for Upper Cook Inlet personal use salmon fisheries (5 AAC 77.540). This plan established four personal use fisheries in Cook Inlet: Kasilof River dip net, Kasilof River set gillnet, Kenai River dip net, and Fish Creek dip net. Unlike subsistence fisheries, personal use fisheries do not have a priority over other existing uses. Personal use fisheries are open to all residents of Alaska, require a household permit, and occur in marine and intertidal waters outside of Federal public lands. These fisheries target sockeye salmon, the species of greatest abundance and for which the best stock assessment information is available. Annual harvest limits are 25 salmon for the head of each household and 10 salmon for each additional household member. The limit is combined for all four fisheries. Incidentally caught coho, pink, and chum salmon may be retained as part of the annual limit. Each household is limited to one Chinook salmon in the Kenai River dip net fishery. No retention of Chinook salmon is allowed in the Kasilof River or the Deep Creek dip net fishery, but any Chinook salmon caught in the Kasilof River personal use set gillnet fishery may be retained as part of the annual limit.

Finally, the State administers several educational fisheries in Cook Inlet under the provisions of 5 AAC

93,200 – 93,235 (Nelson et al. 1999 and Fall et al. 2004). The purpose of educational fisheries is to allow groups to practice traditional harvest and use methods so that these practices and knowledge are not lost. Educational fisheries, unlike subsistence fisheries, do not have priority over other fisheries. Therefore, during times of resource shortages, educational fisheries could be restricted before or at the same time as commercial, sport and personal use fisheries are restricted. For the Kasilof River, the Kenaitze Tribe, Kasilof Regional Historical Association, and Ninilchik Traditional Council have each been issued educational permits to fish one set gillnet in marine waters near the mouth of the river. The Kenaitze Tribe has participated in an educational fishery since 1989, and for the Kasilof River is allowed to harvest 25 Chinook salmon.

Three educational fisheries have been issued to three Ninilchik area groups, Ninilchik Traditional Council (NTC), Ninilchik Native Decedents (NND) and Ninilchik Emergency Services (NES). The Ninilchik Traditional Council has participated in an educational fishery since 1993 for the Ninilchik area fisheries and since 2007 for the Kasilof area fisheries. In 1998, a group of NTC members formed a new organization called Ninilchik Native Decedents and the allocation was divided evenly between the two groups. In 2003, Ninilchik Emergency Services received the third permit for the area. Below lists the current stipulations of the permits:

- Area and gear stipulations:
 - NTC is permitted to harvest salmon using one or two set gillnets in marine waters near the Ninilchik River mouth and other traditional methods in freshwaters of the Ninilchik River below the Sterling Highway Bridge. In addition they are also permitted to use one gillnet in marine waters near the Kasilof River.
 - NND, is permitted to use one set gillnets in marine waters near the Ninilchik River mouth and other traditional methods in freshwater of the Ninilchik River below the Sterling Highway Bridge.
 - NES is permitted to use one set gillnets in marine waters near the Ninilchik River mouth.
- Quotas:
 - NTC is permitted a combined harvest quota up to 2,800 salmon for the Ninilchik and Kasilof area, of which there is also an individual coho and king salmon harvest quota: the quota for coho salmon is 500 (200 for the Ninilchik area and 300 for the Kasilof area); the quota for king salmon is 200 (100 for the Ninilchik area and 100 for the Kasilof area).
 - NND is permitted a combined harvest quota up to 2,800 salmon from the Ninilchik area, of which there is a coho and king salmon harvest quota: the quota for coho salmon is 150 and the quota for king salmon is 150.
 - NES is permitted a combined harvest quota up to 250 salmon from the Ninilchik area, of which there is a coho and king salmon harvest quota: the quota for coho salmon is 50 and the quota for king salmon is 25.

Federal Subsistence Fisheries in the Cook Inlet Area

In 2002, Federal subsistence regulations for harvest in the Cook Inlet Area were established for salmon, trout, and Dolly Varden and other char. A Federal subsistence permit was required and seasons, harvest and possession limits, and methods and means for take were the same as those in Alaska sport fishing regulations. This fishery was established as an interim measure to provide some subsistence opportunity in the Cook Inlet Area for Federally qualified rural residents. Initially, there were no customary and traditional use determinations for salmon, trout, Dolly Varden, and char in Cook Inlet; so all rural residents of Alaska could harvest under Federal regulations.

In January 2006, the Federal Subsistence Board made positive customary and traditional use determinations for Hope and Cooper Landing residents for all fish in the Kenai River Area, and for Ninilchik residents for all fish within the Kasilof River drainage within the Kenai National Wildlife Refuge. In November 2010, the Board made a final positive customary and traditional use determination for Ninilchik residents for all fish in the Kenai River Area.

During their May 2007 meeting, the Federal Subsistence Board adopted proposals that established dip net/rod and reel salmon fisheries on the Kasilof and Kenai Rivers; increased previously established harvest, possession, and annual limits for salmon and selected resident species for existing rod and reel fisheries on the Kasilof and Kenai River drainages; and allowed use of up to two single or treble hooks and bait for rod and reel fishing during specified dates for both systems. Also during the May 2007 meeting, the Federal Subsistence Board adopted a proposal to establish a winter season subsistence fishery at Tustumena Lake with jigging through the ice and gillnets fished under the ice for lake trout, rainbow trout and Dolly Varden/Arctic char.

In 2007, the Southcentral Alaska Subsistence Regional Advisory Council submitted Proposal FP08-09 to establish a temporary community fish wheel on both the Kenai and Kasilof Rivers. The Council contended that the fish wheels would provide a more effective means for Federally qualified subsistence users to harvest salmon. They requested a temporary establishment of fish wheels as a gear type be temporary to evaluate the feasibility of operating this type of gear. The Federal Subsistence Board, at its January 2008 meeting, adopted the proposal with modification to allow fish wheels to be classified as a gear type, but only in the Kasilof River. The Federal Subsistence Board specified that only one fish wheel with a live box was be allowed in the upper mainstem of the Kasilof River. A permit was required to use the fish wheel and that an operation plan must be submitted to and approved by the Federal in-season manager, before the permit would be awarded. A National Wildlife Refuge General Special Use Permit to operate the fish wheels within the Kenai National Wildlife Refuge boundaries was required. Individuals operating the fish wheel would need to have a Federal subsistence fishing permit and all harvest limits on the permit would apply to the fish wheel. Salmon harvested by the fish wheel would be included as part of each household's annual limit and all fish harvested must be reported to the in-season manager within 72 hours of leaving the fishing location. The Federal Subsistence Board at its January 2012 meeting supported FP13-15 to remove the expiration date for the community fish wheel salmon fishery on the Kasilof River allowing continued operation of the fish wheel.

Alaska Department of Fish and Game, Subsistence Division completed a study (OSM study 03-045) documenting past, present and potential noncommercial harvests and uses of fish in waters of the Cook Inlet Management Area. One of the project objectives was to identify potential areas and gear types for Federal subsistence fishing opportunities. Subsistence Division personnel completed key respondent interviews and held focus group meetings to gather public input. Community fish wheels were among the ideas suggested for potential Federal subsistence fisheries in the Cook Inlet Management Area. According to interviews conducted in the study most of the households agreed that current seasonal limits in the State personal use fisheries were adequate and most respondents supported basing any future Federal subsistence fishing regulations on State sport fishing rules. Many supported the status quo; were only interested in opportunities in State waters (especially marine waters) or expressed concern about the consequences of net fisheries in fresh water (Fall et al. 2004).

Current Events Involving Species

Anticipated poor late-run Chinook salmon returns to the Kasilof River and high harvest potential resulted in restrictions to the late-run Chinook salmon sport fishery by Alaska Department of Fish and Game (ADF&G). Beginning July 31, 2014 sport fishing for late-run Chinook salmon in the Kasilof River was restricted to catch-and-release (Begich 2014). ADF&G sought to minimize any increased pressure on the Kasilof River Chinook salmon due to the closure of the late-run Chinook salmon in the Kenai River by restricting harvest.

Biological Background and Harvest History

Sockeye Salmon

Sockeye salmon are the most abundant salmon species in the Kasilof River drainage, and the State's *Kasilof River Salmon Management Plan* (5 AAC 21.365) establishes escapement objectives (160,000-390,000 fish) and provides guidelines for the management of fisheries harvesting this run. Kasilof River sockeye salmon are harvested in large numbers in mixed-stock commercial salmon fisheries in Cook Inlet (Shields 2013). The Upper Cook Inlet commercial sockeye salmon harvest has ranged from 2,045,794 to 3,402,450 sockeye salmon during 2004–2013, with a 10-year average harvest of 3,402,459. The sport fishery harvest in the mainstem Kasilof River has ranged from 3,693 to 7,834 sockeye salmon during 2004–2013, with a 10-year average harvest of 6,203. Sport fishing for sockeye salmon is not permitted within Tustumena Lake or its tributaries. The personal use gillnet and dip net fisheries harvests of Kasilof River salmon have ranged from 59,690 to 102,920 sockeye salmon during 2004–2013, with a 10-year average harvest of 84,544. Educational fisheries harvests have ranged from 12 to 300 sockeye salmon during 2004–2013, with a 10-year average harvest of 93. In 2013, the Kasilof River sockeye salmon escapement was estimated at 489,654, which exceeded the optimal escapement goal range of 160,000 – 390,000.

Chinook Salmon

Chinook salmon are harvested during mixed-stock commercial salmon fisheries in the upper Cook Inlet. The 2013 upper Cook Inlet harvest of 5,398 Chinook salmon was the fifth smallest since 1966 (Shields

2013) and was 63% less than the previous 10-year (2003-2012) average annual harvest of 14,450. The decline in Chinook salmon harvest observed during the 2013 season was likely caused by a decreased abundance of Chinook salmon in the Upper Cook Inlet and subsequent restrictions placed on the commercial fisheries for Chinook salmon conservation.

The Kasilof River supports both early and late runs of Chinook salmon. The early-run supports the larger recreational fishery. The State's *Kenai River and Kasilof River Early-Run King Salmon Conservation Management Plan* (5 AAC 56-070) establishes escapement objectives and guidelines for the management of fisheries harvesting this run. No management plan exists for Kasilof River late-run Chinook salmon. The late-run Kasilof River Chinook salmon compose a wild stock and abundance and run timing of the population is unknown (Reimer 2012). Sport fishing for Chinook salmon occurs on the mainstem Kasilof River, is focused on the enhanced early run of Crooked Creek Chinook salmon, which can be identified by an adipose fin clip, and is not allowed above the Sterling Highway Bridge after 30 June. Sport fish harvest of wild Chinook salmon (with an adipose fin), above the bridge prior to July 1, is restricted to Tuesdays, Thursday and Saturdays by regulation.

In 2012, Kasilof River Chinook sport harvest was 927. The total Chinook salmon sport fishery harvest in the Kasilof River has ranged from 927 to 4,234 during 2003–2012, with an average harvest of 3,224 (Begich 2013). Estimates of the number of late-run Chinook salmon within these harvests from 2003 - 2012, and range from 55 to 2,164, with an average harvest of 1116. In 2013, 64 Chinook salmon were harvested in the Kasilof River personal use fishery. Harvests from the personal use gillnet and dip net fishery, which is directed at Kasilof River sockeye salmon, have ranged from 103 to 457 Chinook salmon during 2003–2012, with an average harvest of 232. In 2013 the Kasilof area educational fisheries harvested 3 early run Chinook salmon. The historical harvest ranged from 2 to 13 Chinook salmon during 2003-2012, with an average harvest of 4.

Early-run Chinook salmon, including the hatchery-produced component, spawn in Crooked Creek during late May and June. Only the headwaters of Crooked Creek lie within the Kenai National Wildlife Refuge, so early-run Chinook salmon are not generally available for harvest in Federal public waters. Late-run Chinook salmon spawn in the upper mainstem Kasilof River, including the outlet of Tustumena Lake, during August and September, and would be available for harvest by Federally qualified subsistence users.

Coho Salmon

Coho salmon are likely the second most abundant salmon species in the Kasilof River drainage, and are harvested during mixed-stock commercial salmon fisheries in Cook Inlet. Total annual harvest within these fisheries is usually hundreds of thousands of coho salmon. The contribution of Kasilof River coho salmon to these harvests is not known. The sport fishery harvest in the mainstem Kasilof River ranged from 1,740 to 4,217 coho salmon during 2003–2013, with an average harvest of 3,158 (Begich 2013). The sport fishery harvest in Tustumena Lake is much less and has ranged from 0 to 338 coho salmon during this same time period, with an average harvest of 96. Kasilof area educational fisheries harvests have ranged from 0 to 44 coho salmon during 2004-2013, with an average harvest of 23.

Federal Harvest

Rural residents of Ninilchik have been allowed to harvest fish under Federal subsistence regulations since 2007. From the inception of the Kasilof River Federal Subsistence Fishery sockeye salmon composed over 99% of the total harvest. Two Chinook salmon were harvested in 2008. For the period of 2007 through 2013 the total harvest of sockeye salmon has ranged from 1 to 108 fish (Table 1).

Table 1. Total Harvest of Sockeye Salmon by Ninilchik Community, Kasilof River Federal Subsistence Fishery.

2007-2013 Kasilof Federal Subsistence Sockeye Salmon Harvest							
	Total Number of Sockeye Salmon Harvested						
	2007	2008	2009	2010	2011	2012	2013
Dip Net Fisheries	30	108	7	40	1	24	107
Rod/ Reel and Fish Wheel Fisheries	0	0	0	0	0	0	0
Total	30	108	7	40	1	24	107

Harvest estimates for 2014 Federal Subsistence fishery will not be available until early 2015.

Other Alternatives Considered

A set gillnet fishery in Tustamena Lake with a fishing season through late summer or early fall would allow additional opportunity for Federal subsistence users to harvest sockeye and coho salmon while minimizing the harvest of both Chinook salmon and steelhead trout. Early-run Chinook salmon, including the hatchery-produced component, spawn below Tustamena Lake in Crooked Creek during late May and June and do not migrate. The majority of late-run Chinook salmon spawn in the mainstem of the Kasilof River, with significant spawning areas at mouth of Crooked Creek and between river mile 9 and river mile 18 (Reimer 2012). Steelhead trout returning to the Kasilof River watershed are considered fall-run fish, entering freshwater between mid-August and November and over-wintering before spawning in Crooked Creek and tributaries of Tustamena Lake during May and June. A gillnet fishery in Tustamena Lake would provide additional harvest opportunity for while still protecting the Chinook salmon and steelhead trout which continue to be species of concern.

A beach seine fishery could be implemented on the Kasilof River and Tustamena Lake under the same restrictions as the proposed gillnet fishery. Using seines instead of gillnets would allow for non-targeted species to be released unharmed. In addition, fishers could avoid an overharvest Chinook salmon and steelhead trout.

Effects of the Proposal

If this proposal is adopted it would provide additional subsistence harvest opportunity for Federally qualified subsistence users living in Ninilchik. Currently Ninilchik is the only community with customary and traditional use determination for the Kasilof River. The proposed gillnet fishery along with ongoing existing fisheries could lead to a harvest of Chinook salmon and steelhead trout in the Kasilof River that would be above sustainable harvest levels. Gillnets do not lend themselves well to selective harvest of species or stocks. Incidental catch of resident species would occur in any gillnet fishery for salmon resulting in mortality of non-targeted species.

In addition to developing an operational plan for approval by the in-season fishery manager, in consultation with the Kenai National Wildlife Refuge manager, the proponent must also apply for a National Wildlife Refuge System General Special Use Permit. Both the operational plan and National Wildlife Refuge General Special Use Permit must be updated yearly.

OSM PRELIMINARY CONCLUSION

Oppose Proposal FP15-11.

Justification

Gillnets do not allow for species, stock and size selective management or control of harvest. Introduction of gillnets as a gear type in the Kasilof River could lead to a Chinook salmon conservation concern, and could result in an over-harvest of resident species. Of particular concern is the potential incidental catch of stocks or species that are spawning, less abundant and prone to over harvest, or of critical size. Currently, subsistence users from the community of Ninilchik may harvest salmon with a community fish wheel, dip nets and rod and reel, these gear types provide a selective method of harvesting salmon while protecting species of concern.

ANALYSIS ADDENDUM

OSM CONCLUSION

Support Proposal FP15-11 **with modification** to remove the language addressing the release of rainbow/steelhead trout after the annual total harvest limit of 200 fish is exceeded. The ability of these fish to survive once captured in gillnets is unknown. It is possible that majority of the rainbow/steelhead trout caught in the community gillnet would die before they could be released. Therefore, releasing any rainbow/steelhead trout exceeding the 200 fish annual total harvest limit could be problematic. Instead, by allowing the in-season fishery manager and the Kenai National Wildlife Refuge manager to work with the organization submitting the operational plan to develop a strategy for rainbow/steelhead trout would provide the most flexibility. The operational plan should describe how any gillnet harvest of rainbow/steelhead trout over 200 fish are be handled. The community gillnet could be fished during a window in July when sockeye salmon harvest can be maximized while minimizing the harvest late-run Chinook salmon and rainbow/steelhead trout. The operation plan can address conservation concerns with timing, quotas, mesh size and depth restrictions.

The modified regulation should read:

§ __.27(i)(10)(iv) You may take only salmon, trout, Dolly Varden, and other char under authority of a Federal subsistence fishing permit. Seasons, harvest and possession limits, and methods and means for take are the same as for the taking of those species under Alaska sport fishing regulations (5 AAC 56 and 5 AAC 57) unless modified herein. Additionally for Federally managed waters of the Kasilof and Kenai River drainages:

(G) Residents of Ninilchik may harvest sockeye, Chinook, coho, and pink salmon through a community gillnet in the Federal public waters of the upper mainstem of the Kasilof River. Residents of Ninilchik may retain other species incidentally caught in the Kasilof River.

(1) Only one community gillnet can be operated on the Kasilof River. The gillnet cannot be over 10 fathoms in length, and may not obstruct more than half of the river width with stationary fishing gear. Subsistence stationary gillnet gear may not be set within 200 feet of other subsistence stationary gear.

(2) One registration permit will be available and will be awarded by the Federal in-season fishery manager, in consultation with the Kenai National Wildlife refuge manager, based on the merits of the operation plan. The registration permit will be issued to an organization that, as the community gillnet owner, will be responsible for its use in consultation with the Federal fishery manager.

(i) Prior to the season, provide a written operation plan to the Federal fishery manager including a description of fishing method, fishing time and how fish will be offered and distributed among households and residents of Ninilchik;

(ii) After the season, provide written documentation of required evaluation information to the Federal fishery manager including, but not limited to, persons or households operating the gear, hours of operation and number of each species caught and retained or released.

(3) The gillnet owner (organization) may operate the net for subsistence purposes on behalf of residents of Ninilchik by requesting a subsistence fishing permit that:

(i) Identifies a person who will be responsible for fishing the gillnet;

(ii) Includes provisions for recording daily catches, the household to whom the catch was given, and other information determined to be necessary for effective resource management by the Federal fishery manager.

(4) Fishing for sockeye, Chinook, coho and pink salmon will be closed by Federal Special Action prior to the operational plan end dates if the annual total harvest limits for that

species is reached or suspended.

- (5) ~~Salmon~~ Fish taken in the gillnet fishery will be included as part of dip net/rod and reel fishery annual total harvest limits for the Kasilof River and Kenai. All fish harvested must be reported to the in-season manager within 72 hours of leaving the fishing location.*
- (6) ~~After 200 rainbow/steelhead trout have been taken in the dip net and gillnet fishery, or after August 15, all rainbow/steelhead trout must be released unless otherwise provide.~~*
- (7) After 200 rainbow/steelhead trout have been take in the dip net and gillnet fishery, or after August 15, the gillnet fishery will be closed.*
- (8) Failure to respond to reporting requirements or return the completed harvest permit by the due date listed on the permit may result in issuance of a violation notice and will make you ineligible to receive a subsistence permit during the following regulatory year.*

Justification

Support for this proposal is warranted considering that the community of Ninilchik has a customary and traditional use determination for all fish in the Kasilof River. Allowing Ninilchik to use a single community gillnet will provide the community with an additional traditional means of harvesting fish within the Kasilof River. Concerns over the conservation of different fish populations such as late-run Chinook, which are currently experiencing low returns in the Kasilof River, would be addressed through two management strategies associated with the allowed use of a community gillnet for the harvesting of : 1) the community of Ninilchik would continue to be subject to annual household and total community limits by species; and, 2) an annual operational plan which could address specific conservation concerns would be subject to approval by the in-season fishery manager and Kenai National Wildlife Refuge Manager prior to the use of the gillnet that season.

SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATION**SOUTHCENTRAL ALASKA SUBSISTENCE REGIONAL ADVISORY COUNCIL**

Recommendation: Support FP15-11

Justification: The Council stated that the proposal, if enacted into regulation, would provide for a meaningful subsistence preference. Chinook and rainbow trout harvest will be limited and conservation concerns can be addressed through an operational plan. The operational plan, with review by the in-season manager, would require prior approval with the land managing agency prior to any fishing. The proponent provided public comments and stated that gillnet is a customary and traditional use method.

INTERAGENCY STAFF COMMITTEE COMMENTS**FP15-11**

The Interagency Staff Committee found the staff analysis to be a thorough and accurate evaluation of the proposal and that it provides sufficient basis for the Regional Advisory Council recommendation and Federal Subsistence Board action on the proposal. The OSM conclusion is similar to the Southcentral Alaska Subsistence Regional Advisory Council's recommendation, but it provides a recommendation that gillnets would not be allowed once the rainbow/steelhead limit is reached. The release of rainbow/steelhead would not be a viable option with the gear type, as released fish will likely result in mortalities. As stated by the Council, other conservation concerns with Chinook salmon and rainbow/steelhead trout could be addressed by the operation plan that must be approved by the Federal in-season manager and the manager of the Kenai National Wildlife Refuge.

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APPENDIX D: Federal Subsistence Management Program regulatory language regarding Requests for Reconsideration.

Subsistence management regulations at 36 CFR Part 242 and 50 CFR Part 100, dated May 7, 2002, state the following regarding requests for reconsideration.

§ _____.20 *Request for reconsideration.*

- (a) *Regulations in subparts C and D of this part published in the Federal Register are subject to requests for reconsideration.*
- (b) *Any aggrieved person may file a request for reconsideration with the Board.*
- (c) *To file a request for reconsideration, you must notify the Board in writing within sixty (60) days of the effective date or date of publication of the notice, whichever is earlier, for which reconsideration is requested.*
- (d) *It is your responsibility to provide the Board with sufficient narrative evidence and argument to show why the action by the Board should be reconsidered. The Board will accept a request for reconsideration only if it is based upon information not previously considered by the Board, demonstrates that the existing information used by the Board is incorrect, or demonstrates that the Board's interpretation of information, applicable law, or regulation is in error or contrary to existing law. You must include the following information in your request for reconsideration:*
 - (1) *Your name, and mailing address;*
 - (2) *The action which you request be reconsidered and the date of Federal Register publication of that action;*
 - (3) *A detailed statement of how you are adversely affected by the action;*
 - (4) *A detailed statement of the facts of the dispute, the issues raised by the request, and specific references to any law, regulation, or policy that you believe to be violated and your reason for such allegation;*
 - (5) *A statement of how you would like the action changed.*
- (e) *Upon receipt of a request for reconsideration, the Board shall transmit a copy of such request to any appropriate Regional Council and the Alaska Department of Fish and Game (ADFG) for review and recommendation. The Board shall consider any Regional Council and ADFG recommendations in making a final decision.*
- (f) *If the request is justified, the Board shall implement a final decision on a request for reconsideration after compliance with 5 U.S.C. 551–559 (APA).*
- (g) *If the request is denied, the decision of the Board represents the final administrative action.*

Michael Bangs, Chair
Southeast Alaska Subsistence Regional Advisory Council
P.O. Box 1733
Petersburg, Alaska 99833

Dear Chairman Bangs:

This letter responds to the Southeast Alaska Subsistence Regional Advisory Council's (Council) fiscal year 2015 Annual Report. The Secretaries of the Interior and Agriculture have delegated to the Federal Subsistence Board (Board) the responsibility to respond to these reports. The Board appreciates your effort in developing the Annual Report. Annual Reports allow the Board to become aware of the issues outside of the regulatory process that affect subsistence users in your region. We value this opportunity to review the issues concerning your region.

1. Fisheries Resource Monitoring Program

Funding for the Fisheries Resource Monitoring Program projects is important to the entire program and should be maintained at current levels and opportunities for funding projects from other sources investigated. The Council has written a letter to the USFS Regional Forester with these concerns, but the Board should be aware and concerned that funding for several informational needs is being reduced and important projects are being cancelled. The Council would be very interested to know if the Board is aware of opportunities for partnering with other agencies or non-governmental organizations.

Response:

The mission of the Fisheries Resource Monitoring Program (FRMP) is to identify and provide information needed to sustain subsistence fisheries on Federal public lands for rural Alaskans through a multidisciplinary collaborative program. The FRMP is administered by the Office of Subsistence Management (OSM). Projects are selected for funding under the Monitoring Program through an evaluation and review process that is designed to advance projects that are strategically important for the Federal Subsistence Management Program, technically sound, administratively competent, promote capacity building and are cost effective. The FRMP is intended to be a coordinated resource monitoring program which adds to, is consistent with, and does not duplicate existing efforts by government agencies and organizations already engaged in assessment of subsistence fisheries and subsistence fishery resources.

The Board appreciates the Council's concern with soliciting funding opportunities outside the U.S. Forest Service and the U.S. Fish and Wildlife Service budget system. Generally, it is the responsibility of the principal investigator to identify partnership opportunities while designing project proposals. To better compete for FRMP funding, principal investigators are strongly encouraged to submit project proposals that include other sources of funding. That helps stretch FRMP budgets. One of the rating categories for FRMP proposals is cost effectiveness. When Federal staff learn of other funding sources that can be used to augment FRMP proposals they

share that information with principal investigators. Sources for grants or partnerships are a dynamic area and Federal staff are ready to assist principal investigators in identifying funding sources that complement the FRMP.

2. Transboundary Mining

The operation of mines on streams in Canada that flow into Alaska has the potential for significant negative effects on the region's fisheries resources. This topic was the number one priority issue identified by the Council in its 2014 Annual Report. The Council submitted letters to the Board in March and October of 2014 and remains concerned that local concerns are not being heard. There is a water quality program being initiated on some transboundary rivers this year and the Council requests Board support for the continuation of that project.

Response:

The Board is aware of the plans for the development of mines on the Taku, Stikine and Unuk Rivers, and the potential negative impacts to these rivers. The Board supports efforts to protect these watersheds as necessary to ensure healthy wild salmon populations and abundant fisheries, as well as the economic, ecological, subsistence, cultural, and recreational values that the river systems support. The Board defers to other appropriate agencies, primarily the U.S. Forest Service (USFS), for coordination with the public, Tribes and non-governmental organizations on habitat issues. The USFS has assumed a support role as it relates to large mine water quality oversight and monitoring, by assisting Central Council of Tlingit and Haida Indian Tribes of Alaska contractors in conducting baseline water quality studies, and sharing data associated with subsistence uses of fisheries associated with these river systems. The USFS is seeking guidance from the Department of Agriculture and Department of State regarding the best way to engage with the State of Alaska, Canadian Government, and British Columbia Province, to ensure that the resources of the Tongass National Forest are protected.

3. Petition for Extraterritorial Jurisdiction

The Council is interested in how the petition for extraterritorial jurisdiction for the marine waters in Chatham Strait is being resolved and whether the local solution approved by the State Board of Fisheries is being effective in passing Sockeye Salmon through the commercial fishery to provide for escapement and subsistence use of those stocks. The Council requests the Board engage the Alaska Department of Fish and Game to determine if additional Sockeye Salmon stock-of-origin genetic studies are warranted and whether subsistence needs are being met by the residents of Angoon.

Response:

The Federal Subsistence Board, and the Secretaries of the Interior and Agriculture remain keenly interested in the success of the fisheries management strategy developed by local users and the Alaska Board of Fisheries that addresses issues contained in the petition for extraterritorial jurisdiction submitted by Kootznoowoo Inc. The USFS continues to pursue the economic development aspects mentioned in the petition. The Fisheries Resource Monitoring Program has

plans to monitor Sockeye Salmon escapements into Kanalku, Sitkoh and Kook Lakes for at least one more season. The USFS remains committed to operating those population assessment studies into the future, providing funding is available. The partial barrier at Kanalku Creek has been modified and studies will occur this season to monitor the effectiveness of that modification. The USFS and ADF&G are committed to work together to address access concerns and providing for adequate escapement of Sockeye Salmon to the Kanalku Lake. ADF&G will continue to obtain samples as necessary to complete the genetic stock database from Sockeye Salmon spawning populations but there is no funding available this season to monitor stock-of-origin genetic studies from the Chatham Strait and Icy Strait commercial seine fisheries. In 2015, the Alaska Board of Fisheries established a new Amounts Reasonably Necessary for Subsistence Uses of Salmon as 1,100-1,700 salmon for District 12 (Angoon). A total catch estimate for the 2015 season from the State's subsistence permit database is not yet available.

4. Use of Cabins on National Park Service Land

There is currently a prohibition on subsistence use of cabins and other facilities that have been permitted for commercial activities within Glacier Bay and Wrangell-St. Elias National Preserve. This prohibition does not make sense to the Council. The Council would like to engage the Board in consideration of how the National Park Service (NPS) should implement the subsistence priority on Preserve lands. The Council would appreciate a report on management of cabins used for subsistence in other parks and preserves.

Response:

The National Park Service (NPS) appreciates the Council's concern regarding the subsistence use of cabins and other facilities on NPS lands, and notes the specific concerns identified for Glacier Bay National Preserve and Wrangell-St. Elias National Park and Preserve. Contrary to what the Council reported in its annual report, there is no prohibition on subsistence use of cabins and facilities permitted for commercial activities in the Malaspina Glacier Forelands area of Wrangell-St. Elias National Preserve and the Dry Bay area of Glacier Bay National Preserve, consistent with NPS regulations for cabins (Title 36 Code of Federal Regulations, Part 13, Subpart C). Within Glacier Bay National Preserve at Dry Bay, subsistence uses are authorized during the times that the camps are occupied in association with commercial fishing activities (May 1-October 31). Requests to use the camps for subsistence activities outside this season are addressed on a case-by-case basis. Although two requests were recently denied, those requests were for a six-month period and included uses in addition to subsistence. The majority of the requests over the last decade have been approved. In the Malaspina Glacier Forelands area of Wrangell-St. Elias National Preserve, separate permits authorize the use of the cabins for subsistence activities and commercial fishing activities. This arrangement appears to work for the federally qualified subsistence users who have these permits.

Subsistence harvests of fish and wildlife in NPS national preserves in Alaska is allowed consistent with Title 8 of ANILCA. (Subsistence harvests are also allowed in some national parks and monuments, as specified in ANILCA.) Seasons and harvest limits for fish and wildlife are established by the Federal Subsistence Board, while the NPS has management authority over

issues such as plant harvest, access, and the use of cabins and other structures in support of subsistence. In terms of implementing the subsistence priority, federal subsistence harvests would have a priority over other consumptive uses in times of shortage. In addition, federal regulations may be more liberal than state regulations. For example, the federal season for hunting goats in Unit 5 is one month longer than the state season. Similarly the federal moose season opens one week earlier than the state season, and federal public lands in Unit 5A (except for Nunatak Bench) are closed to the harvest of moose except by residents of Unit 5A (Yakutat) from October 8 to October 21. Consistent with the NPS cabin regulations, the use of cabins to support subsistence activities *may* be authorized, if cabins are recognized as a customary and traditional part of subsistence uses in the area. As described below, however, the regulations specify factors that must be considered in deciding whether to authorize such use. In both the Dry Bay and Malaspina Forelands areas, subsistence users also have access to a public use cabin.

With regard to the Council's question about the management of cabins used for subsistence in other parks and preserves, NPS units in Alaska manage subsistence cabins consistent with Title 36 Code of Federal Regulations (CFR) Sections 13.160 - .168, which were effective as of October 20, 1986. Region-wide regulations were adopted in an effort to assure uniform treatment of cabin permit applications in Alaska park areas. These regulations provide that permits should only be issued after considering whether cabins are a customary and traditional part of subsistence uses in the area and determining whether the use and occupancy of a cabin is necessary to reasonably accommodate the applicant's subsistence uses. In making this determination, the Superintendent is directed to examine the applicant's particular circumstances, including his or her past pattern of subsistence uses and plans for future use, reasonable subsistence use alternatives, the specific subsistence uses to be accommodated, the impacts of the cabin or structure on other local subsistence users, and the impacts of the proposed structure and activities on the values and purposes for which the park area was established. The regulations also provide that the Superintendent may designate existing cabins or other structures that may be shared by local rural residents for authorized subsistence uses without a permit. Construction of new subsistence cabins may be permitted only if a tent or other temporary facility would not accommodate the applicant's subsistence uses without significant hardship and no other type of cabin or structure can accommodate the subsistence uses with a lesser impact on the values and purposes for which the park area was established. Additionally, any newly constructed subsistence cabins must be designated for shared use. Residential use of subsistence cabins is prohibited.

Philip Hooe, Superintendent, Glacier Bay National Park and Preserve, plans to attend the October 2016 Council meeting in Petersburg. The Council is encouraged to continue working with the Superintendent on this issue.

5. Sea Otters

The Council recognizes that the Board does not have direct management authority for sea otters, but the Council feels it is imperative that the Board understands that the expanding sea otter population is destroying much of the economic base for rural communities in the region and eliminating an important component of the subsistence lifestyle of rural residents. Enforcement of the regulations governing harvest does not promote use of these animals. It is the intention of

the Council to identify the negative impacts of sea otters as an ongoing issue that is important to the residents of the Region but not to request a specific action by the Board.

Response:

The Board forwarded this issue to the U.S. Fish and Wildlife Service, Marine Mammals Management, which responds as follows:

The U.S. Fish and Wildlife Service is aware of the conflicts between a growing sea otter population and commercial and subsistence use of shellfish and other resources. There are no regulations that govern the harvest of sea otters by Alaskan Natives that live in coastal communities. The only restriction is that the harvest is not wasteful.

6. Customary and Traditional Use

The Council has expended considerable efforts in reviewing the customary and traditional use determination process, as requested by the Secretary of the Interior. After several years of discussion, the Council has decided not to submit a proposal to change the current customary and traditional use determination regulations but instead approved a letter to the Board which outlines the Council's approach to and interpretation of the current regulations. This is specific to the Southeast Region and acknowledges that it may not be applicable to the rest of the state due to the wide variation of conditions and considerations that are present in other regions. The Council requests the Board reply to the Council with an evaluation of the recommendation contained in the letter.

Response:

The Board greatly appreciates the time, energy, and commitment that the Council has given to this issue. Not only has the Council's efforts benefitted the other Councils by raising their understanding of customary and traditional use determinations, it has benefitted the staff at the Office of Subsistence Management as well. The Board has separately provided a detailed response to the Council's latest letter, a copy of which is attached. The Board looks forward to continued dialogue with the Council on this issue as is needed.

7. Terminal Area Escapement

Adequate returns of Sockeye Salmon to the terminal areas, sufficient to provide for escapement and subsistence fishing, are a continuing concern to the Council. The Council will work with staff to identify those systems in greatest need of information concerning total returns, interception rates and escapement requirements in addition to importance to subsistence use. The Council anticipates the need for additional technical assistance and hopes that the Board will support any future requests for staff support required to define and identify specific data gaps.

Response:

The Fisheries Resource Monitoring Program is designed to provide information needed for management of Federal subsistence fisheries. The focus of the Program in the Southeastern Alaska Area is Sockeye Salmon population assessments and harvest monitoring in locations identified by the Council as a priority information need. At the spring 2016 Council meeting in Anchorage, the Council provided staff a preliminary list of priority Sockeye Salmon systems for population assessment studies starting in 2018. The Council will have an opportunity to review and amend that list during their fall council meeting. In November 2016, there will be a call for investigators to submit proposals to address those priority information needs. Staff from the Office of Subsistence Management and the U.S. Forest Service are committed to working with the Council to assist in identifying relevant information needs and are committed to work with ADF&G and Project Investigators to focus studies to address specific informational deficiencies necessary for management of these stocks. The population assessment studies now underway will provide base-line information that will help refine and define additional fisheries information needs that may be specific to a particular species or location.

8. *Salmon and Halibut Interception*

Interception of salmon and halibut by commercial fisheries both within and outside of the Southeast Region has been an ongoing concern and the subject of previous annual report issues. The Council is interested in remaining aware of the magnitude of these removals, particularly in the long-line and trawl fisheries in the Gulf of Alaska, and efforts to control or reduce the level of by-catch. The Council requests the Board provide a comprehensive summary of this issue and an analysis on the effects of these interceptions on subsistence use of these fish stocks.

Response:

One of the national standards of the Magnuson-Stevens Fishery Conservation and Management Act states that conservation and management measures shall, to the extent practicable, minimize bycatch, and to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. The North Pacific Fisheries Management Council (NPFMC) is responsible for implementation of the Act and adopts regulations and management plans governing the conduct of fisheries in the Bering Sea and Gulf of Alaska. The results of studies identifying incidental harvests and subsequent management controls are contained in a briefing document found at: <http://www.npfmc.org/wp-content/PDFdocuments/bycatch/Bycatchflyer913.pdf>. The subsistence halibut program is implemented by the National Marine Fisheries Service (NMFS) and the Board does not have the authority to investigate the effects of halibut bycatch on the subsistence halibut fishery. Although the Board does have the authority to manage subsistence salmon fisheries on Federal public waters, there is simply not the capacity to conduct an analysis of the effects on subsistence fisheries by incidental harvests, independent of the NPFMC and the NMFS. The NPFMC is acutely aware of the interest by subsistence users in eliminating incidental harvest of salmon that may subsequently be used for subsistence. Fishery management plans developed by the NPFMC are implemented by the NMFS. Chinook Salmon prohibited species catch (PSC) limits were established for the Gulf of Alaska (GOA) pollock trawl fisheries in 2012 and for the non-pollock groundfish species in 2015. The NPFMC is in the

process of developing comprehensive management measures to address the trawl fleet's ability to fish within the established PSC limits and will consider further reductions to GOA Chinook salmon PSC limits. More information on comprehensive GOA measures can be found at: <http://www.npfmc.org/goa-trawl-bycatch-management/>.

9. North Pacific Fishery Management Council Representation

The Council is in complete agreement with the other Councils in requesting the Board seek to find an avenue for having a designated subsistence seat on the North Pacific Fisheries Management Council. The representative for such a seat should have experience on a Federal subsistence regional advisory Council.

Response:

The membership of the North Pacific Fishery Management Council (NPFMC) is determined by statute; specifically, the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §1852. The NPFMC is required under Section 302(a)(1)(F) of that Act to have 11 voting members, including 7 appointed by the Secretary of Commerce, with 5 from Alaska and 2 from Washington. Governors from both states are provided the opportunity to make recommendations on those appointments. The remaining four seats are the leading fisheries officials for the states of Alaska, Washington and Oregon and the Alaska Regional Director for the National Marine Fisheries Service.

Nothing in the current law requires a particular type of user to occupy any of the 7 seats where the governors can make nominations. There is, however, an Advisory Panel of 21 members that does include subsistence users in its membership. As noted in previous annual report replies to the Regional Advisory Councils, the Magnuson-Stevens Act is currently up for renewal. In June 2015, the U.S. House of Representatives passed a bill (H.R. 1335) to reauthorize the Magnuson – Stevens Act. It has not passed the U.S. Senate.

The most recent appointees to Obligatory Seats from Alaska, made in 2015, are Dan Hull of Anchorage and Andrew D. Mezirow of Seward. Enclosed is the most recent nomination letter from the Governor, dated March 9, 2016. It is worth noting that in Governor Walker's nomination letters to the Secretary of Commerce, he notes he has consulted with "commercial and recreational fishing interests in Alaska," but not *subsistence* interests as the law does not presently require it. However, H.R. 1335, if it becomes law, would require the Governor to consult with "the subsistence fishing interests of the State." The bill also adds a new definition of "subsistence fishing" to the Magnuson-Stevens Act. The definition parallels language currently seen in Title VIII of the Alaska National Interest Lands Conservation Act:

The term "subsistence fishing" means fishing in which the fish harvested are intended for customary and traditional uses, including for direct personal or family consumption as food or clothing; for the making or selling of handicraft articles out of nonedible byproducts taken for personal or family consumption, for barter, or sharing for personal or family consumption; and for customary trade.

The bill passed the U.S. House of Representatives on June 1, 2016. On June 2, it was received in the Senate and referred to the Committee on Commerce, Science and Transportation. There has been no action since then. The Office of Subsistence Management will keep you and other Councils informed on any additional developments.

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 Southeast Region are well represented through your work.

Sincerely,

Tim Towarak
Chair

Enclosure

cc: Southeast Alaska Subsistence Regional Advisory Council
Federal Subsistence Board
Interagency Staff Committee
Eugene R. Peltola, Jr., Assistant Regional Director, OSM
Stewart Cogswell, Acting Deputy Assistant Regional Director, OSM
Carl Johnson, Council Coordination Division Chief, OSM
Robert Larson, Council Coordinator, USFS
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March 9, 2016

Ms. Eileen Sobeck
Assistant Administrator for Fisheries
National Marine Fisheries Service
1315 East-West Highway, Room 14636
Silver Spring, MD 20910

Dear Ms. Sobeck:

In accordance with the provisions of Section 302 of the Magnuson-Stevens Fishery Conservation and Management Act, I am pleased to submit my nominations for two obligatory seats from the State of Alaska on the North Pacific Fishery Management Council (NPFMC) expiring August 10, 2016. As discussed below, I have nominated individuals who are knowledgeable and experienced in the harvest, conservation, and management of fishery resources and who also provide representation for minority groups.

After reviewing the requirements of the Act and consulting with commercial and recreational fishing interests in Alaska, I nominate the individuals listed below for consideration by the Secretary of Commerce:

Seat 1

Theresa Peterson
Eric Olson
Paul Gronholdt

Seat 2

Michael "Buck" Laukitis
Linda Behnken
Art Nelson

I select Ms. Theresa Peterson and Mr. Michael "Buck" Laukitis as my preferred nominees for consideration. As required by the Act, I am submitting two alternate nominees that can be considered for each seat in Mr. Eric Olson, Mr. Paul Gronholdt, Ms. Linda Behnken and Mr. Art Nelson.

Ms. Theresa Peterson has been a commercial and subsistence fisherman for over thirty years. She currently serves as an Advisory Panel Member of the North Pacific Fishery Management Council. Her other memberships include the Alaska Jig Association, the Community Fish Network, and as the Outreach Coordinator for the Alaska Marine Conservation Council. Theresa studied Linguistics and Political Science at the University of California.

Mr. Michael "Buck" Laukitis is a commercial fisherman and the owner of Magic Fish Company and Compass Rose Properties. He helped to develop the Alaska Maritime Workforce Development Plan in 2014. Mr. Laukitis has a United States Coast Guard 100 Ton Masters License. He is also a

Ms. Eileen Sobeck
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longstanding member of the Board of Trustees for the Homer Foundation, whose mission is to promote philanthropic and charitable activities. Mr. Laukitis has a degree in Philosophy from Colorado College.

Ms. Linda Behnken is the Executive Director of Alaska Longline Fishermen's Association. She is also a previous member of North Pacific Fishery Management Council. Ms. Behnken is a member of the Alaska Sustainable Fisheries Trust and the Halibut Coalition. She holds a master's degree in Environmental Science from the Yale School of Forestry and Environmental Studies.

Mr. Paul Gronholdt is a member of the Oagan Tayagungin Tribe and has been a commercial fisherman for over thirty five years.

Mr. Eric Olson is a member of the Pacific States Marine Fisheries Commission and a former manager of the Yukon Delta Fisheries Development Association. He has fished commercially for nearly forty years. He is a previous member of the North Pacific Research Board.

Mr. Art Nelson is the Executive Director of the Bering Sea Fishermen's Association. He grew up fishing commercially for salmon in the Prince William Sound. As a young man he worked for the Kawerak Native Association as a Fisheries Specialist, managing projects that counted salmon escapement. Later he did much the same work for Bering Sea Fishermen's Association. Mr. Nelson has been a member on the Advisory Panel to the North Pacific Anadromous Fisheries Commission, the Alaska Board of Fisheries Kuskokwim Subsistence Salmon Panels, and is Chairman of the Steering Committee for Arctic-Yukon-Kuskokwim Sustainable Salmon Initiative. Mr. Nelson studied biology at the University of Alaska.

Enclosed you will find a list of commercial and recreational fishing groups that have provided input in my nomination of these knowledgeable and qualified individuals. The nominees provide balanced and insightful experience for the NPFMC and will contribute greatly to fisheries management and conservation in the North Pacific. I appreciate your consideration of these nominees.

Sincerely,



Bill Walker
Governor

Enclosures

cc: The Honorable Sam Cotton, Commissioner, Department of Fish and Game
Nathan Butzlaff, Associate Director of State and Federal Relations, Office of the Governor

List of commercial and recreational fishing groups providing input for my nominations:

Afognak Native Corporation
Alaska Federation of Natives
Alaska Groundfish Data Bank
Alaska Longline Fishermen's Association
Alaska Marine Conservation Council
Aleutian Pribilof Island Community Development Association
At-Sea Processors Association
Bristol Bay Economic Development Corporation
Central Bering Sea Fishermen's Association
City of Larsen Bay
City of Old Harbor
City of Saint Paul
Halibut Coalition
International Seafoods of Alaska
Inupiat Community of the Arctic Slope
Kaguyak Village Council
Kawerak, Inc.
K-Bay Fisheries Association
Kodiak Archipelago Rural Regional Leadership Forum
Kodiak Island Borough
Koniag, Inc.
Native Village of Port Lions
North Pacific Fisheries Association
North Pacific Research Board
North Pacific Seafoods
Ocean Beauty Seafoods
Ocean Peace, Inc.
Old Harbor Native Corporation
Pacific Seafood Processors Association
Pelagic Resources, Inc.
Peter Pan Seafoods, Inc.
Tanana Chiefs Conference
United Fishermen of Alaska

Richard Encelewski, Chair
Southcentral Alaska Subsistence Regional Advisory Council
U.S. Fish & Wildlife Service, Office of Subsistence Management
1011 East Tudor Road, MS 121
Anchorage, Alaska 99503

Dear Chairman Encelewski:

This letter responds to the Southcentral Alaska Subsistence Regional Advisory Council's (Council) fiscal year 2015 Annual Report. The Secretaries of the Interior and Agriculture have delegated to the Federal Subsistence Board (Board) the responsibility to respond to these reports. The Board appreciates your effort in developing the Annual Report. Annual Reports allow the Board to become aware of the issues outside of the regulatory process that affect subsistence users in your region. We value this opportunity to review the issues concerning your region.

1. Cooperative Management with Ninilchik Traditional Council Fishery

The Council unanimously supported Ninilchik Traditional Council's (NTC) subsistence gillnet fisheries on the Kenai and Kasilof Rivers when it recommended that the Federal Subsistence Board (Board) adopt fisheries proposals FP15-10 and FP15-11.

The Council also supports the approval of an operational plan for both river systems. Even though both rivers' operational plans were essentially identical, the Kasilof River plan was approved and the operational plan for the Kenai River was not approved by the in-season manager. NTC ultimately prosecuted the subsistence fishery for the Kasilof River as authorized by the new regulation. Efforts regarding the operational plan for the Kenai River are ongoing.

The Council supports the NTC efforts, in cooperation with the in-season fishery manager and Refuge manager, to move forward with the Kenai River subsistence fishery through implementation of the operational plan. The Council questions why NTC is required to have insurance for a subsistence fishery on the Kenai and Kasilof rivers, while other user groups are not required to provide insurance with the exception of commercial guides. The Council also expressed its concern over the length of time it has taken to get the operational plans approved. Surely, when the Board delegated authority to the in-season manager to approve the operational plan, the Board contemplated that it would be done in a timely manner to fulfill the intentions of the regulation.

The Council urges the Federal Subsistence Board to view the presentation that NTC provided to the Council at its fall 2015 meeting on NTC's efforts to provide a subsistence gillnet fishery on the Kenai and Kasilof Rivers. A copy of that presentation is enclosed.

Response:

The Board recognizes the Council's support for the subsistence gillnet fisheries on the Kenai and Kasilof rivers, and appreciates the additional information enclosed with the letter. The Federal regulations for the subsistence gillnet fisheries on both rivers state that the decision to approve the operation plans is by the Federal in-season fishery manager, in consultation with the Kenai National Wildlife Refuge (Refuge) manager, based on merit of the plans. As mentioned by the Council, the operational plans for both rivers were essentially identical. However, the Federal subsistence regulatory frameworks for fisheries in both rivers are considerably different, as are conservation concerns and general river conditions. Given these differences, portions of the contents of an operational plan developed for a gillnet fishery on the Kasilof River are not suitable for a fishery on the Kenai River. Operational plans need to adequately address the relevant regulations, conservation concerns of affected species and/or stocks, and other conditions specific to those rivers.

Many of the differences between the two rivers were identified in the OSM analyses for the proposals and were subsequently discussed at the Council and Board meetings. In both the Council and Board rationale for supporting the two proposals, it was stated that conservation concerns would be addressed during the development of the operational plans. This was particularly true for the Kenai River community gillnet fishery because there were no modifications to the proposed regulatory language to address concerns, as was the case for the Kasilof River subsistence gillnet fishery. In addition to issues with the operational plan, the U.S. Fish and Wildlife Service (Service) did not issue a registration permit for the community gillnet fishery on the Kenai River in 2015 due to an urgent need to conserve early-run Chinook Salmon. All Federal waters of the Kenai River were closed to fishing for Chinook Salmon for all users with all gear types through August 15.

The Service dedicated considerable staff time working with NTC to craft an operational plan for the Kasilof River experimental community gillnet fishery that could be approved. The Service was prompt and responsive in all written and oral communication. The longest delay in developing the Kasilof River operational plan was a lack of response from NTC to written comments submitted by the Service on June 10, 2015. The Service did not receive a responsive draft from NTC until July 5th. The operational plan was subsequently finalized on July 13.

As for the Council's question about the requirement for insurance, liability insurance is a routine requirement under special use permits issued by the Kenai National Wildlife Refuge. Special use permits are required by the Refuge when administering certain activities that have potential to affect natural resources and/or public safety, including safety of the permittees or their assigns, members, or clients. Organizations sponsoring special events and all commercial entities providing visitor services such as guided fishing or river floating on the Refuge are required to obtain a special use permit, and this liability insurance requirement applies. For more information on the requirements for special use permits, the Board recommends contacting the Refuge Manager directly.

2. Unit 11 Brown Bear Population Status and Research

Brown bear baiting will be allowed on Federal public lands if the Federal Subsistence Board approves wildlife proposal WP16-18. In Units 11 and 12 and the Kenai Peninsula, brown bear population information and harvest data to track the current status has been limited. Additional biological information is needed if management action is to be taken when a conservation concern arises.

Monitoring the general population through brown bear hair samples is a tool used to gauge the overall health of the population. The Council supports additional monitoring efforts of the brown bear through new technology. Trail cameras can be used in addition to hair samples along bear trail routes. With the additional monitoring efforts, this will allow managers the tools needed to manage season and harvest limits. The Council urges the Board to encourage managers to pursue any new methods they can to better assess the status of the brown bear population in these units.

Response:

The Board agrees monitoring and researching brown bear populations would aid in making more informed management decisions and regulatory actions. The Board currently has no funding mechanism to assist with wildlife research or monitoring studies. For now, research and monitoring of wildlife populations is conducted by the individual land management agencies.

Currently, Wrangell-St. Elias National Park and Preserve has no plans to conduct any brown bear studies due to lack of funding. The staff plans to submit a brown bear research and monitoring proposal for funding when opportunities arise (i.e. from internal NPS sources), although results from any funded proposals are years away and there is no guarantee the proposal would be funded. Tetlin National Wildlife Refuge (NWR) also has no plans to monitor or research brown bears as brown bear hunting and baiting is not a major activity on the refuge. However, the Tetlin NWR may consider brown bear monitoring and research if there was a strong impetus to do so.

The State monitors brown bear harvest in Unit 12 using several metrics (3-year mean harvest is less than 28 bears and males comprise at least 55% of the harvest). Unit 12 brown bear harvest has consistently been within these metrics, indicating no conservation concerns. The State plans to conduct an aerial survey for brown bears in Unit 20E this year, but has no plans of monitoring or researching brown bears in Unit 12 beyond its typical harvest reporting due to lack of personnel, funding, and higher priorities (i.e. moose, caribou, brown bears in other units), and because there is currently not a biological concern for the Unit 12 brown bear population. Jeff Wells, the area biologist for Unit 12, further commented that estimating a brown bear population using hair samples is a very intensive effort requiring a systemic grid of bait stations and hair snagging wire to be placed within the area of interest and the use of a helicopter.

The Kenai NWR conducted a brown bear population estimate of the Kenai NWR and the portion of the Chugach National Forest (NF) located on the Kenai Peninsula in 2010. The refuge employed a grid of bait and hair snagging stations in order to collect hair samples for DNA analysis and to determine a population estimate. The refuge has no plans to conduct any further brown bear research or monitoring in the near future as it is a very expensive and time-intensive undertaking and because the 2010 population estimate is still valid. The State collects harvest and demographic data from radio-collared sows on Kenai brown bears. The refuge also receives and examines this information.

The Chugach National Forest does not plan to conduct any brown bear research in Unit 7. Some of the factors influencing this decision are the fact that Kenai NWR conducted an intensive brown bear survey of this area in 2010 and that there is no Federal customary and traditional use determination for brown bears in Unit 7.

3. Unit 6 Deer Harvest Report

Federal subsistence harvest reporting for deer in Unit 6 is currently not required, but collecting information such as harvest data, user groups, and area of hunt is beneficial to the Council to help it develop recommendations on future proposals and also can serve as an in-season management tool. Thus, there should be an interagency effort to develop a harvest reporting system for Federal subsistence permits on Federal public lands. The harvest data will be an additional resource for the Council to use when deliberating on future proposals and can also serve as a monitoring tool to measure the overall health of the deer population.

Response:

To harvest deer in Unit 6 under Federal subsistence regulations, state harvest tickets and harvest reporting is required. The reporting obligation only requires a hunter to turn in reports at the end of the season, so they would not be helpful for in-season management; however, other tools are in place to assist State and Federal deer managers. Managers conduct deer pellet surveys to monitor trends in the Prince William Sound deer population. Managers also loosely monitor snow depth and harvest activity in the fall, which are good predictors of when deer are highly vulnerable.

Generally, there is no need for in-season deer management, as weather has a greater effect on the Prince William Sound deer population than hunter harvest. At very low population levels, as occurred after the 2011-12 winter, there can be a need to reduce hunter harvest but this was largely done pre-season based observed population indicators.

Harvest data, general location of harvest, and user groups are already tracked by the State harvest tickets and harvest reports and are available to State and Federal managers.

4. Unit 13 Paxson Hunt Area

With the newly opened portion of Unit 13 that was part of the Paxson Closed Area, there has been an increase in hunters using the area when the Nelchina caribou migrate through. This has caused a safety concern for residents hunting in the area due to the high volume of hunters within a small corridor. Reports of hunters parking on the road to hunt caribou has brought up safety issues by commuters navigating through parked vehicles on the sides of the highway and hunters near residential areas discharging their rifles while hunting caribou. The Richardson Highway is also used by semi-trucks for the transportation of goods. All of these factors combined create serious safety concerns for all users of the highway.

The Council requests the Board begin a dialogue with the Alaska Department of Transportation and the Department of Public Safety to address the safety concerns received from the residents of the area. Increased safety patrols and hunter education will help alleviate these concerns to ensure the communities and other users are not exposed to unnecessary safety hazards as we move forward. Additionally, installing more safety signs and developing additional public parking along the hunting corridor could help alleviate safety concerns.

Response:

The Board acknowledges the safety issues that can occur when the Nelchina caribou migrate across the Richardson Highway during the hunting season. The recommendations suggested by the Council are reasonable but not within the scope of the Federal Subsistence Board's authority. Public safety concerns in the area remain the responsibility of State and local law enforcement officials, Alaska Department of Transportation and the Department of Public Safety, and the individual State and Federal land management agencies.

The Bureau of Land Management (BLM) is currently working with Ahtna Inc. on a subsistence hunter education program for their members. The BLM has engaged local Paxson area residents in discussing how to best disseminate information on safely hunting in the area and has made maps available for hunters unfamiliar with the revised boundaries in the closed area. At the Council's fall 2015 meeting in Glennallen, the BLM and the State of Alaska noted that their law enforcement personnel currently work and coordinate their activities in this area and that immediate threats to public safety, be it illegal highway parking or shooting from or across a roadway, should be reported as soon as practical. Groups or individuals interested in developing additional parking pullouts along the hunting corridor should contact their State representatives and the Department of Transportation.

5. Tribal Resource Management

In November 2014, the U.S. Attorney General issued a report entitled, Advisory Committee on American Indian/Alaska Native Children Exposed to Violence: Ending Violence so Children Can Thrive. The report noted:

The Department of Interior (DOI) and the State of Alaska should empower Alaska Tribes to manage their own subsistence hunting and fishing rights, remove the current barriers, and provide Alaska Tribes with the resources needed to effectively manage their own subsistence hunting and fishing.

Regulations that limit the ability of Alaska Natives to conduct traditional subsistence hunting and fishing are directly connected to violence in Alaska Tribes and the exposure of Alaska Native Children to that violence. Violence is essentially nonexistent during the times in which the communities are engaging in traditional subsistence hunting and fishing activities, and violence spikes during times when Alaska Natives are unable to provide for their families. Beyond providing basic food, subsistence fishing and hunting has been essential to Alaska Native families' way of life for generations. Like language and cultural traditions, it has been passed down from one generation to the next and is an important means of reinforcing tribal values and traditions and binding families together in common spirit and activity. Interfering with these traditions erodes culture, family, a sense of purpose and ability to provide for one's own, and a sense of pride.¹

The Council is involved in subsistence management by providing recommendations to the Federal Subsistence Board on matters relating to the take of fish and wildlife for subsistence regulatory proposals, management plans, and policies, among others, to protect and uphold Title VIII of ANILCA. The Attorney General's report squarely addresses how regulation of subsistence activities impacts culture and the cycle of violence in Alaska Native communities. This is and should be a part of the discussion in implementing Title VIII of ANILCA, and the Council requests that the Board include these issues as part of the conversation at public meetings when applicable.

Response:

The Board recognizes the many different ways the subsistence way of life positively impacts a community and that it is essential to the wellbeing of rural users. As stated in ANILCA Section 801(1), "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." With that in mind, the Board uses a comprehensive approach in

¹https://edit.justice.gov/sites/default/files/defendingchildhood/pages/attachments/2014/11/24/aian_executive_summary.pdf

making decisions that are heavily weighted by recommendations from the Subsistence Regional Advisory Councils. It is the suggestion of the Board, that when the Council submits recommendations on matters relating to the take of fish and wildlife for subsistence regulatory proposals, management plans, and policies to include the ancillary impacts that subsistence activities have on culture and the cycle of violence in Alaska Native communities. This connection between the issues of concern, the Councils, and the Board will then be captured within the administrative record and inherently part of the conversation at public meetings. The Board appreciates the thoughtful awareness being presented by the Council and looks forward to future meaningful dialogue.

6. Effects of Climate Change on Subsistence

Climate change impacts on subsistence activities, seasons and harvest limits, migratory patterns and returns, and communities continue to be of concern for the Council. The Council would like to receive status reports on how climate change is affecting community lives and the natural resources and how management is adapting to the changes.

The Council recognizes that unpredictable seasonal patterns are to be expected due to climate change. The regulatory process needs to remain openly dynamic in order to enable subsistence users to adapt to changing environmental conditions affecting resource availability in three aspects: 1) timing of resource availability, 2) abundance of the resource, and 3) accessibility to resources. As a result, there will likely be a greater need for the use of special actions to adapt to the changing conditions. The Council encourages the Board to take whatever action is necessary to prepare for this eventuality.

Response:

The Board recognizes that many Federally qualified subsistence users are already experiencing unprecedented changes to the distribution, abundance, and accessibility of fish and game due to climate change. Climate change was one of the factors the Board considered at its April 2016 meeting when it created a new winter season for deer in Unit 6, extended the mountain goat season in Unit 6D, and added more flexibility to allow the Ahtna Heritage Foundation opportunity to harvest moose or caribou for their Culture Camp. The effects of climate change were also considered in proposals submitted by other regional councils. Although rural communities have long dealt with scarcity and high environmental variability, additional social and economic stresses may increase their vulnerability to the impacts of climate change. The Board has been responsive to the need for quick action on out of cycle requests like special actions and has analyzed well over a dozen such requests in the last two years. The special action process provides the flexibility necessary to respond to these changes.

The Council, through its members, has probably the best information as to how climate change is affecting the local resources and the communities that depend on them. Some other sources of information are as follows: The Alaska Tribal Health Consortium produces a weekly email of “Climate and Health News” and the Local Environmental

Observer Network, which consists of local environmental professionals from more than 60 communities across Alaska, posts local climate observations to a shared Google© Map available on the Internet.

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 Southcentral Region are well represented through your work.

Sincerely,

Tim Towarak
Chair

cc: Southcentral Alaska Subsistence Regional Advisory Council
Federal Subsistence Board
Interagency Staff Committee
Eugene R. Peltola, Jr., Assistant Regional Director, OSM
Stewart Cogswell, Acting Deputy Assistant Regional Director, OSM
Carl Johnson, Council Coordination Division Chief, OSM
Donald Mike, Subsistence Council Coordinator, OSM
Administrative Record

Speridon Simeonoff, Chair
Kodiak/Aleutians Subsistence Regional Advisory Council
U.S. Fish & Wildlife Service, Office of Subsistence Management
1101 East Tudor Road, MS 121
Anchorage, Alaska 99503

Dear Chairman Simeonoff:

This letter responds to the Kodiak/Aleutians Subsistence Regional Advisory Council's (Council) fiscal year 2015 Annual Report. The Secretaries of the Interior and Agriculture have delegated to the Federal Subsistence Board (Board) the responsibility to respond to these reports. The Board appreciates your effort in developing the Annual Report. Annual Reports allow the Board to become aware of the issues outside of the regulatory process that affect subsistence users in your region. We value this opportunity to review the issues concerning your region.

1. Fisheries Resource Monitoring Program (FRMP)

The Council appreciated the Office of Subsistence Management (OSM) presentation on the FRMP at its September 29-30, 2015 meeting in Kodiak. OSM staff agreed to submit the concerns and recommendations outlined in the attached letter to Stewart Cogswell, the FRMP program lead. The Council is concerned that its involvement with the FRMP is too late in the process and did not allow for important input on whether projects meet Priority Information Needs and should be funded. The Council would also like to know why FRMP regions are currently inconsistent with subsistence regions and if this could be changed for consistency. The Council perceives there are allocation discrepancies between how funds are distributed to areas within the FRMP regions.

Recommendation(s): On this issue, the Council has already transmitted a letter with some recommendations to Stewart Cogswell, Fisheries Division Chief with the Office of Subsistence Management (enclosed), and incorporates those recommendations by reference.

Response:

The mission of the Fisheries Resource Monitoring Program (FRMP) is to identify and provide information needed to sustain subsistence fisheries on Federal public lands for rural Alaskans through a multidisciplinary collaborative program. The FRMP is administered by the Office of Subsistence Management (OSM). Projects are selected for funding under the Monitoring Program through an evaluation and review process that is designed to advance projects that are strategically important for the Federal Subsistence Management Program, technically sound, administratively competent, promote capacity building and are cost effective. The FRMP is intended to be a coordinated resource monitoring program which adds to, is consistent with, and does not duplicate existing efforts by government agencies and organizations already engaged in assessment of subsistence fisheries and subsistence fishery resources.

It is the goal of the OSM to ensure the FRMP is meeting its stated mission and delivering a professional program that is fair, transparent and objective. To review projects, the OSM utilizes the Technical Review Committee (TRC), a standing inter-agency committee of senior technical experts that is foundational to the credibility and scientific integrity of the evaluation process for projects funded under the FRMP. The TRC is empowered to review and evaluate proposed projects and make recommendations consistent with the mission of the FRMP, for project selection. Recommendations from the TRC provide the basis for further review and comment from Regional Advisory Councils (Councils), the public, and the Interagency Staff Committee (ISC), and approval of a Fisheries Resource Monitoring Plan by the Federal Subsistence Program.

The concerns forwarded by the Council will be addressed by the TRC during its fall meeting. Specifically, they will discuss the current FRMP Regional boundaries and their associated allocations. At the All Council meeting last March, staff with OSM assisted with the creation of working groups to support the development of Priority Information Needs (PIN) for potential project ideas. The OSM appreciates input and looks forward to working with the Councils to assist with subsistence fisheries related concerns throughout the State.

2. National Wildlife Refuge System (NWRS) Proposed Rule on Hunting

At both its February and September regular cycle meetings, the Council heard presentations from U.S. Fish and Wildlife Service (USFWS) Refuges staff on the Proposed Rule on Hunting in National Wildlife Refuge Lands in Alaska. The Council believes its relationship with refuge staff in the region has improved; however, it is discouraged with the way this and some other issues are being communicated to subsistence users. The Council believes it has had little opportunity to provide input on the proposed rule, and voted to oppose the proposed rule on September 30. The Council is disappointed that the Rule has already been submitted to the Washington, D.C. office for approval. The 1997 National Wildlife Refuge Improvement Act was brought up in the NWRS presentation as a supporting document for the Rule; however, the Council was not provided with a copy of this document at the meeting, nor does it have a good understanding of its requirements and implementation relative to the Rule.

The Council has specific concerns about extending the temporary closure review timeframe from twelve months to up to three years. The Council would like to know who will determine the time necessary for temporary closures, and believes such closures may be overlooked during a longer review period. The Council will be submitting comments to USFWS when the public comment period is announced in the Federal Register.

Response:

The Board forwarded your issue on to the U.S. Fish and Wildlife Service, Alaska Region Division of Refuges, which provides this response:

The proposed rule was open for a 90-day comment period between January 8, 2016 and April 7, 2016. The Alaska Region Division of Refuges is currently in the process of evaluating and responding to comments. Responses to comments

are currently being finalized and changes to the rule are being considered based on comments. The goal is to publish a final rule in mid to late July.

3. Kodiak National Wildlife Refuge Staffing

In 2014, the Kodiak National Wildlife Refuge lost an important subsistence biologist position. The individual who held that position was extremely helpful to the Council, and provided critical information on ungulate research and subsistence issues for the Refuge. We believe the Refuge is no longer able to provide that caliber of information, and that the lack of such information is detrimental to the Council and the Kodiak subsistence community, as well as the effective management of wildlife resources.

The Council would like to see funding returned to the Refuge to fill this position. The Refuge Manager expressed the possibility of filling the position with an Alaska Native Science and Engineering Program (ANSEP) student. Council members will encourage local youth to apply for an ANSEP position should it become available.

Response:

The Board forwarded your issue on to the U.S. Fish and Wildlife Service, Alaska Region Division of Refuges, which provides this response:

Funding for the entire National Wildlife Refuge System (NWRS) has decreased over the past several years. All our funding is based on funds appropriated by Congress. With these decreases we have had to make strategic decisions based on priorities. We continue to meet all our obligations and base all our wildlife and habitat management decisions with the best available science. As additional funding comes back into the NWRS we are ready to realign our workforce to better meet our priorities.

4. Emperor Geese

The Council is pleased to hear progress towards a limited Emperor Goose hunt. Over the years the Council has expressed concerns regarding the validity of population surveys, and is gratified survey methods are being reviewed and/or modified. The Council continues to have issue with a proposed 3,500 harvest limit, which equals the estimated number of birds illegally harvested in the Yukon Delta region. This harvest limit would essentially leave no birds available for subsistence users in the Kodiak/Aleutians area. The Council would like for the Emperor Goose season to be opened in early March to allow Kodiak users to hunt when birds are present. The Council is greatly concerned with allocation and would like to be actively involved with the various decision-making bodies for Emperor Goose management as the issue proceeds.

The Council has sent a letter to the Suna'q Tribe, the local Alaska Migratory Bird Co-Management Council (AMBCC), the Pacific Flyway Council, and Sonny Squartsoff, the AMBCC statewide representative, to ensure timely communication regarding meetings and meeting

summaries. The Council requests that its Council Coordinator foster relationships with the various leads for migratory bird management to complement this effort.

Response:

The Board is very pleased to hear that the Council has initiated increased communication with several decision-making and management bodies working on the Emperor Goose issue in Alaska. While migratory bird harvest is outside its jurisdiction, the Board recognizes that Emperor Geese provide an important subsistence resource for the Kodiak/Aleutian region. The Board also understands that the Council received extensive updates at the All Council's meeting in March from multiple representatives working on a proposed Emperor Goose hunt in Spring, 2017. In addition, the Council met with members of the Yukon Kuskokwim Delta Council, which also considers Emperor geese an important subsistence resource for their region.

Your Council Coordinator has been in contact with members of the Pacific Flyway Management and Yukon Kuskokwim Delta Emperor Goose Management plans working group, and the division of Migratory Bird Management under the U.S. Fish and Wildlife Service. It is the Board's understanding that a draft harvest strategy for Spring, 2017 is being developed and will be reviewed at the Alaska Migratory Bird Co-Management Council meeting in July. Your Coordinator will keep you apprised of this and future activities.

5. Sea Otters

The Council would like to inform the Board about the impacts of sea otters on subsistence resources in the region, particularly throughout the Kodiak Archipelago. The Council recognizes that the management of marine mammals is outside the authority of the Board; however, local communities, tribes and the Council believe sea otters are negatively impacting shellfish resources, which do fall under the Board's jurisdiction. Locals are regularly reporting increasing numbers of sea otters, including in areas where sightings were previously rare.

Recommendation(s): The Council is requesting comprehensive survey data on sea otter populations, subsistence shellfish harvest data from areas that may be affected by sea otter predation, mark and tagging information on sea otters, and comparative data between areas where sea otters are and are not present. The Council would also like to know if sea otter predation studies have been conducted in the region or if such studies can be initiated to determine impacts. It is the Council's hope that this information will stimulate a discussion on sea otter management. The Council will be gathering data from the National Oceanic and Atmospheric Administration and the Alaska Department of Fish and Game for historical and current shellfish (Tanner, Dungeness and king crabs) harvests, as well as harvests of clams. The Council is willing to work with representatives from the Sea Otter Commission, USFWS, and others to address a management plan for the issue. The Council would like to have a presentation from the Sea Otter Commission at its next meeting to address these issues.

Response:

The Board passed your issue on to the U.S. Fish and Wildlife Service, Marine Mammals Management, which provides this response:

The U. S. Fish and Wildlife Service (USFWS) maintains a database of sea otter harvests and this can be summarized in most any fashion that a user would request, for example, by year, village, etc. We can also provide data on any surveys that have been conducted in the area, but these are old and may not be too useful. We are in the process of surveying an area centered around Cold Bay in 2016, and these results should be available in a year or two. We have not undertaken any predation studies in the region, but the U.S. Geological Survey may have. The USFWS would be open to any conversations about the management of sea otters in the region.

6. Izembek National Wildlife Refuge Aircraft

The Council had previously received a commitment from the USFWS Region 7 office to always have an aircraft available to Izembek National Wildlife Refuge for resource surveys. The Council would like assurances that this commitment will be met, particularly given the current caribou subsistence resource issues on the Alaska Peninsula.

Response:

The Board forwarded your issue on to the U.S. Fish and Wildlife Service, Alaska Region Division of Refuges, which provides this response:

The Izembek NWR works in close partnership with the State of Alaska's Department of Fish and Game monitoring caribou populations on the Southern Alaska Peninsula and Unimak Island. This includes annual surveys (typically June and October) and radio collaring/tracking calves and adults. There are a variety of ways each agency contributes towards these activities within the operational constraints associated with working in these areas. While the agency's intention is to complete surveys every year, in reality there are many factors that can affect the ability to do this. As the Council is aware, weather in this area can be extreme and significantly affect operations. Safety of personnel completing survey work is always the highest priority, and the USFWS will not put staff at risk unnecessarily. Other factors can influence the ability of the USFWS to complete surveys including variable snow cover and mechanical/equipment failure. Refuge staff welcomes the opportunity to talk more about current surveys and operational issues.

7. Council Meeting Locations

The Council is concerned about the lack of opportunities to meet in rural communities outside the regional hubs of Kodiak and Cold Bay. The Council believes that many communities are not

represented due to budget restrictions. This is particularly true for communities along the Aleutian Chain. This Council has never in its history held a meeting in an Aleutian Islands community, but is expected to represent people in that part of the region. Given that half of the current membership of the Council is comprised of Kodiak residents, any time the Council meets outside of Kodiak the travel costs for meetings automatically double. Additionally, due to the nature of air carrier service in the region (where almost all flights have to go through Anchorage), all travel costs are higher per capita when compared to any other region. Thus, an increase in cost should not be a primary consideration when determining meeting locations.

Recommendation(s): The Council would like approval from the Office of Subsistence Management to hold its fall 2016 meeting in Dutch Harbor in conjunction with the Aleutian Life Forum. The Forum will provide an unprecedented opportunity for Council members to meet with local residents along the Aleutian Chain and Alaska Peninsula to learn about subsistence issues facing those communities. The Council will work with local community members to achieve lower lodging costs and believes early planning could help achieve a successful meeting at minimal costs.

Response:

As the Council is aware, the Federal government in general, and this program in particular, has increasingly been limited by Congressional budget allocations. With the limited budget, and for the foreseeable future, Council meetings must be restricted to hub communities. Hub communities are identified in the enclosed memorandum. However, every 2-3 years, a Council may request to meet in a non-hub community. Through the Council Coordinator, the Council must provide a cost comparison between the hub community and the desired non-hub community location, plus a written justification and rationale for meeting in that location.

With that said, the Board is pleased to respond that the Office of Subsistence Management has granted your request to conduct a meeting at Dutch Harbor in connection with the Aleutians Life Forum. It is my understanding that this is due to the hard work and diligent efforts of your Council Coordinator, Karen Deatherage, to procure additional funding in the amount of \$10,000.00 from the Landscape Conservation Cooperative program managed by the U.S. Fish and Wildlife Service. The Board looks forward to receiving a report from the Council regarding its participation in that event, and the value it received from conducting a meeting out in an Aleutian Island community for the first time in its history.

8. Refuge Information Technicians (RIT)

The Council values and appreciates the service of the USFWS Refuge Information Technicians (RIT) including our local Kodiak National Wildlife Refuge RIT, Tonya Lee. RITs provide essential information that benefit Council members and the public.

Recommendation(s): The Council recommends that the USFWS expand the RIT base to include more individuals from Refuges on the Alaska Peninsula and Aleutians. The Council believes this will help maintain continuity with tribes, and provide timely insight on important local issues.

Response:

The Board passed your issue on to the U.S. Fish and Wildlife Service, Alaska Region Division of Refuges, which provides this response:

The USFWS agrees that the Refuge Information Technicians (RIT) are valuable members of our Refuge team. As a liaison the RIT's help build a stronger connection between local communities and the Refuge. The USFWS looks forward to continuing to promote the RIT program.

9. Kagalaska Caribou Issue

The Council is disappointed with the handling of the Kagalaska caribou and Sand Point/Chirikof cattle issues. Pressure to donate edible meat and/or hides to local communities came from our congressional delegation rather than collaboration between the Alaska Maritime National Wildlife Refuge and communities.

Recommendation(s): If there is removal of invasive or non-indigenous species and these species can be considered subsistence resources, the Federal agencies involved in their removal should be reaching out to local communities when planning disposal of meat and other useful animal parts. Otherwise, communities view the disposal as waste carried out by the Federal agencies, which is prohibited by their own regulations.

Response:

The Board forwarded your issue on to the U.S. Fish and Wildlife Service, Alaska Region Division of Refuges, which provides this response:

The Alaska Maritime NWR is currently not working on any efforts towards the removal of caribou on Kagalaska or cattle on Chirikof Island. The Refuge will continue to work with local communities, if and when, future work and or decisions are made regarding how to handle this sensitive issue.

The USFWS is no longer working on these efforts due to elimination of funding for those activities by Congress, as noted in the enclosed press release.

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 Kodiak/Aleutians Region are well represented through your work.

Sincerely,

Tim Towarak
Chair

Enclosures

cc: Kodiak/Aleutians Subsistence Regional Advisory Council

Federal Subsistence Board

Interagency Staff Committee

Eugene R. Peltola, Jr., Assistant Regional Director, OSM

Stewart Cogswell, Acting Deputy Assistant Regional Director, OSM

Carl Johnson, Council Coordination Division Chief, OSM

Karen Deatherage, Subsistence Council Coordinator, OSM

Administrative Record

REGIONAL HUBS: Meeting Locations for Regional Advisory Councils

For our purpose, a hub is a community that requires only one leg of the trip from the point of origin to the hub community. It may be that not all travelers will live within one leg of the journey to a hub community, but hub communities should meet that requirement for the majority of travelers.

Meeting locations should also provide adequate lodging and food for travelers without stressing the resources of the community.

This list was approved by the ARD on 2/25/08. Councils that need to meet in a community not encompassed by this list must submit a justification for the alternate location along with a cost comparison.

Southeast

Juneau, Sitka, Wrangell, Petersburg, Ketchikan

Southcentral

Anchorage, Cordova, road system communities

Kodiak/Aleutians

Kodiak, Cold Bay

Bristol Bay

Dillingham

King Salmon/Naknek

Yukon-Kuskokwim Delta

Bethel

St. Marys

Western Interior

Aniak, Galena

Seward Peninsula

Nome

Northwest Arctic

Kotzebue

Eastern Interior

Fairbanks, road system

North Slope

Barrow



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Alaska Maritime National Wildlife Refuge
95 Sterling Highway, Suite 1
Homer, Alaska 99603



News Release

For Immediate Release
April 22, 2016

Contact: Steve Delehanty
(907) 235-6546
Steve_delehanty@fws.gov

Alaska Maritime National Wildlife Refuge Halts Cattle Planning and Caribou Control

The U.S. Fish and Wildlife Service is halting work on two invasive species projects on Alaska Maritime National Wildlife Refuge due to restrictive language in the federal budget act which funds refuge activities. The projects that have been halted are the control of invasive caribou on Kagalaska Island in the Aleutians and preparation and release of the environmental impact statements regarding unauthorized cattle on Chirikof Island (southwest of Kodiak) and Wosnesenski Island (south of the Alaska Peninsula).

The federal budget act, which provides fiscal year 2016 funding for the U.S. Fish and Wildlife Service, includes language prohibiting the Service from spending any funds to remove non-native caribou from Kagalaska Island and conduct any work to address unauthorized cattle grazing on Chirikof and Wosnesenski islands. The specific language in the Senate Appropriations Committee Report is:

The Committee directs that no funds are provided for the Service to conduct a caribou hunt on Kagalaska Island in the State of Alaska. Additionally, the Committee directs that no funds are provided to the Service for efforts to remove cattle on Chirikof and Wosnesenski Islands in the State of Alaska.

The U.S. Fish and Wildlife Service appreciates the public's participation in the environmental impact statement scoping process to determine how to address the cattle on Chirikof and Wosnesenski islands. We received hundreds of comments covering a wide range of issues, from determining cattle ownership and genetics to impacts on cultural and natural resources. If authorized in the future, we hope to provide a draft EIS for public review and comment and address these issues.

Due to the budget act restrictions, the U.S. Fish and Wildlife Service is not allowed to issue permits that would result in removal of any cattle from these two islands. Also, the U.S. Fish and Wildlife Service is ceasing work to clarify ownership of the cattle.

-FWS-

The U.S. Fish and Wildlife Service works with others to conserve, protect, and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people. For more

information, visit www.fws.gov, or connect with us through any of these social media at <http://www.fws.gov/home/socialmedia/index.html>.

Molly Chythlook, Chair
Bristol Bay Subsistence Regional Advisory Council
U.S. Fish & Wildlife Service, Office of Subsistence Management
1101 East Tudor Road, MS 121
Anchorage, Alaska 99503

Dear Chairwoman Chythlook:

This letter responds to the Bristol Bay Subsistence Regional Advisory Council's (Council) fiscal year 2015 Annual Report. The Secretaries of the Interior and Agriculture have delegated to the Federal Subsistence Board (Board) the responsibility to respond to these reports. The Board appreciates your effort in developing the Annual Report. Annual Reports allow the Board to become aware of the issues outside of the regulatory process that affect subsistence users in your region. We value this opportunity to review the issues concerning your region.

1. Consistent Enumeration Reports

The Council depends on consistent and current enumeration reports on moose, caribou, and other large mammal species in order to base its recommendations on sound science and survey reports. Without current reports, it is a challenge for the Council to analyze existing, outdated data. Without recent scientific data, it is difficult for the Council to develop informed recommendations to base its decisions on.

Council discussions in the past over regulatory proposals, particularly regarding moose, have resulted in the Council opposing the proposal due to lack of biological information, erring on the side of conservation for the population. In recent years, lack of snow cover has prevented adequate and reliable population surveys, forcing the Council to rely on data that is several years old and extrapolated. Whether opposing a proposal due to inadequate data or having to rely on out-of-date data in making a recommendation, neither approach is desirable to the Council when it comes to making appropriate recommendations to the Board. Federal and State land managers should consider new methods of surveying land mammals to account for changing environmental conditions such as low snow years.

Response:

Lack of current population estimates is a recognized management challenge throughout Alaska. Acquisition of current information is limited by funding, staffing resources, and logistical challenges, including variations in weather and climate. For moose, surveys rely on good snow cover, so that animals can be detected by an aerial observer. In the Bristol Bay region, snow and weather conditions frequently result in poor moose

sightability and poor flying conditions. As a result, surveys often cannot be conducted as planned, and population estimates may be out of date.

Local wildlife managers understand that this is a problematic situation and have been exploring updated survey methodologies. Notably, the Togiak National Wildlife Refuge, in partnership with other U.S Fish and Wildlife (USFWS) programs and the Alaska Department of Fish and Game (ADF&G), recently secured funding from the Western Alaska Landscape Conservation Cooperative (LCC) to update moose survey methodologies in the Bristol Bay region. Using radio collared moose, researchers will develop a sightability model. This will allow biologists to account for detection bias when surveying moose in varying snow conditions, and should result in better population estimates, even when conditions are not ideal.

In addition to this project, the LCC, the USFWS and ADF&G are planning a workshop that will focus on identifying the barriers to more effective moose management, specifically as they relate to current and expected changes in climate. This workshop will address the issue at a statewide level, and is tentatively scheduled for early 2017.

2. Chinook Salmon Intercepts

The Bering Sea high seas fisheries intercept on Chinook Salmon continues to be a concern for the residents of Bristol Bay. The smaller runs on the east side of the bay are vulnerable to incidental commercial harvest, and the sport fishery harvest is a concern to affected residents bay-wide. The eastern Bristol Bay area runs are minimal in annual returns and are not as strong as 20 years ago. The Bristol Bay Chinook Salmon, as well as other Western Alaska runs, should continue be addressed as stocks of concern.

Response:

The North Pacific Fishery Management Council (Council) is the agency responsible for the regulation of salmon bycatch in the Bering Sea commercial Pollock fishery. On April 11, 2015, the Council passed an amended package of Chum and Chinook salmon bycatch avoidance measures, including reductions in the performance standards and hard caps for Chinook Salmon bycatch in the Bering Sea Pollock fishery. The Council's unanimous decision was to reduce the bycatch hard cap from 60,000 to 45,000 fish and the performance standard bycatch from 47,591 to 33,318 fish in low abundance years. Low abundance is defined as less than 250,000 Chinook Salmon in a three-river index of run reconstructions on the Upper Yukon, Kuskokwim, and Unalakleet rivers stock groupings. In the commercial Pollock season following a year of less than 250,000 Chinook Salmon, the bycatch reductions will be enacted.

The ADF&G is the fisheries management agency responsible for determining where or not a fish population should be/is listed as a stock of concern. Currently, in Western Alaska, only the Yukon River Chinook Salmon population is listed as a "Yield Concern." There are no Bristol Bay Chinook Salmon populations listed as a stock of concern. Your Office of Subsistence Management support staff, namely your Council Coordinator and

fisheries biologist, will work with you on drafting an appropriate letter to ADF&G to state your concerns.

3. Commercial Interference with Subsistence Salmon Harvests

Since the inception of the Outer Port Heiden commercial fishery in 2007, Port Heiden residents have stated they have not met their subsistence needs for Chinook Salmon, and at times the other salmon returns are not as abundant. Extra effort to harvest subsistence salmon requires additional fishing days for residents to meet their needs.

The residents of the region desire to have the commercial fishery closed by the appropriate Federal fishery managers, where such activities are occurring within Federal jurisdiction. Cooperative management between this program and other Federal managers is needed to ensure subsistence needs are being met.

Response:

The Federal Subsistence Board does not have jurisdiction in marine waters in the Port Heiden area. Any requests for changes to the commercial fisheries in the area need to be directed to the Alaska Board of Fisheries. A visit to the Board of Fisheries website can provide information about submitting proposals or other requests and the related schedule: <http://www.adfg.alaska.gov/index.cfm?adfg=fisheriesboard.main>

4. Management Attendance at Council Meetings

The Regional Advisory Council meets biannually to address fish and wildlife proposals, and is also charged to review and comment on management plans affecting subsistence resources. The Council recognizes the need for subject matter experts to be present at Council meetings, and recognizes the cost effectiveness of teleconference to participate in public meetings due to budget cuts. Often, there are combined issues affecting subsistence uses in the Bristol Bay region and the personnel qualified to address these issues are Federal and State staff.

The Council encourages senior management staff from Federal and State land management agencies to attend the Council meetings in person throughout the two day public meeting. Issues at Council meetings are best addressed by managers familiar with the issues that have authority and ability to explain recent management actions. The face-to-face dialogue between the Council members and managers is beneficial in that it provides the Council accurate information needed for decision making, and the qualified staff to provide the expertise.

Response:

The Board recognizes the value of having subject matter experts attend Council meetings to ensure that the meeting is productive for the Council. It is typical for an Interagency Staff Committee member to also attend Council meetings, in no small part to provide

information on Federal Subsistence Management Program policy and directives and hopefully be a liaison between the Board and the Council.

As a regular part of his duties, your Council Coordinator sends out a general call for agenda items and materials, which includes both state and federal agency staff and managers. If the Council desires a particular manager to attend a meeting to discuss a particular management issue, the Board encourages the Council to issue a direct invitation to that manager.

5. Chignik Fisheries

The Chignik area fishery is relied upon by residents of the area as a subsistence resource and a livelihood. The residents of the Chignik communities, Port Heiden, and Perryville are concerned for their subsistence fishery and the recent difficulty in meeting their needs. The communities would like an investigation as to why returns are low and subsistence needs are not being fully met. The Council encourages the Federal Subsistence Board to consider funding projects related to subsistence salmon harvests in these areas through the Fisheries Resource Monitoring Program or other cooperative projects.

The Council encourages the Federal Subsistence Board to consider funding projects related to subsistence salmon harvests in these areas through the Fisheries Resource Monitoring Program or other cooperative projects.

Response:

The Chignik area communities, Meshik/Port Heiden, Perryville, and Egegik will soon take part in a Fisheries Resource Monitoring Program project 16-451. The project is titled "Description and analysis of the subsistence salmon network in Bristol Bay. The data to be collected has been identified as an information need for a description and analysis of social networks underlying the allocation and management of subsistence salmon fisheries in the villages in the Bristol Bay-Chignik Area.

The goal of this project is to provide information on how the social network "functions in the allocation and management of subsistence resources and how such a model might be applied and utilized in Federal subsistence management." The project will result in estimates of salmon harvest and utilization by resident of Chignik Lake, Chignik Lagoon, Egegik, and Port Heiden. Information collected will be analyzed to illustrate the sharing networks both within each community as well as across the region.

This project will investigate the social networks of shared subsistence salmon resources in Bristol Bay and Chignik communities and how these networks could be understood within the federal subsistence management system. All residents of the Bristol Bay Management Area qualify for participation in Federal subsistence fisheries. Because of the number of communities in Bristol Bay and the depth of knowledge this project seeks to gather, a sample of communities representative of different areas were chosen based upon researchers' prior experiences with sharing networks. The information collected

during this project will assist all involved with understanding the magnitude of the challenges faced by subsistence fishermen in those communities.

Fisheries regulation changes were made during the past year which may impact three of the five communities scheduled for study. The Alaska Board of Fisheries increased the Chignik River Sockeye Salmon late run escapement goal by an additional 50,000 fish during the month of September. This increase was placed in State regulation specifically in response to the voices of concerned subsistence fishermen of the Chignik area that have recently experienced difficulty with harvest of very late season sockeye salmon (redfish). This increase in the escapement goal was a direct allocation of Sockeye Salmon to provide additional opportunity to subsistence users. Additionally, the Alaska Board of Fisheries expanded waters closed to commercial salmon fishing near the village of Port Heiden with the intent to allow more passage of salmon into the spawning river potentially increasing subsistence fishing opportunities.

Information requests for salmon escapements into the waterways near the above identified communities can be placed with the ADF&G. Comprehensive escapement surveys of salmon streams may become less frequent in the near future depending upon current and future funding of the ADF&G.

The OSM Fisheries Division will investigate the current salmon escapement trends for the systems near the communities identified in the approaching study and will provide information to the Bristol Bay RAC at the winter meeting.

6. Bering Sea By-Catch

Returns for Western Alaska salmon stocks have declined and subsistence needs are not being fully met. By-catch of Western Alaska salmon stocks by the Bering Sea fishing industry is a likely explanation for these low returns. The Council and the public need to attend the North Pacific Fishery Management Council (NPFMC) meetings and insist for a larger reduction on by-catch of Western Alaska bound Salmon stocks. Representation from the Council and the public at these meetings will help to achieve this goal of lowering the by-catch limit through personal testimony stressing how important salmon is to the subsistence way of life.

Response:

Any Regional Advisory Council can request the Office of Subsistence Management, through its Council Coordinator, to authorize and fund one (or more) of its members to attend in-person, and provide testimony on behalf of the Council at a meeting of the North Pacific Fishery Management Council when salmon bycatch is on the agenda. Requests should be made at least one month in advance of the meeting and will be considered on a case-by-case basis. Approval/non-approval is often based on the availability of funds at the time of request. It is best that a Council express its desire on the record at a Council meeting to send one of its members to a NPFMC meeting.

7. Agency Involvement in Regional Advisory Council Meetings

The Council would like to express its appreciation for the service that Refuge Information Technicians (RITs) provide at its public meetings. The RITs are rural residents living in the communities employed by the U.S. Fish and Wildlife Service and are knowledgeable on various resource issues and are the frontline of communications between communities and managers. They provide sound information on events in communities and relay resource concerns to the Council and land managers. The Council considers RITs to be subject matter experts who provide valuable information to assist the Council in developing recommendations on subsistence uses and other resource related issues. The Council encourages that the applicable Refuges to ensure that their RIT positions are always filled and that RITs continue to play an active role in Council operations.

Response:

The Board forwarded your issue on to the U.S. Fish and Wildlife Service, Alaska Region Division of Refuges, which provides this response:

The U.S. Fish & Wildlife Service (Service) agrees that the Refuge Information Technicians (RIT) are valuable members of our Refuge team. As a liaison the RIT's help build a stronger connection between local communities and the Refuge. The Service looks forward to continuing to promote the RIT program.

8. Youth Involvement

The Council held its fall 2015 public meeting at the Dillingham Middle/High School gym. It provided an opportunity for the middle and high school students to experience how the Regional Advisory Council system operates by engaging public participation. The presence of students attending and participating in the meeting was also a meaningful experience for the Council members in attendance. The Council would like to acknowledge the presence and participation of the students and support from the school district and staff; they did an outstanding job representing their school and community.

Engaging the youth to participate in these public forums, and learning how to address resource management issues, is a positive step toward encourage young subsistence users to pursue and get engaged in resource management careers. The Council and the Federal Subsistence Management Program need to find additional opportunities to engage the youth in the Bristol Bay region.

Response:

The Board acknowledges the benefits of youth participation. This collaboration allows for a demonstrative process that fosters youth engagement in resource management in Alaska. Bristol Bay Native Association is continuing an excellent program funded thru the Partners for Fisheries Resource Monitoring Program that cherishes youth involvement

through active internships for youth that are considering a role in subsistence management whereby the interns are able to coordinate activities and knowledge thru the local subsistence users to further allow transparency of the projects at hand and the future projects that aid in fisheries resource monitoring. The BBNA program allows for opportunities for youth participation in the Federal regulatory process by attending Regional Advisory Council meetings and actively engaging the board members to address resource issues. The Board would like to see continued cooperation and opportunities to include youth into the management process to mentor young adults and allow for the way of life for the subsistence user.

Additionally, there was an entire breakout session at the March 2016 All Council meeting dedicated to developing ideas on how to increase youth involvement in the Federal Subsistence Management Program. Several staff in the Council Coordination Division are collating information from that meeting and will be working with Amanda Roberts, Youth Program Coordinator, Department of the Interior – Alaska to develop ideas to share with the Councils.

9. Research Funding

As the current crises with the Alaska State budget continues, State funding for research and monitoring of important fish sources is likely going to decline. The Council is already starting to see impacts to research in the Bristol Bay region due to budget cuts. The State will also have to make choices that benefit commercial fishing research, which will also have an effect on subsistence-related projects.

The Federal Subsistence Management Program needs to be vigilant and monitor how the State's budget cuts will impact research on subsistence fisheries. When the cuts occur, other opportunities to fund projects need to be identified to offset the current lack of data provided by the Alaska Department of Fish and Game. The Program could perhaps work collaboratively with the State regarding other funding sources and filling data needs. This is also an important point to consider when deciding how to fund Fisheries Resource Monitoring Program projects.

Response:

The State of Alaska's budget challenges have been noted in various areas from reduced in person participation by ADF&G staff at Council meetings (noted in Issue 4 above) to reductions or elimination of aerial surveys or weirs. Though the State does strive to ensure subject matter experts do attend Council meeting via teleconference, absence of local area managers and researchers potentially detracts from the Council process. Reducing or eliminating the tools historically used for fisheries management ultimately benefiting subsistence users will be a large challenge for all users in the future.

The Board will task the OSM Fisheries Division to work closely with the ADF&G to determine the potential impacts to Federally qualified subsistence users from resulting State budget cuts. Additionally, the Board will direct the various agencies to conduct a

data gap analysis to determine what information critical to resource management is at threat and if efforts to partner with the State will address some of the more contentious or sensitive resources.

The Board is committed to encouraging partnerships and challenges agencies to investigate and find a way to operate cooperatively with the intent of ensuring the continuance of subsistence uses and sound management of the resources.

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 Bristol Bay Region are well represented through your work.

Sincerely,

Tim Towarak
Chair

cc: Bristol Bay Subsistence Regional Advisory Council
Federal Subsistence Board
Interagency Staff Committee
Eugene R. Peltola, Jr., Assistant Regional Director, OSM
Stewart Cogswell, Acting Deputy Assistant Regional Director, OSM
Carl Johnson, Council Coordination Division Chief, OSM
Donald Mike, Subsistence Council Coordinator, OSM
Administrative Record

Lester Wilde, Sr., Chair
Yukon-Kuskokwim Delta Subsistence
Regional Advisory Council
c/o U.S. Fish & Wildlife Service
1011 E. Tudor Road, MS 121
Anchorage, Alaska 99503

Dear Chairman Wilde:

This letter responds to the Yukon-Kuskokwim Delta Subsistence Regional Advisory Council's (Council) fiscal year 2015 Annual Report. The Secretaries of the Interior and Agriculture have delegated to the Federal Subsistence Board (Board) the responsibility to respond to these reports. The Board appreciates your effort in developing the Annual Report. Annual Reports allow the Board to become aware of the issues outside of the regulatory process that affect subsistence users in your region. We value this opportunity to review the issues concerning your region.

1. Dip Nets

The use of a dip net on the Yukon and Kuskokwim Rivers is not a traditional subsistence gear type for most of the region and does not allow users to meet subsistence needs. Subsistence users should be able to use any of the usual harvest methods for subsistence harvest. The Council recommends that the Board determine that dip nets should not be the only gear type allowed during open subsistence fisheries on the Yukon and Kuskokwim Rivers.

Response:

Dip nets are just one type of allowable gear available for use by subsistence users during open subsistence fisheries on the Yukon and Kuskokwim Rivers. In the recent past, mostly during times of conservation of Chinook Salmon stocks on both rivers, gear restrictions have been put in place that allow subsistence users to target and selectively harvest other fish species (e.g. Chum Salmon) while, at the same time, being able to immediately release unharmed any and all Chinook Salmon incidentally caught. Dip nets allow such immediate release to occur. While the Board recognizes and understands that dip nets are not a traditional subsistence gear type, this gear type should remain an option for use, especially during times of Chinook Salmon (or other species) conservation. Subsistence users retain the option whether or not to utilize dip nets to harvest fish.

2. Accountability for In-Season Managers

The Council is concerned with how the U.S. Fish and Wildlife Service in-season managers are held accountable for ensuring that there are fish and wildlife available to harvest for subsistence uses. Subsistence use is required to have the highest priority in management, but there are several examples of recent policies and actions that are being implemented that do not provide the continuation of subsistence use. The Council recommends the Board be vigilant in providing

guidance to other Federal agencies regarding their obligations under Title VIII of the Alaska National Interest Lands Conservation Act to provide for the continuation of subsistence uses.

Response:

Delegation of authority to a Federal in-season Manager is established pursuant to 36 C.F.R. 242.10(d)(6) and 50 C.F.R. 100.10(d)(6), which states, “The Board may delegate to agency field officials the authority to set harvest and possession limits, define harvest areas, specify methods or means of harvest, specify permit requirements, and open or close specific fish or wildlife harvest seasons within frameworks established by the Board.” It is the intent of the Board that subsistence management by Federal officials be coordinated with the Alaska Department of Fish and Game and involve Regional Advisory Council representatives and, where appropriate, consultation with tribes, ANCSA corporations, and other entities, to conserve healthy fish and wildlife populations while providing for subsistence uses. Each letter of delegation explicitly stipulates criteria for the review of proposed special actions, guidelines for delegation, and reporting requirements. The Board strives to have complete adherence to these delegation requirements and works throughout the year to maintain relationships and open communications with relevant Councils, agencies and departments. The importance of communications between the public members, agencies and bureaus that comprise the Federal Subsistence Board and their respective field officials is critical to the success of the Federal Subsistence Management Program. The Board will continue to work with the agencies on in-season accountability and will make adherence to the delegation of authority requirements a high priority.

3. Communication Challenges

Two-way communication and an education process between local residents and Federal agency staff regarding what constitutes a “traditional way of life” are needed. This concept is not easily explained or understood. The Council requests the Board provide direction and staff training in methods to incorporate this concept into management plans and policies of all Federal land management agencies.

Response:

The U.S. Fish and Wildlife Service established an Alaska Native Relations training several years ago as an optional training to help federal employees better understand Native stakeholders. This training was designated in 2015 as mandatory for all new employees in the U.S. Fish and Wildlife Service, Alaska Region. Several other agency staff, such as Bureau of Land Management and National Park Service, also participate in that training. This training provides new employees an opportunity to gain greater understanding of Alaska Native people through introduction of cultures, stories and languages, historical information, subsistence way of life, and communication styles. It is the hope that providing this training to all employees will help to improve communication in the way the Council desires.

4. Salmon and Halibut Bycatch

Commercial trawl fisheries that operate in the waters adjacent to waters under Federal subsistence management jurisdiction incidentally harvest large numbers of salmon and halibut,

which could otherwise be used for subsistence. The Council has a long history of requesting that this bycatch be reduced to the greatest extent possible. The Council recommends the Board investigate opportunities for the Council to have a more direct role in working with the North Pacific Fisheries Management Council to inform that body of our concerns.

Response:

The Board has been informed that the Council had a discussion about halibut bycatch during its March 2016 meeting. As a result of the discussion, the Council requested the Office of Subsistence Management to fund one Council member to attend and testify at the April 2016 meeting of the North Pacific Fisheries Management Council (NPFMC) on halibut bycatch. The request was not approved due to budget constraints.

The Board applauds the Council's subsequent appropriate and direct action of sending a letter to the NPFMC expressing the council's concerns about salmon and halibut bycatch in the Bering Sea, and the actions the Council requests the NPFMC to take to address the concerns and to reduce bycatch.

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 Yukon-Kuskokwim Delta Region are well represented through your work.

Sincerely,

Tim Towarak
Chair

cc: Yukon-Kuskokwim Delta Subsistence Regional Advisory Council
Federal Subsistence Board
Interagency Staff Committee
Eugene R. Peltola, Jr., Assistant Regional Director, OSM
Stewart Cogswell, Acting Deputy Assistant Regional Director, OSM
Carl Johnson, Council Coordination Division Chief, OSM
Administrative Record

Jack Reakoff, Chair
Western Interior Alaska Subsistence Regional Advisory Council
U.S. Fish & Wildlife Service
1101 East Tudor Road, MS 121
Anchorage, Alaska 99503

Dear Chairman Reakoff:

This letter responds to the Western Interior Alaska Subsistence Regional Advisory Council's (Council) fiscal year 2015 Annual Report. The Secretaries of the Interior and Agriculture have delegated to the Federal Subsistence Board (Board) the responsibility to respond to these reports. The Board appreciates your effort in developing the Annual Report. Annual Reports allow the Board to become aware of the issues outside of the regulatory process that affect subsistence users in your region. We value this opportunity to review the issues concerning your region.

1. Co-Management for the Yukon River

The Council has received a briefing on the Kuskokwim River Partnership Project and related Tribal co-management efforts, and endorses these efforts. The Council requests that a similar co-management system be explored for the Yukon River, especially with the more complicated management challenges faced on that river.

Response:

It is important to note the distinction between this type of collaborative management and co-management. Other examples of co-management in Alaska, such as marine mammals and migratory birds, are authorized by specific statutes. There is no legislative authority for fisheries co-management activities in Alaska, which is why the administrative options have been explored. Deputy Secretary of the Interior, Mike Connor, has stated that the Partnership Project will be on the Kuskokwim River only, at this time. When the Kuskokwim River Partnership Project has been running smoothly for two seasons and has developed effective strategies, it may be ready for export to other areas. The first year of full implementation on the Kuskokwim River will be 2017.

2. Fair Share of Fish

This Council has, on several occasions in recent years, expressed concerns to the Board regarding the ability of subsistence users on the Yukon River to obtain their needed supply of Chinook Salmon. In recent years, there have been several restrictions on the subsistence harvest of Chinook Salmon. While subsistence users have to abstain from harvesting Chinook Salmon, Bering Sea commercial fishing operations are permitted to waste some 20,000 Chinook Salmon as bycatch. This is an inequitable distribution of such a valuable resource, and subsistence

users are entitled to a fair share of the resource. As current management stands, subsistence users are not receiving their fair share. The Council is aware that the Board has previously communicated concerns to the Secretaries of Commerce and Interior regarding this issue, but again asks that the Board stress to these secretaries that subsistence users are not getting the share of fish that they need and deserve.

Response:

The Board understands the concerns of Federally qualified subsistence users regarding Yukon Chinook Salmon. For several years Federally qualified subsistence users have had limited opportunity to harvest Chinook Salmon in the Yukon River drainage. The Board through staff at the Office of Subsistence Management (OSM), has remained engaged and taken on an appropriate role of monitoring the work and decisions of the North Pacific Fisheries Management Council (NPFMC) with respect to salmon bycatch in the Bering Sea/Aleutian Islands commercial Pollock fishery. The Board will continue to comment when appropriate through letters and recommendations.

On April 11, 2015, the North Pacific Fishery Management Council passed an amended package of Chum and Chinook Salmon bycatch avoidance measures, including reductions in the performance standards and hard caps for Chinook Salmon bycatch in the Bering Sea Pollock fishery. The North Pacific Fishery Management Council's unanimous decision was to reduce the bycatch hard cap from 60,000 to 45,000 fish and the performance standard bycatch from 47,591 to 33,318 fish in low abundance years. Low abundance is defined as less than 250,000 Chinook Salmon in a three-river index of run reconstructions on the Upper Yukon, Kuskokwim, and Unalakleet Rivers stock groupings. In the commercial Pollock season following a year of less than 250,000 Chinook Salmon, the bycatch reductions will be enacted.

Per the directive in the Secretarial Review, we will forward your concerns on this matter to the Secretaries of the Interior and Agriculture.

3. Mulchatna Caribou Herd Information Needed

As this Council makes recommendations to the Board on wildlife proposals, it is crucial for us to be provided with updated information on relevant populations. This fall, the Council discussed WP 16-29, related to the Mulchatna Caribou Herd. The Council disagreed with the conclusion that there is no biological concern for this herd, noting that there is no survey or composition data to substantiate that claim. Harvest objectives for this herd were set before the herd declined, and the Alaska Department of Fish and Game has been derelict in its management of this herd. High harvest objectives were established to maintain intensive management – too many bulls were taken and with the low productivity and a low bull: cow ratio, the population crashed. The Council is concerned that State managers are not conveying current data to the Office of Subsistence Management or the Board. Federal managers do not have current population and composition data – this crucial information needs to be shared for this important resource. With dwindling caribou populations statewide, it is important for management decisions to be well informed, and science-based. The State Board of Game has recently

increased the bag limit to 2-bulls for the Mulchatna herd. It is very likely the bull: cow ratio will again be suppressed, causing further decline of this once vibrant herd.

Response:

The draft analysis for Proposal WP16-29 presented to the Western Interior Alaska Subsistence Regional Council at its fall 2015 meeting included the most recent available data (only including population data up to 2012 and harvest data up to 2010). The analysis presented to the Board incorporated the most recent (2015) population data after it became available, which demonstrated an increase in the bull:cow ratio (35 bulls:100 cows) and a population estimate (30,736) that was within the State management objective (30,000-80,000). The Board version of the analysis also incorporated the most recent (2014) harvest data, which demonstrated remarkably low harvest over the past several years (99 caribou in 2013 and 117 caribou harvested in 2014). Regardless of the State's harvest objectives, the current (2014) harvest rate of 0.4% will not negatively impact the herd.

While OSM did not support a "dramatic liberalization of harvest" (WP16-29 analysis, pg. 16), OSM did support the 15-day season extension due to extremely low harvest and improvement in the herd's population and bull:cow ratio. Additionally, users could already hunt during the requested Federal season extension under State regulations, so no increases in harvest were expected.

OSM commented on Board of Game Proposal 134, which requested that the bull harvest and season restriction be removed for the Mulchatna caribou herd. OSM's position on this proposal was neutral. OSM supported increasing opportunity for Federally qualified subsistence users but expressed concern over how liberalizing harvest could negatively impact the bull:cow ratio, especially when the herd is still recovering. The Alaska Department of Fish and Game (ADF&G) supported this proposal due to low harvest and adequate bull:cow ratios in recent years.

4. Chinook Salmon Recovery Efforts

There have been several efforts in recent years, both by State and Federal managers, to ascertain the cause of the Chinook Salmon population declines and to take efforts toward recovery of those populations. The Council appreciates these efforts and urges that all possible steps be taken to continue working on the recovery of this important subsistence resource. Subsistence users on the Kuskokwim and Yukon rivers have been subjected to strict conservation measure recently. These restrictions are worthwhile only if broader conservation measures are taken and real recovery of the populations can be achieved.

Response:

The Board recognizes the need to monitor and restore the Chinook Salmon populations in the Western Alaska regions. The two primary river systems that provide a majority of the subsistence fisheries are the Yukon and Kuskokwim. Declines in Chinook Salmon have been observed statewide starting in 1997. Currently there is a great deal of research to find evidence of

what drives these declines. There are many possible drivers in the declines including incidental bycatch, overfishing, climate change, and other biological drivers that influence recruitment of adults back to their natal streams to spawn. All of these factors are confounding and make management of this fishery difficult due to the size of both of the rivers. Currently the OSM has two programs that help fund projects that support monitoring and research to better understand these population trends. The Fisheries Resource Monitoring Program and the Partners for Fisheries Monitoring Program aid various entities research projects to identify and monitor trends of fish populations across Alaska.

The people of the Yukon River have seen about a two-third reduction of Chinook Salmon that they were accustomed to seeing 20 years ago. Steps are being taken towards monitoring, research, and restoration through various agencies statewide including Federal, State, University, Tribal Governments, and the private sector. During the years of 2012 and 2013, some of the lowest returns of Chinook Salmon occurred in the Yukon River which prompted drastic conservation efforts in terms of restrictions to the fishery for both Subsistence and commercial (**Table 1 and Table 2**). It does appear at the Eagle sonar site that there is an upward trend in the Chinook Salmon escapement, however more years of a continued upward trend would greatly help support the fishery to what it used to be prior to the 1997 decline.

Table 1. Yukon River Chinook escapement at Pilot Station.

Cumulative 2015	Cumulative 2014	Cumulative 2013	Cumulative 2012
146,859	163,895	136,805	127,555

Table 2. Yukon River Chinook escapement at Eagle sonar site.

Cumulative 2015	Cumulative 2014	Cumulative 2013	Cumulative 2012
84,015	63,462	30,752	34,747

5. Wildlife Resource Monitoring Program Needed

The Council desires to establish a wildlife resource monitoring program similar to fisheries for the Federal Subsistence Management Program, especially for community harvests. Harvest reporting is critical, showing how much wildlife resources are used locally. The lack of such wildlife resource monitoring data jeopardizes federally qualified subsistence users by endangering the opportunity for harvest. Council members believe it is no longer acceptable to rely heavily on the Alaska Department of Fish and Game Division of Subsistence to produce wildlife research because the State has been losing subsistence funding. Furthermore, the data provided by the State is often outdated and ill-suited to informing timely resource management decisions. This highlights the need for establishing a wildlife resource monitoring program

developed with dedicated funding for wildlife research and community harvest reporting. Such a wildlife resource monitoring program should be operated in a scientifically defensible and community-based participatory manner, where harvest surveys or other studies could engage members of the community and outside researchers alike.

Councils have called for the establishment of a wildlife resource monitoring program 7 times over the past 10 years as documented in annual reports submitted to the Board. The Councils' requests to establish a wildlife resource monitoring program aligns with the findings of the Secretarial Review. In 2009, the Secretaries of the Interior and Agriculture announced a review of the Federal Subsistence Management Program, acknowledging that it was no longer temporary, and stating that there was value in examining the program. Their stated goals were to look ahead to plan for the future of the program to ensure that it is best serving rural Alaskans and that the letter and spirit of Title VIII of ANILCA are being met. The review began in November 2009, and preliminary recommendations were released in August 2010. A pertinent recommendation included in the Secretarial Review stated:

8. At the request of the Director of the Fish and Wildlife Service and under Departmental procedures, review and submit recommendations for Departmental consideration of the annual budget for the Federal subsistence program;

The recommendation specified the need for "Implementing Wildlife Monitoring Studies." The status of implementing this recommendation is pending additional funding. Establishing a wildlife resource monitoring program should not diminish the funding utilized by the Fisheries Resource Monitoring Program. Thus, the Council asks the Board to ask the Secretaries to advocate for dedicated funding to establish a wildlife resource monitoring program for wildlife and community harvest reporting issues.

Response:

The Board supports the creation of a wildlife resource monitoring program (WRMP) and agrees that such a program would aid in collecting data and developing studies specifically geared toward investigating and reporting wildlife subsistence needs.

The limit thus far in creating a dedicated wildlife research program has been funding. OSM is pursuing options for funding a WRMP, but no dedicated source of monies is currently available. Until such a funding mechanism is secured, it will not be possible to create a WRMP.

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,

Tim Towarak
Chair

Enclosure

cc: Western Interior Alaska Subsistence Regional Advisory Council
Federal Subsistence Board
Interagency Staff Committee
Eugene R. Peltola, Jr., Assistant Regional Director, OSM
Stewart Cogswell, Acting Deputy Assistant Regional Director, OSM
Carl Johnson, Council Coordination Division Chief, OSM
Melinda Burke, Subsistence Council Coordinator, OSM
Administrative Record

Louis Green, Chair
Seward Peninsula Subsistence Regional Advisory Council
U.S. Fish & Wildlife Service, Office of Subsistence Management
1101 East Tudor Road, MS 121
Anchorage, Alaska 99503

Dear Chairman Green:

This letter responds to the Seward Peninsula Subsistence Regional Advisory Council's (Council) fiscal year 2015 Annual Report. The Secretaries of the Interior and Agriculture have delegated to the Federal Subsistence Board (Board) the responsibility to respond to these reports. The Board appreciates your effort in developing the Annual Report. Annual Reports allow the Board to become aware of the issues outside of the regulatory process that affect subsistence users in your region. We value this opportunity to review the issues concerning your region.

1. Fisheries Resource Monitoring Program (FRMP)

The Council appreciated the Office of Subsistence Management (OSM) presentation on the FRMP at its October 14-15, 2015 meeting in Nome. OSM staff agreed to submit our concerns and recommendations to the FRMP program lead. The Council stressed its frustration over the lack of federal land in the area available for project approval, despite the fact that resources across jurisdictions are needed for subsistence. Migratory species such as caribou and fish should receive funding for research for migratory patterns on the Seward Peninsula, wherever they occur.

Recommendations: The Council recommends the FRMP adopt an ecosystem approach for funding approval, and would also appreciate OSM staff assistance with identifying areas or subjects with the required Federal nexus so that they can be incorporated into the region's Priority Information Needs for the Fisheries Resource Monitoring Program.

Response:

The Mission of the Fisheries Resource Monitoring Program (FRMP) is to identify and provide information needed to sustain subsistence fisheries on Federal public lands for rural Alaskans through a multidisciplinary collaborative program. The FRMP is administered by the Office of Subsistence Management (OSM). Projects are selected for funding under the Monitoring Program through an evaluation and review process that is designed to advance projects that are strategically important for the Federal Subsistence Management Program, technically sound, administratively competent, promote capacity building and are efficient. The FRMP is

intended to be a coordinated resource monitoring program which adds to, is consistent with, and does not duplicate existing efforts by government agencies and organizations already engaged in assessment of subsistence fisheries and subsistence fishery resources.

The concerns forwarded by the Seward Peninsula Subsistence Regional Advisory Council (SPSRAC) will be addressed by the FRMP program and the Technical Review Committee (TRC) in early fall. The Office of Subsistence Management (OSM) is currently assisting working groups with development of Priority Information Needs (PIN) potential project ideas. A long standing concern of the SPSRAC is the lack of federal land to develop a project and meet the requirements of the FRMP. The FRMP program was designated to be used on Federal lands and have a Federal nexus. The OSM always strives to meet subsistence fisheries needs and be as creative as possible, within the intent and scope of the FRMP. The original guidelines were put in place for Federal lands only in order to eliminate duplicative efforts of other funding programs and to protect from excessive broadening of scope that would diminish the overall efforts in any one area. The OSM will continue to work with the SPSRAC to find creative solutions to subsistence questions, through the FRMP or other funding mechanisms.

2. Ownership/Management of Reindeer Herds

The Council would like the Board to know that reindeer herds have become a critical subsistence resource for residents on the Seward Peninsula, particularly given the continued downward spiral of ungulate populations such as musk ox, caribou, and moose. The Council needs clarification about who is responsible for managing reindeer herds in the region and believes the Federal government made a promise to keep herds going for the local people. The communities of Saint Michael and Stebbins have community herds and would like for the Board to recognize these herds as subsistence resources. There used to be as many as 35,000 reindeer but locals now believe current populations are between 5,000-10,000 animals. Communities do not have the resources to count reindeer but would like a census to determine the current population of the Stebbins/St. Michael and Katcheak herds. The Council has heard from many communities that food security is a major issue and with some assistance, reindeer herds could alleviate some of these concerns.

Response:

Reindeer are privately owned and are defined as livestock in both Federal and State regulation. The authority of the Board is limited to the administration of the subsistence taking and uses of fish and wildlife on public lands. It does not have any management authority for reindeer, as Section 803 of ANILCA defines subsistence uses as “the customary and traditional uses by rural residents of **wild** renewable resources...” (emphasis added). As such, they will never be managed as a subsistence species. However, the Board recognizes that reindeer herding has historical and cultural significance and that it can be a locally important food resource. As a result, the Board does consider the impact to reindeer herding activities when evaluating proposed regulation changes. This is reflected in the Board’s April 2016 decisions on WP16-37 and WP16-45, which limited the expansion of an existing caribou hunt area due to its proximity to active reindeer grazing ranges.

While Federal agencies bear no responsibility for the management of individual reindeer herds, including activities related to estimating herd size, Federal and State agencies do have a role in monitoring reindeer grazing activities on public lands on the Seward and Baldwin Peninsulas. Specifically, the Bureau of Land Management (BLM), the National Park Service (NPS), and the Alaska Department of Natural Resources (DNR) are responsible for administering reindeer grazing permits on public lands in these areas. Federal agencies also provide some technical support. In addition, the Natural Resource Conservation Service (NRCS) is available to provide technical assistance to reindeer herders, when requested. These roles and responsibilities are outlined in a 2010 Memorandum of Agreement among BLM, NPS, DNR and NRCS concerning management of reindeer grazing permits in Northwestern Alaska.

3. Federalizing the Yukon River

Rural residents of the Stebbins have a customary and traditional use determination for Yukon River salmon. The Council is greatly concerned about current management of Chinook Salmon on the Yukon River, and would like the fisheries system to be federalized similar to how it was for the Kuskokwim River in 2014 and 2015. Food security is an inherent guarantee of Title VIII of ANILCA and the federal government has an obligation to ensure that subsistence needs are met for the communities that depend on the salmon.

Response:

There are three mechanisms available to address this issue: a regulatory proposal, a special action request, and extra-territorial jurisdiction. For either a proposal or special action, OSM staff would also have to conduct a Section 804 analysis to determine what communities were eligible to harvest, like with the Kuskokwim River. But even with the special actions that have been implemented on the Kuskokwim, the periods of purely federal management have been limited. However, the geography of the Yukon is quite distinct from the Kuskowkim in that there is more of a mixture of State and Federal waters. Fisheries special actions were submitted in 2015 to take action similar to that on the Kuskokwim, but they were not accepted by the Board. In order to “federalize” the entire reach of the Yukon River, the Federal government would have to take control of state waters. This is done through exercising extra-territorial jurisdiction. It is worth noting, however, that despite several petitions, the Secretaries of the Interior and Agriculture have never exercised such authority in the history of Federal subsistence management. We are enclosing information that relates to each of these options.

4. Guided Hunting of Moose in Unit 22E

The ADF&G area biologist Tony Gorn reported that moose in Unit 22E are stabilized and reproducing, but still at very low densities. Mr. Gorn indicated that research shows moose migrating back and forth between Units 22D and 22E. The Council is very concerned about non-resident hunting of moose being allowed in this region, particularly given the shortage of moose in communities such as Teller. The Council has requested that OSM staff prepare a proposal to the Alaska Board of Game for its Interior Alaska cycle to shut down non-resident hunting in the western portion of Unit 22D.

Response:

On behalf of the Council, a proposal was submitted to the Alaska Board of Game for consideration during their 2016/2017 meeting cycle (Log Number EG-F16_035). The proposal requests that the Board of Game close non-resident moose hunting in Units 22D remainder and Unit 22E (RM855), due to low moose density and uncertainty regarding the relationship between changing moose densities and distributions in Units 22D and 22E. Proposals for Unit 22 are scheduled to be deliberated by the Board of Game at their Arctic and Western Region meeting in Bethel, January 6 – 9, 2017.

5. Climate Change and Baseline Studies

The Council is alarmed by changing weather and water temperatures, impacts on salmon populations and the current lack of comparative baseline data. Communities have reported sightings of dead and floating salmon, which could be caused by increased water temperatures. The Council is troubled that few data exist on disease and invasive species, extreme population shifts such as the crowding of sockeye in Salmon Lake, and the overall health of the ecosystem.

Response:

The Board shares the Council's concern over the impact of climate change on fish, wildlife, plants, access, and traditional food harvest. Through the Fisheries Resource Monitoring Program, the Board has continued to seek research proposals that fund projects addressing changes in subsistence fishery resources in the context of climate change. One example is a Northern Alaska Region project that was funded through the 2016 Fisheries Resource Monitoring Plan to study changes in harvest and abundance of salmon and nonsalmon species in the Meade River. The primary object of the study is to document changes in harvest of subsistence users and establish baseline information that can be used to monitor fish populations over time.

6. Extirpation of Chinook Salmon

The Council believes that Chinook Salmon have now been extirpated in some parts of the region, particularly near Teller. The Council is interested in how Chinook Salmon might be restored to the region through a formal reintroduction program.

Response:

The Board recognizes the concern and validity of the need to help protect the wild stocks of Chinook Salmon to the Seward Peninsula near Teller. The only available avenue through the Federal Subsistence Management Program for funding any research is the Fisheries Resource Monitoring Program. However, that program would not apply to this situation as it does not allow funding opportunities for projects that include formal stocking of fish. Additionally, the waters near Teller are not Federal waters and thus not eligible. Anyone who would wish to pursue research on this issue should contact the Alaska Department of Fish and Game.

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 Seward Peninsula Region are well represented through your work.

Sincerely,

Tim Towarak
Chair

Enclosures

cc: Seward Peninsula Subsistence Regional Advisory Council
Federal Subsistence Board
Interagency Staff Committee
Eugene R. Peltola, Jr., Assistant Regional Director, OSM
Stewart Cogswell, Acting Deputy Assistant Regional Director, OSM
Carl Johnson, Council Coordination Division Chief, OSM
Karen Deatherage, Subsistence Council Coordinator, OSM
Administrative Record



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

Federal Subsistence Board Informational Flyer



Forest Service

Contact: Outreach Coordinator
(907) 786-3888 or (800) 478-1456

How to Submit a Proposal to Change Federal Subsistence Regulations

Alaska residents and subsistence users are an integral part of the Federal regulatory process. Any person or group can submit proposals to change Federal subsistence regulations, comment on proposals, or testify at meetings. By becoming involved in the process, subsistence users assist with effective management of subsistence activities and ensure consideration of traditional and local knowledge in subsistence management decisions. Subsistence users also provide valuable wildlife harvest information.

A call for proposals to change Federal subsistence fishing regulations is issued in January of even-numbered years and odd-numbered years for wildlife. The period during which proposals are accepted is no less than 30 calendar days. Proposals must be submitted in writing within this time frame.

You may propose changes to Federal subsistence season dates, harvest limits, methods and means of harvest, and customary and traditional use determinations.

What your proposal should contain:

There is no form to submit your proposal to change Federal subsistence regulations. Include the following information in your proposal submission (you may submit as many as you like):

- Your name and contact information (address, phone, fax, or E-mail address)
- Your organization (if applicable).
- What regulations 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.”
- Write the regulation the way you would like to see it written in the regulations.
- Explain why this regulation change should be made.
- You should provide any additional information that you believe will help the Federal Subsistence Board (Board) in evaluating the proposed change.

You may submit your proposals by:

1. By mail or hand delivery to:
Federal Subsistence Board
Office of Subsistence Management
Attn: Theo Matuskowitz
1011 E. Tudor Rd., MS-121
Anchorage, AK 99503
2. At any Federal Subsistence Regional Advisory Council meeting (A schedule will be published in the Federal Register and be announced statewide, bi-annually, prior to the meeting cycles)
3. On the Web at <http://www.regulations.gov>

Submit a separate proposal for each proposed change; however, do not submit the same proposal by different accepted methods listed above. To cite which regulation(s) you want to change, you may reference [50 CFR 100](#) or [36 CFR 242](#) or the proposed regulations published in the Federal Register: <http://www.gpoaccess.gov/fr/index.html>. All proposals and comments, including personal information, are posted on the Web at <http://www.regulations.gov>.

For the proposal processing timeline and additional information contact the Office of Subsistence Management at (800) 478-1456/ (907) 786-3888 or go to <http://www.doi.gov/subsistence/proposal/submit.cfm>.

How a proposal to change Federal subsistence regulations is processed:

1. Once a proposal to change Federal subsistence regulations is received by the Board, the U.S. Fish and Wildlife Service, Office of Subsistence Management (OSM) validates the proposal, assigns a proposal number and lead analyst.
2. The proposals are compiled into a book for statewide distribution and posted online at the Program website. The proposals are also sent out the applicable Councils and the Alaska Department of Fish and Game (ADF&G) and the Interagency Staff Committee (ISC) for review. The period during which comments are accepted is no less than 45 calendar days. Comments must be submitted within this time frame.
3. The lead analyst works with appropriate agencies and proponents to develop an analysis on the proposal.
4. The analysis is sent to the Councils, ADF&G and the ISC for comments and recommendations to the Board. The public is welcome and encouraged to provide comments directly to the Councils and the Board at their meetings. The final analysis contains all of the comments and recommendations received by interested/affected parties. This packet of information is then presented to the Board for action.
5. The decision to adopt, adopt with modification, defer or reject the proposal is then made by the Board. The public is provided the opportunity to provide comment directly to the Board prior to the Board's final decision.
6. The final rule is published in the Federal Register and a public regulations booklet is created and distributed statewide and on the Program's website.

A step-by-step guide to submitting your proposal on www.regulations.gov:

1. Connect to www.regulations.gov – there is no password or username required.
2. In the white space provided in the large blue box, type in the document number listed in the news release or available on the program webpage, (for example: FWS-R7-SM2014-0062) and select the light blue “Search” button to the right.

3. Search results will populate and may have more than one result. Make sure the Proposed Rule you select is by the U.S. Fish and Wildlife Service (FWS) and **not** by the U.S. Forest Service (FS).
4. Select the proposed rule and in the upper right select the blue box that says, "Comment Now!"
5. Enter your comments in the "Comment" box.
6. Upload your files by selecting "Choose files" (this is optional).
7. Enter your first and last name in the spaces provided.
8. Select the appropriate checkbox stating whether or not you are providing the information directly or submitting on behalf of a third party.
9. Fill out the contact information in the drop down section as requested.
10. Select, "Continue." You will be given an opportunity to review your submission.
11. If everything appears correct, click the box at the bottom that states, "I read and understand the statement above," and select the box, "Submit Comment." A receipt will be provided to you. Keep this as proof of submission.
12. If everything does not appear as you would like it to, select, "Edit" to make any necessary changes and then go through the previous step again to "Submit Comment."

Missing out on the latest Federal subsistence issues? If you'd like to receive emails and notifications on the Federal Subsistence Management Program you may subscribe for regular updates by emailing fws-fsb-subsistence-request@lists.fws.gov. Additional information on the Federal Subsistence Management Program may be found on the web at www.doi.gov/subsistence/index.cfm or by visiting www.facebook.com/subsistencealaska.



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

Federal Subsistence Board Informational Flyer



Forest Service

Contact: Outreach Coordinator
(907) 786-3888 or (800) 478-1456

How to submit a Special Action Request to the Federal Subsistence Board

The regulatory cycle for changes to fish/shellfish and wildlife regulations take place every two years. A call for proposals to change fishing regulations is issued in January of even numbered years and odd numbered years for wildlife. A Special Action Request is an out-of-cycle change in a season, harvest limit, or method of harvest. Special Actions are taken when unusual situations arise, such as a significant change in resource abundance that could not reasonably have been anticipated. The Federal Subsistence Board may take a Special Action to restrict, close, open, or reopen the taking of fish and wildlife on Federal public lands and waters. Such actions are taken to ensure the continued viability of a particular fish or wildlife population, to ensure continued subsistence use, or for reasons of public safety. These guidelines and requirements can be found in [36 CFR 242.19](#) and [50 CFR 100.19](#).

To submit a Special Action request, please provide the following information:

- Name
- Address
- Telephone number
- Fax number (if applicable)
- E-mail address
- Organization (if applicable)
- Describe the action you are requesting; reference the current regulations you wish to change
- List if there have been unusual or significant changes in resource abundance or unusual conditions affecting harvest opportunities that could not reasonably have been anticipated and that potentially could have significant adverse effects on the health of fish and wildlife populations or subsistence users
- State if requested action is to ensure the continued viability of a fish or wildlife population, to continue subsistence uses of fish or wildlife, or for public safety reasons
- State the extenuating circumstances that necessitate a regulatory change before the next regulatory review

How a Special Action request is processed:

1. A Special Action that is 60 days or less in duration is an emergency special action. A special action lasting 61 days or more is a temporary special action.

2. Special Actions are assigned to an analyst who works with the requestor and field staff to develop a recommendation to the Federal Subsistence Board.
3. The analysis and recommendation is presented to the Interagency Staff Committee (ISC), the affected Regional Advisory Council (Council) chair(s), and the Alaska Department of Fish and Game (ADF&G).
4. If the request is a temporary special action, a public meeting is held in the affected area(s) to allow for public comment.
5. If the timing of a regularly scheduled Council meeting permits without incurring undue delay, the Board **may** seek Council recommendations on proposed Emergency Special Actions.
6. If timing of a regularly scheduled Council meeting permits without incurring undue delay, the Board **will** seek Council recommendations on proposed Temporary Special Actions.
7. Prior to taking any action the Board (or ISC) will consult with ADF&G and the chairs of the affected Councils.
8. If there is unanimous consent of the ISC, the Assistant Regional Director for the Office of Subsistence Management may approve the request.
9. If there is not unanimous consent of the ISC the analysis goes to the Board. The decision to adopt, adopt with modification or reject is then made by the Board.
10. Once a decision is made, a response letter, and a copy of the complete analysis and recommendations, is sent to the requesting proponent with a copy sent to the affected Council chair(s), State Federal Liaison Team Lead and Federal and State law enforcement.
11. If needed, the OSM subsistence outreach coordinator or the Federal agency requesting the Special Action will prepare a news release.

Submit your request by:

Mail:

Office of Subsistence Management
Attn: Subsistence Policy Coordinator
1011 East Tudor Road, Mail Stop 121
Anchorage, Alaska 99503

Fax: (907) 786-3898

E-mail: subsistence@fws.gov

The Federal Subsistence Management Program website link to this information may be found here:
http://www.doi.gov/subsistence/proposal/special_action/index.cfm

Missing out on the latest Federal subsistence issues? If you'd like to receive emails and notifications on the Federal Subsistence Management Program you may subscribe for regular updates by emailing fws-fsb-subsistence-request@lists.fws.gov. Additional information on the Federal Subsistence Management Program may be found on the web at www.doi.gov/subsistence/index.cfm or by visiting www.facebook.com/subsistencealaska.

FEDERAL SUBSISTENCE BOARD PROCEDURES ADDRESSING PETITIONS FOR SECRETARIAL EXTENSION OF JURISDICTION FOR THE IMPLEMENTATION OF A FEDERAL SUBSISTENCE PRIORITY

The US Code Title 5 Section 553(e); 7 CFR 1.28; and 43 CFR 14 allow citizens to petition the Secretaries of the Interior and Agriculture (Secretaries). The Secretaries will accept for consideration petitions to exert authority over hunting, fishing, or trapping activities occurring on non-Federal lands when such petitions indicate that those activities may be interfering with subsistence hunting, fishing, or trapping on the Federal public lands and waters to such an extent as to result in a failure to provide the subsistence priority as specified in Title VIII of the Alaska National Interest Lands Conservation Act.

The Secretaries carefully review each case and use a very high threshold when making their decision whether to extend Federal jurisdiction. Petitioners should submit sufficient facts and/or analytic standards to document both the failure to maintain a subsistence priority and how the failure relates to activities occurring off of Federal lands.

The Federal Subsistence Management Regulations for Public Lands in Alaska (36 CFR Part 242 and 50 CFR Part 100, §____.10) clarify that the Secretaries have not delegated the authority to restrict or eliminate activities occurring on non-Federal lands to the Federal Subsistence Board (Board). However, §____.10(d)(4)(xvii) of those regulations gives the Board the authority to evaluate whether activities on non-Federal lands may interfere with subsistence activities on Federal public lands or waters, to consult with the State of Alaska, the Regional Councils, and other Federal agencies, and to make recommendations to the Secretaries.

The Board will utilize the following procedures and any additional directions provided by the Secretaries when developing recommendations on a request for extension of Federal jurisdiction.

PROCEDURES

1. Petitions should be addressed to the Secretaries of the Interior and Agriculture as follows:

Secretary of the Interior and Secretary of Agriculture
c/o Chair, Federal Subsistence Board
U.S. Fish and Wildlife Service, Office of Subsistence Management
1101 East Tudor Road, MS 121
Anchorage, AK 99503-6199

2. Each petition must clearly identify the affected subsistence activity, the Federal public lands or waters where that activity occurs, and how the subsistence priority has been harmed so as to result in a failure. Each petition should present substantial evidence demonstrating that the failure of the subsistence priority is specifically due to a hunting, fishing, or trapping activity that is occurring off of Federal public lands or waters. The information should describe what the interfering activity is, where and when it is taking place, and how it is causing the failure of the subsistence priority on the Federal public lands and waters.
3. Each petition should describe the desired result from Secretarial extension of jurisdiction and propose Federal regulations which would accommodate the subsistence priority.
4. The Board, upon receipt of such a petition, will forward the petition to the Secretaries, notify the State of Alaska and affected Regional Council(s), and may issue a notice to the general public of the request for extension of Federal jurisdiction.
5. If the Secretaries believe that public comment on the issue or extensive analysis will aid in consideration of the petition, they may request the Federal Subsistence Board to hold public meetings to solicit comments and to develop a more detailed analysis of the issue.
6. If directed to do so by the Secretaries, the Board and staff may conduct additional research and assemble information that assists in a thorough analysis. In developing their recommendation to the Secretaries, the Board may meet in public session and accept testimony on the petition.
7. Following review of all information, staff analyses, and public comments, the Board will forward their confidential recommendation to the Secretaries.

Following receipt of a recommendation from the Board, the Secretaries will promptly notify the petitioners of their final decision relative to the petition. A Secretarial decision constitutes the final administrative remedy for any petition.

Approved by the Federal Subsistence Board on July 18, 2005.

Sue Entsminger, Chair
Eastern Interior Alaska Subsistence Regional Advisory Council
c/o U.S. Fish & Wildlife Service
Office of Subsistence Management
1101 East Tudor Road, MS 121
Anchorage, Alaska 99503

Dear Chairwoman Entsminger:

This letter responds to the Eastern Interior Alaska Subsistence Regional Advisory Council's (Council) fiscal year 2015 Annual Report. The Secretaries of the Interior and Agriculture have delegated to the Federal Subsistence Board (Board) the responsibility to respond to these reports. The Board appreciates your effort in developing the Annual Report. Annual Reports allow the Board to become aware of the issues outside of the regulatory process that affect subsistence users in your region. We value this opportunity to review the issues concerning your region.

1. Fall chum management on the Porcupine River

The Council believes that fall Chum Salmon should be managed more carefully so that the commercial fisheries harvest on the lower Yukon River does not reach levels that will adversely impact subsistence needs and compromise escapement goals. This year subsistence harvest of fall Chum was closed on the upper Yukon River and rural residents in this area did not have any harvest of fall Chum due to the run return not being as strong as forecasted prior to the prosecution of the commercial fishery.

While the Council appreciated the efforts of managers to meet with affected communities to discuss this subsistence fishery closure, there are rural residents who live remotely on the Porcupine River who depend extensively on fall Chum for subsistence but were not consulted about the closure. Council members who live in the area noted it caused great hardship for these remote residents who were unable to harvest fall Chum. Fall Chum is an important subsistence food, whether to feed families, provide food for dog teams, or use for bait on trap lines; few other resources are available at their remote residences as a replacement. The Council recommends that, at a minimum, if fall Chum Salmon is closed to subsistence harvest again in the future that some sort of permit system be in place whereby the remote residents could still have some small harvest to provide for basic needs. The Council notes that if the few people who live remotely on the Porcupine and other tributaries to the Yukon were granted permits to fish in time of conservation closures, it would help them greatly but likely not affect the overall escapement by their harvest of what might amount to just a few hundred fish at most.

Response:

The Board recognizes the need to help protect subsistence users through ANILCA Title VIII. Delegation of authority to a Federal in-season Manager is established pursuant to 36 C.F.R. 242.10(d)(6) and 30 C.F.R. 100.10(d)(6), which states, “The Board may delegate to agency field officials the authority to set harvest and possession limits, define harvest areas, specify methods or means of harvest, specify permit requirements, and open or close specific fish or wildlife harvest seasons within frameworks established by the Board.” It is the intent of the Board that subsistence management by Federal officials be coordinated with the Alaska Department of Fish and Game (ADF&G) and involves Regional Advisory Council representatives to conserve healthy fish and wildlife populations while providing for subsistence uses. Currently the best way for subsistence users to modify or change current regulations governing fall Chum salmon is to submit a regulatory proposal. During this process the proponent recommends either changing a current regulation or proposing a new regulation to be adopted. This process allows subsistence users a chance to voice their ideas on regulations to further allow more opportunity for subsistence uses. Additionally, for more immediate action, people can also submit special action requests. Limiting harvest to residents of specific communities would also require a Section 804 analysis. Information flyers are enclosed that can be shared with your communities on how to submit proposals and special action requests.

The Board recognizes the need to allow more opportunity for the Eastern Interior users to harvest more fall Chum Salmon in their region. The Board recognizes that during restrictive times, closures are necessary for the preservation of certain stocks of fish. This limits the opportunity for subsistence users to harvest much needed food resources for themselves, dogs, and bait for trapping. If the Council or the public wishes to expand opportunity for the small villages in your region to harvest more fall Chum Salmon, then pursuing either special actions or regulatory proposals as suggested above would be available options.

2. Inclusion of Traditional Ecological Knowledge in proposal analyses

The Council has observed that few of the wildlife proposal analyses that were reviewed this year included much information on local or Traditional Ecological Knowledge. The Council feels consultation with rural communities and affected subsistence hunters and fishers would greatly inform regulatory proposal analyses and ensure the subsistence users’ knowledge of the local area and resources were incorporated into consideration of all options and effects of the proposal. Importantly, local subsistence hunters will have ongoing observations and experience with the resources and the environment, as well as interaction of other aspects such as social and cultural elements of the harvest, timing, travel and access to hunt areas, preparation and preservation of the fish or meat, and interaction with other subsistence resources.

The Council suggests that the tribes and communities affected by the proposal should be engaged earlier as part of the analysis process rather than conducting tribal consultation after the analysis is complete. The Council also recommends that analysts call upon Council members who are knowledgeable about the resource and incorporate their information into the analysis. Also Council members can often recommend key contacts in their community or region who may be interested in contributing their knowledge to help inform the analysis. The Council

feels these efforts to connect with the subsistence users themselves will better inform the analyses and lead to more effective, responsive regulations as well as serve to better engage rural residents in the Federal Subsistence Management Program and public process.

Response:

The Board and recognizes the importance of traditional ecological knowledge (TEK) in proposal analyses and the value of this knowledge in the decision making process. Federal staff also recognizes the critical role of traditional ecological knowledge in analyses. Federal analysts strive to provide a thorough discussion of social and cultural information, which may include TEK in all analyses. All regulatory analyses are supported by written reports containing sociocultural information concerning the harvest and use of wild resources by rural communities. These analyses are still in draft form when submitted to the Councils for review. Additionally, as you are aware, Federal staff rely on Regional Advisory Councils and local subsistence users to provide sociocultural information that may not be available in written reports. During the year, staff attend and participate in meetings concerning rural communities and uses of wild resources throughout the state. This ongoing involvement helps ensure that Federal staff are familiar with emerging and ongoing regulatory issues, including knowledge held by local subsistence users. Additionally, staff hear and take note of public comments provided at Council meetings. This information is also incorporated into the final versions of the proposal analyses that are presented to the Board.

The Board will continue to encourage Federal staff and Council Coordinators to assist Regional Advisory Councils in seeking information from knowledgeable people within local communities and facilitating discussions regarding regulatory issues and other topics of concern to subsistence users. The Board appreciates and welcomes the Council's feedback about additional opportunities and mechanisms to more meaningfully engage with traditional knowledge in the future.

The Board is also committed to meaningful tribal consultation. This process itself is designed as a forum for dialogue about a myriad of issues, including traditional ecological knowledge and other forms of sociocultural knowledge. Opportunity for tribal consultation about regulatory proposals occurs before proposal analyses are finalized. Non-confidential information provided through tribal consultation is incorporated into analyses before they are submitted to Regional Advisory Councils or the Board so that this information can inform recommendations and decision making. Additional opportunities for tribal consultation are provided throughout the regulatory process, including at Council and Board meetings.

3. Tribal Consultation and Active Participation of hunters in Council meetings

The Council has reviewed and heard reports on the Federal Subsistence Board's Tribal Consultation Policy and process and is pleased there is an effort to communicate and consult with tribes on Federal subsistence regulatory proposals and policies that affect their communities. However, the Council has not seen the results of this consultation at the Regional Advisory Council meetings. The Council is concerned that no tribal comments or

recommendations were received for many wildlife proposals that would have been of interest to the tribes in the region.

Additionally, the Council sees little opportunity for tribal participation at the Council meetings when the meetings are often held in Fairbanks due to ongoing budget restrictions for holding meetings outside of regional hubs. Teleconference is not an effective means of communicating with rural communities or tribes. The Council wishes to directly engage with the communities it represents. We strongly recommend holding Council meetings in rural communities to get to the “grassroots” and provide opportunity for the subsistence hunters and fishers themselves to participate in the process. The Federal Subsistence Management Program is, after all, described as a “bottom-up program.” Tribal representatives would have an opportunity to participate with the Council directly in person as well when meetings are held in their community or region as often tribes do not have funds to support travel costs to attend meetings when held in the regional hub.

The Council notes that in the past, when the meetings were held in a rural community, there was a very different level of participation with subsistence hunters, fishers, families, elders and youth, all being able to contribute and inform the Council’s decision making. Overall, meeting in the rural communities would make the Federal Subsistence Management Program more accessible to the people it serves and build greater understanding about subsistence as well as provide an opportunity to consult directly with the Tribal Council.

The Council suggests it is better to connect with tribes for consultation by calling them directly and not assuming that an outreach email or fax has been received. Timing of the consultation is important to ensure it does not overlap with important subsistence and other community activities. The Council further suggest as noted in subject number two of this report that consultation with tribes occur in advance of the proposal analysis process so that information or recommendations may be considered for inclusion in the analysis.

Response:

Staff have reported with concern to the Board that there has been little participation in tribal consultation. The Tribal Consultation Implementation Guidelines provide for an annual review, which is coordinated by the OSM Native Liaison. The Board welcomes any suggestions on that process and encourages you to communicate with the Native Liaison those suggestions. During the All Council meeting it was also suggested by the OSM Native Liaison that assistance with the input of new tribal leaders could help to improve updates. Additionally, improvements have been recently made to the tribal contacts database that will hopefully expedite any changes to contact information.

The issue of increased tribal participation at meetings and holding meetings in more remote locations is definitely related. As the Council is aware, the Federal government in general and this program in particular, has been limited by Congressional budget allocations. With the limited budget, and for the foreseeable future, Council meetings must be restricted to hub communities. Hub communities are identified in the enclosed memorandum. However, every 2-3 years, a Council may request to meet in a non-hub community. Through the Council

Coordinator, the Council must provide a cost comparison between the hub community and the desired non-hub community location, plus a written justification and rationale for meeting in that location. Even when the Councils cannot meet in non-hub communities, every opportunity is provided for tribes to participate telephonically. The Board welcomes the Council to provide suggestions to the OSM Native Liaison and its Council Coordinator on how to increase tribal participation at Council meetings.

As for the Council's other suggestions, staff at OSM such as the Native Liaison and Council Coordinators do attempt to follow up initial email or fax contact with phone calls to ensure that the invitations for consultation have been received. It has also been considered to engage in information-sharing earlier in the proposal process in order to possibly incorporate tribal input into proposal analyses.

4. Protection of caribou front runners: "let the leaders pass" – solutions sought

The Council remains concerned about disturbance to caribou and alteration of migration patterns as a result of hunters taking the lead caribou. The overall concern is that caribou are being scattered or dispersed when hunters get in front of the herd and shoot the frontrunners. Based on the experience of Council members and local observations throughout the state, if lead caribou that know the way are shot, it may cause the rest of the herd to stray from their normal migration path. The concern is for the health of the herd and also the hardship on local communities if the herd is scattered or pushed farther from their usual migration routes, requiring local hunters to travel much farther to find the herd.

The Council is aware that this issue is a common concern for other regions and herds across the state as well as on the Canadian migration portion of the Porcupine Caribou Herd. Protecting the lead caribou would benefit the caribou as well as support local hunters and communities.

The Council has brought this concern to the Federal Subsistence Board before, but would like to seek specific support on how to address this issue. As noted further below, the Council would like a commitment from the Federal Subsistence Management Program to help initiate a collaborative hunter outreach and education program which could also include building awareness on the importance of not hunting, disturbing, or deflecting the front of the herd. Further, the Council would like support from Office of Subsistence Management staff to explore regulatory proposal options that may be able to address the concern through hunt restrictions during the caribou migration or other possible avenues to protect the lead caribou on their migratory path.

Response:

As the Council mentioned, allowing lead caribou to establish migration routes without hunting disturbance is a continuing issue across the state. The request to help initiate a hunter outreach and education program for this issue is addressed below.

The Board recommends that the Council identify specific problem areas. While this issue occurs across the state, each situation presents unique challenges and opportunities (i.e. amount and type

of Federal public lands, road access, river access, hunting pressure and harvest, hunting season dates, caribou herd population status and migration patterns, interspersions of Federal public, private, and state lands, etc.). While one broad, sweeping solution would be the simplest, the Board believes this issue is best addressed on a case by case basis.

The Council could also specify the user group to whom any hunt restrictions should apply as regulatory options depend on user group. Actions taken by the Board would only apply to Federally qualified subsistence users on Federal public lands, except for instances where the Board would close hunting to non-Federally qualified users pursuant to its Closure Policy. The Council may need to submit proposals to the Alaska Board of Game in order to affect all hunters and all lands.

The Board also recommends that the Council consult directly with Federal and State land managers. In Unit 23, the National Park Service established a 'delayed entry zone' in the Noatak National Preserve. Within the delayed entry zone, transporters can only transport non-Federally qualified caribou hunters after September 15. The purpose of this zone is to allow a sufficient number of caribou to cross the Noatak River, establishing migration routes and to allow local hunters the first opportunity to harvest caribou in that area. Other management actions used to address this issue include the State's controlled use area around Anaktuvuk Pass and the Noatak Controlled Use Areas along the Noatak River. One possible approach would be to develop a multi-region working group, working with your Council Coordinator to identify other regions that would be interested in participating and developing recommendations. Another could be to conduct a one-day workshop in connection with another resource management meeting to brainstorm and discuss various options, such as occurred during the All Council meeting.

5. Hunter ethics and education to reduce user conflict and promote understanding

The Council has heard many proposals and extensive public discussion over the years that focus on user conflicts among various resource users. The Council feels education and outreach initiatives should be developed to generate better understanding between user groups that hunt and fish common resources on Federal public lands. Proactively providing information may help avoid conflicts that stem from activity in sensitive cultural areas, Alaska Native lands, or lack of awareness of local etiquette and values when outsiders engage in hunting and fishing near rural communities or in traditional hunting areas. The Council would like to see the Federal Subsistence Management Program and its Federal land managers make an effort to develop educational initiatives in collaboration with the State where needed for known conflict/problem areas identified through the Regional Advisory Council meetings or Tribal consultation process. Fostering understanding and respect may help greatly in co-management efforts and reduce stress experienced by some due to conflicts around hunting and fishing activities.

The Council possesses a diverse membership and may be able to assist in developing approaches to education and outreach initiatives. The Council suggests that possible solutions include providing education materials in the Federal and State fish and wildlife regulatory books and/or education flyers that can be distributed along with relevant hunting permits. Information could include maps of Alaska Native lands, local cultural information by region, and notations

regarding local etiquette, such as donation of meat to local communities and elders. Contact information for more details or questions could also be provided.

The Council met with the Western Interior Alaska Subsistence Regional Advisory Council during the winter 2015 meeting cycle and worked jointly to develop ideas and solutions to address these user conflict issues. The Council also discussed these potential collaborative options with Alaska Department of Fish and Game representatives at the same meeting and has been pursuing avenues that could be facilitated by Council member involvement in other resource advisory groups. The Council has also drafted a letter outlining several suggestions, which is enclosed with this report. To have an effective education and outreach program will require the collaboration and support of the Federal Subsistence Management Program. The Councils seeks feedback and confirmation from the Federal Subsistence Management Program on what type of programmatic, technical, and monetary resources the program may be able to contribute to the effort and a plan for possible next steps in order to proceed.

Response:

The Board appreciates the Council's continued ideas and collaborative efforts to develop an education and outreach program that can reduce hunter conflicts in the region. Such a program could particularly help local hunters in rural areas who rely heavily on fish and wildlife resources for subsistence. The Board recognizes that this is a critical concern not only for your Council but several other Councils, including Western Interior.

Member Andy Bassich from Eagle effectively captured and presented the Council's concerns during a facilitated Outreach Challenges session held at the All Council's Meeting in March. The ideas and suggestions from the session will provide a baseline for the development of an OSM outreach strategy to reduce user conflicts and educate local and visiting hunters. A pilot project would be carried out in the Eastern Interior region to test the strategy. Karen Deatherage and Katerina Wessels are OSM council coordinators who have extensive outreach and communications background. They will both be working to initiate a pilot outreach program to address the concerns of Council on this matter. The Board fully supports this effort and looks forward to a successful program.

6. Online submission process for Federal proposals and public comment

As noted previously, the Council held a joint meeting with the Western Interior Alaska Subsistence Regional Advisory Council in winter 2015 and concurs with their expressed frustration on the difficulty to find, navigate, and submit comments or proposals through the Regulations.gov portal. It is very difficult to locate this new system and correct submission portal, as well as links to it through the Federal Subsistence Management Program website. Additionally Regulations.gov is not a satisfactory avenue for submittal due to the bandwidth limitations in rural Alaska and is not accessible or user friendly for many of the individuals, communities, and tribes that are required to utilize it to submit public comments.

The Council requests a standardized, easily downloadable and fillable form to be developed in accordance with Office of Management and Budget requirements that can then be emailed in. An

online link that is simple and straightforward to use would also be helpful. A rural user should have the ability to download, complete, and submit in a straightforward, accessible, and comprehensible manner. It is imperative that when rural residents have an opportunity to comment on or submit a proposal on subsistence regulations that affect rural residents specifically, that regular access to internet and slow bandwidth in rural Alaska is not an impediment.

Response:

The E-Government Act of 2002 requires all Federal agencies to use www.regulations.gov for the submission of comments/proposals for rulemaking. Based on the understanding of limited infrastructure in rural Alaska, the Federal Subsistence Management Program requested waivers to this rule. The Office of Management and Budget (OMB) decided that while the program would still be required to use the www.regulations.gov site, it would also be allowed to accept comments via mail and in-person at Regional Advisory Council meetings. OSM was directed by the OMB to remove the downloadable form that was previously on the program's webpage. The Subsistence Outreach Coordinator for OSM has produced an informational flier that takes a person through the steps to enter a comment or proposal into www.regulations.gov (enclosed). This flyer has been disseminated through various public outreach events and is available on the Federal Subsistence Management Program website.

7. Request for Council representative to participate in resource working groups

The Council requests to have a representative from the Regional Advisory Councils to serve as a point of contact and work with any future planning groups for large Federal policy or program initiatives that affect subsistence. Council members have been involved in similar pre-planning discussions through other working groups and it has been a very positive process to have dialog and share input that helped to fine tune policy and understand the interaction with subsistence. For example, members of the Council who serve on National Park Service Subsistence Resource Commissions have been involved in pre-scoping management discussions. A member of the North Slope Subsistence Regional Advisory Council served on the Tribal Consultation Working Group in helping to develop the Board's Tribal Consultation Policy and related Implementation Guidelines. The Council feels wide-reaching policy initiatives would benefit from Regional Advisory Council participation as part of the scoping process, help build understanding through discussion, and it would also serve to keep the Councils informed so that they are aware and engaged before a new policy is formally proposed.

Response:

Regional Advisory Council members either serve on or participate in various resource management working groups related to subsistence. These currently include the Western Arctic Caribou Working Group, the Kuskokwim River Salmon Management Working Group, and the Dall Sheep Working Group. There are not presently any federal working groups related to subsistence management or resources; however, two Councils (Western Interior and Yukon-Kuskokwim Delta) will soon be forming subcommittees to participate in the Kuskokwim River Partnership Project, which involves the Intertribal Fisheries Commission and the U.S. Fish and

Wildlife Service. As participation in these groups flows from Council membership, the Office of Subsistence Management provides travel funding and logistical support to Council members who attend.

As for scoping of specific agency program or rule making initiatives, the Regional Advisory Councils recently have been involved in the process. Both the National Park Service and the U.S. Fish and Wildlife Service engaged in scoping outreach to all affected Regional Advisory Councils as part of developing their proposed rules related to predator management. How each agency conducts its pre-scoping management is at the discretion of the agency. The Tribal Consultation Working Group you mention was a Board-initiated process, so the Board was able to determine the membership of the group. It continued to rely on that group for the formation of its Alaska Native Claims Settlement Act Consultation Policy and its Tribal Consultation Implementation Guidelines. The Board can, however, encourage other agencies to involve Councils early in the process to the degree possible.

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 Eastern Interior Region are well represented through your work.

Sincerely,

Tim Towarak
Chair

Enclosures

cc: Eastern Interior Alaska Subsistence Regional Advisory Council
Federal Subsistence Board
Interagency Staff Committee
Eugene R. Peltola, Jr., Assistant Regional Director, OSM
Stewart Cogswell TBD, Acting Deputy Assistant Regional Director, OSM
Carl Johnson, Council Coordination Division Chief, OSM
Eva Patton, Subsistence Council Coordinator, OSM
Administrative Record



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

Federal Subsistence Board Informational Flyer



Forest Service

Contact: Outreach Coordinator
(907) 786-3888 or (800) 478-1456

How to Submit a Proposal to Change Federal Subsistence Regulations

Alaska residents and subsistence users are an integral part of the Federal regulatory process. Any person or group can submit proposals to change Federal subsistence regulations, comment on proposals, or testify at meetings. By becoming involved in the process, subsistence users assist with effective management of subsistence activities and ensure consideration of traditional and local knowledge in subsistence management decisions. Subsistence users also provide valuable wildlife harvest information.

A call for proposals to change Federal subsistence fishing regulations is issued in January of even-numbered years and odd-numbered years for wildlife. The period during which proposals are accepted is no less than 30 calendar days. Proposals must be submitted in writing within this time frame.

You may propose changes to Federal subsistence season dates, harvest limits, methods and means of harvest, and customary and traditional use determinations.

What your proposal should contain:

There is no form to submit your proposal to change Federal subsistence regulations. Include the following information in your proposal submission (you may submit as many as you like):

- Your name and contact information (address, phone, fax, or E-mail address)
- Your organization (if applicable).
- What regulations 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.”
- Write the regulation the way you would like to see it written in the regulations.
- Explain why this regulation change should be made.
- You should provide any additional information that you believe will help the Federal Subsistence Board (Board) in evaluating the proposed change.

You may submit your proposals by:

1. By mail or hand delivery to:
Federal Subsistence Board
Office of Subsistence Management
Attn: Theo Matuskowitz
1011 E. Tudor Rd., MS-121
Anchorage, AK 99503
2. At any Federal Subsistence Regional Advisory Council meeting (A schedule will be published in the Federal Register and be announced statewide, bi-annually, prior to the meeting cycles)
3. On the Web at <http://www.regulations.gov>

Submit a separate proposal for each proposed change; however, do not submit the same proposal by different accepted methods listed above. To cite which regulation(s) you want to change, you may reference [50 CFR 100](#) or [36 CFR 242](#) or the proposed regulations published in the Federal Register: <http://www.gpoaccess.gov/fr/index.html>. All proposals and comments, including personal information, are posted on the Web at <http://www.regulations.gov>.

For the proposal processing timeline and additional information contact the Office of Subsistence Management at (800) 478-1456/ (907) 786-3888 or go to <http://www.doi.gov/subsistence/proposal/submit.cfm>.

How a proposal to change Federal subsistence regulations is processed:

1. Once a proposal to change Federal subsistence regulations is received by the Board, the U.S. Fish and Wildlife Service, Office of Subsistence Management (OSM) validates the proposal, assigns a proposal number and lead analyst.
2. The proposals are compiled into a book for statewide distribution and posted online at the Program website. The proposals are also sent out the applicable Councils and the Alaska Department of Fish and Game (ADF&G) and the Interagency Staff Committee (ISC) for review. The period during which comments are accepted is no less than 45 calendar days. Comments must be submitted within this time frame.
3. The lead analyst works with appropriate agencies and proponents to develop an analysis on the proposal.
4. The analysis is sent to the Councils, ADF&G and the ISC for comments and recommendations to the Board. The public is welcome and encouraged to provide comments directly to the Councils and the Board at their meetings. The final analysis contains all of the comments and recommendations received by interested/affected parties. This packet of information is then presented to the Board for action.
5. The decision to adopt, adopt with modification, defer or reject the proposal is then made by the Board. The public is provided the opportunity to provide comment directly to the Board prior to the Board's final decision.
6. The final rule is published in the Federal Register and a public regulations booklet is created and distributed statewide and on the Program's website.

A step-by-step guide to submitting your proposal on www.regulations.gov:

1. Connect to www.regulations.gov – there is no password or username required.
2. In the white space provided in the large blue box, type in the document number listed in the news release or available on the program webpage, (for example: FWS-R7-SM2014-0062) and select the light blue “Search” button to the right.

3. Search results will populate and may have more than one result. Make sure the Proposed Rule you select is by the U.S. Fish and Wildlife Service (FWS) and **not** by the U.S. Forest Service (FS).
4. Select the proposed rule and in the upper right select the blue box that says, "Comment Now!"
5. Enter your comments in the "Comment" box.
6. Upload your files by selecting "Choose files" (this is optional).
7. Enter your first and last name in the spaces provided.
8. Select the appropriate checkbox stating whether or not you are providing the information directly or submitting on behalf of a third party.
9. Fill out the contact information in the drop down section as requested.
10. Select, "Continue." You will be given an opportunity to review your submission.
11. If everything appears correct, click the box at the bottom that states, "I read and understand the statement above," and select the box, "Submit Comment." A receipt will be provided to you. Keep this as proof of submission.
12. If everything does not appear as you would like it to, select, "Edit" to make any necessary changes and then go through the previous step again to "Submit Comment."

Missing out on the latest Federal subsistence issues? If you'd like to receive emails and notifications on the Federal Subsistence Management Program you may subscribe for regular updates by emailing fws-fsb-subsistence-request@lists.fws.gov. Additional information on the Federal Subsistence Management Program may be found on the web at www.doi.gov/subsistence/index.cfm or by visiting www.facebook.com/subsistencealaska.



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

Federal Subsistence Board Informational Flyer



Forest Service

Contact: Outreach Coordinator
(907) 786-3888 or (800) 478-1456

How to submit a Special Action Request to the Federal Subsistence Board

The regulatory cycle for changes to fish/shellfish and wildlife regulations take place every two years. A call for proposals to change fishing regulations is issued in January of even numbered years and odd numbered years for wildlife. A Special Action Request is an out-of-cycle change in a season, harvest limit, or method of harvest. Special Actions are taken when unusual situations arise, such as a significant change in resource abundance that could not reasonably have been anticipated. The Federal Subsistence Board may take a Special Action to restrict, close, open, or reopen the taking of fish and wildlife on Federal public lands and waters. Such actions are taken to ensure the continued viability of a particular fish or wildlife population, to ensure continued subsistence use, or for reasons of public safety. These guidelines and requirements can be found in [36 CFR 242.19](#) and [50 CFR 100.19](#).

To submit a Special Action request, please provide the following information:

- Name
- Address
- Telephone number
- Fax number (if applicable)
- E-mail address
- Organization (if applicable)
- Describe the action you are requesting; reference the current regulations you wish to change
- List if there have been unusual or significant changes in resource abundance or unusual conditions affecting harvest opportunities that could not reasonably have been anticipated and that potentially could have significant adverse effects on the health of fish and wildlife populations or subsistence users
- State if requested action is to ensure the continued viability of a fish or wildlife population, to continue subsistence uses of fish or wildlife, or for public safety reasons
- State the extenuating circumstances that necessitate a regulatory change before the next regulatory review

How a Special Action request is processed:

1. A Special Action that is 60 days or less in duration is an emergency special action. A special action lasting 61 days or more is a temporary special action.

2. Special Actions are assigned to an analyst who works with the requestor and field staff to develop a recommendation to the Federal Subsistence Board.
3. The analysis and recommendation is presented to the Interagency Staff Committee (ISC), the affected Regional Advisory Council (Council) chair(s), and the Alaska Department of Fish and Game (ADF&G).
4. If the request is a temporary special action, a public meeting is held in the affected area(s) to allow for public comment.
5. If the timing of a regularly scheduled Council meeting permits without incurring undue delay, the Board **may** seek Council recommendations on proposed Emergency Special Actions.
6. If timing of a regularly scheduled Council meeting permits without incurring undue delay, the Board **will** seek Council recommendations on proposed Temporary Special Actions.
7. Prior to taking any action the Board (or ISC) will consult with ADF&G and the chairs of the affected Councils.
8. If there is unanimous consent of the ISC, the Assistant Regional Director for the Office of Subsistence Management may approve the request.
9. If there is not unanimous consent of the ISC the analysis goes to the Board. The decision to adopt, adopt with modification or reject is then made by the Board.
10. Once a decision is made, a response letter, and a copy of the complete analysis and recommendations, is sent to the requesting proponent with a copy sent to the affected Council chair(s), State Federal Liaison Team Lead and Federal and State law enforcement.
11. If needed, the OSM subsistence outreach coordinator or the Federal agency requesting the Special Action will prepare a news release.

Submit your request by:

Mail:

Office of Subsistence Management
Attn: Subsistence Policy Coordinator
1011 East Tudor Road, Mail Stop 121
Anchorage, Alaska 99503

Fax: (907) 786-3898

E-mail: subsistence@fws.gov

The Federal Subsistence Management Program website link to this information may be found here:
http://www.doi.gov/subsistence/proposal/special_action/index.cfm

Missing out on the latest Federal subsistence issues? If you'd like to receive emails and notifications on the Federal Subsistence Management Program you may subscribe for regular updates by emailing fws-fsb-subsistence-request@lists.fws.gov. Additional information on the Federal Subsistence Management Program may be found on the web at www.doi.gov/subsistence/index.cfm or by visiting www.facebook.com/subsistencealaska.

Harry Brower, Jr., Chair
North Slope Subsistence Regional Advisory Council
U.S. Fish & Wildlife Service, Office of Subsistence Management
1101 East Tudor Road, MS 121
Anchorage, Alaska 99503

Dear Chairman Brower:

This letter responds to the North Slope Subsistence Regional Advisory Council's (Council) fiscal year 2015 Annual Report. The Secretaries of the Interior and Agriculture have delegated to the Federal Subsistence Board (Board) the responsibility to respond to these reports. The Board appreciates your effort in developing the Annual Report. Annual Reports allow the Board to become aware of the issues outside of the regulatory process that affect subsistence users in your region. We value this opportunity to review the issues concerning your region.

1. Preventing Deflection of Caribou and Food Security Management

The Council addressed the Board last year in its annual report about pressing concerns for food security for communities in the North Slope Region. The Council would like to further address this issue in regards to the current situation with the decline of the Western Arctic and Teshekpuk Caribou Herds. The Council held its fall 2015 meeting in Anaktuvuk Pass and heard extensive testimony from many residents there on the hardships they are experiencing due to both the decline in the caribou herds and shift in the normal migration route that no longer brings caribou close enough to the community to hunt in the past few years.

The Council seeks avenues through the Federal Subsistence Management Program to respond to the situation that the community of Anaktuvuk Pass is faced with, not having met there subsistence needs for several years due to the decline and deflection of the caribou herd. Being an inland Inupiaq community, Anaktuvuk Pass relies extensively on caribou for subsistence and has little access to marine resources and migratory birds or fish that other communities in the North Slope region can rely on when caribou are not as plentiful. Harvest data collected by the Alaska Department of Fish and Game (ADF&G) Subsistence Division confirms that caribou is the predominant subsistence resource and makes up the largest food by weight eaten annually by residents of Anaktuvuk Pass. The Council will be submitting a letter to the Board that shares some of the heartfelt testimony by residents of Anaktuvuk Pass that provides preponderance of evidence of just how critical this subsistence resource is to the community.

Given that caribou specifically is the primary subsistence food that feeds this community, it is imperative to ensure subsistence priority is met. The Council seeks avenues through the Federal Subsistence Management Program to ensure that federal subsistence priority for caribou is met and this also entails ensuring that activities on non-Federal public lands do not deflect caribou from their migratory path through Anaktuvuk Pass. This is a very real matter of food security and the Council seeks the assistance of the Federal Subsistence Program to generate solutions to alleviate the situation.

This is a concern that goes beyond the community of Anaktuvuk Pass. The Council would like to reiterate that access to subsistence resources is an essential aspect of meeting subsistence needs. While the Federal Subsistence Board does not have direct jurisdiction over development or management of non-Federal public lands if caribou are deflected away from communities or subsistence hunt areas, this action affects realizing any subsistence priority over other uses and is detrimental to communities meeting their subsistence needs. The Council seeks to work with the Federal Subsistence Program on solutions to address sources of disturbance to caribou. While some factors driving the decline of the herds may be elusive – disturbance by human activity can readily be mitigated.

Successful examples of policies currently in place to avoid disturbance of migratory routes and subsistence activities can be used as a template for approaches through the Federal Subsistence Management Program. Council members highlight their own experience with their efforts to protect the subsistence whale hunt and the whales themselves from disturbance during the migration. It is now enforceable policy that activities that cause noise or would intercept or interfere with the subsistence hunt are halted until the community harvests whale. Similar policies could also be developed in order to protect subsistence opportunity for the harvest of caribou, even with regard to activities that occur on non-Federal public lands.

Response:

The Board acknowledges the hardship faced by residents of Anaktuvuk Pass due to the lack of accessible caribou near the community. Anaktuvuk Pass is an example of Native community where the local reliance on natural resources, in this case caribou, remains high, and combined with effects of climate change (i.e. increasing frequency of rain on snow events) and difficult economic circumstances, has created a situation which puts their traditional way of life at risk.

Disturbance of caribou during the migration of the Western Arctic and Teshekpuk Caribou herds is an issue the Federal Subsistence Board (Board) has heard about from rural users for many years. However, mitigating human disturbance to lead animals is difficult and would involve the coordinated efforts among local land managers, private land owners, local communities, and agencies responsible for managing caribou on Federal and State lands. The Board encourages efforts by the Councils to submit proposals to the Alaska Board of Game to address some of these issues. Restricting or limiting the use of aircraft, adjusting hunt timing and seasons, and restricting the take of cows during critical caribou migration periods are just a few of the suggestions. The Board took into consideration the situation in Anaktuvuk Pass when considering recent changes to the caribou regulations in Units 24 and 26A, and 26B and is committed to addressing regulatory changes that would increase subsistence opportunity for the residents of Anaktuvuk Pass.

2. Development Impacts and Multi-jurisdiction Cooperation

In follow up on the concerns for food security, the Council would like to revisit some of the concerns that were articulated in the Council's fiscal year 2014 annual report but not fully addressed in the Federal Subsistence Board's reply. There are many factors creating challenges

for subsistence communities to meet their food needs. Changes in the environment are affecting safe travel or access to resources or are changing the timing of the migration or condition of subsistence resources, subsistence fish and wildlife populations are declining, and cost of gas and resources needed to hunt and fish are continuing to rise. In addition, this Council has brought concerns to the Board about the interaction of industrial development and other activities such as remote access transporters for hunters or recreation, and even flights and activities of researchers that have been observed to disturb or deflect important subsistence resources such as caribou.

The Council again asks for understanding and awareness of the interaction of industrial development or transporter flights with subsistence activities. While the Federal Subsistence Management Program does not have direct jurisdiction over development activities and air traffic on the North Slope, impacts to subsistence foods on federal lands is a direct concern of the program in that barriers to migratory routes, disturbance that deflects or stresses animals, or contaminants that may impact subsistence foods all have direct bearing on access, harvest, and safe consumption of important subsistence foods that the Federal program does manage. Additionally, the Federal Subsistence Management Program could be more engaged in ensuring that Federal agencies involved in those activities are properly conducting and executing the analyses required under ANILCA Section 810.

Response:

The Board appreciates the vigilance and extended awareness that the Council has placed on this important topic. As the Board stated in the 2014 Annual Report replies, “the Board is beginning to understand that Alaska Native peoples and other rural residents are discussing food security concepts and issues to help define and articulate how they see current regulations and changing environmental conditions affecting their access to traditional foods.” It remains an integral part of the Council’s responsibilities to make the Board aware of projects, especially Federal undertakings, that have the potential to negatively impact subsistence resources on Federal public lands and that are occurring in your region or that you have received notification of through the ANILCA 810 analysis process. It is important to reiterate that the Board has limited, at best, jurisdiction or authority over Federal undertakings that occur outside of the Federal Subsistence Management Program. However, if there is an undeniable concern from the Council, it is reasonable to expect the Board to consider the concern and if appropriate share that concern with the Secretaries in a similar fashion as the Board ensures the Secretaries are informed when non-Department rulemaking entities develop regulations that may adversely affect Federally qualified subsistence users.

3. Access to Native Allotments within Gates of the Arctic National Park

The Council received testimony from numerous public participants at the fall 2015 meeting in Anaktuvuk Pass about challenges to access their Native allotments within Gates of the Arctic National Park. The absence of travel corridor easements in these areas prevents residents from being able to readily access these allotments which are private land inholdings within the Park. Many allotments are far from the community and accessing the inholdings by some form of motorized transportation is important to maintain cabins and conduct subsistence activities there

which otherwise would require walking for days and having to carry heavy supplies and equipment. These allotments are important to subsistence hunting and other subsistence activities but otherwise are not able to be utilized because of the difficulty of long overland travel.

The Council wishes to bring this issue to the attention of the Federal Subsistence Board and also seeks avenues to assist the community with more information and potential avenues to secure access to their allotments through the National Park Service.

Response:

The National Park Service (NPS) has been conducting ongoing outreach efforts regarding access to Native allotments within Gates of the Arctic National Park. Several park service staff were in attendance at the Council's fall 2015 meeting held in Anaktuvuk Pass and heard the concerns expressed by residents of the community about accessing their Native Allotments within the park. In response park service staff reached out to community members to offer assistance with the right-of-way application process. As part of the outreach an informational flyer was developed (enclosed) and this foundational information on ANILCA Section 1110 which guides this process shared with all. Gates of the Arctic National Park and Preserve staff are committed to working with residents of the community of Anaktuvuk Pass and assist allotment owners with the permit process to access their Native allotments.

In November 2015, an Anaktuvuk Pass resident showed interest in submitting an NPS right-of-way application to access their Native allotment. NPS staff were able to help the interested party with the application and subsequently received an SF299 right of way application from the Anaktuvuk Pass resident in January, 2016 requesting access via Argo to their Native allotment on the John River. NPS staff met with this applicant in Anaktuvuk Pass in February, 2016 to answer any questions that may have arisen regarding the right of way permitting process. At this time NPS staff also shared allotment access information in meetings with another heir to the same allotment, as well as a family member for another Native allotment on the John River. On April 13, 2016, NPS staff presented information regarding Native allotment access to the Naqsrarmiut Tribal Council. Tribal Council members were interested in having another meeting where community members would be able to provide input and share their concerns. The opportunity to have a community meeting came in the form of the Gates of the Arctic National Park Subsistence Resource Commission meeting held in Anaktuvuk Pass on April 26, 2016. Subsistence Resource Commission meetings are open to the public and the right of way applicant was in attendance at this meeting, as well as another Native allotment holder and two tribal council members. The NPS plans on keeping the right of way applicant and her family informed throughout the right of way process.

Additionally, NPS staff provided an update on the Anaktuvuk Pass Native allotment access request to the North Slope Subsistence Regional Advisory Council (Council) at their March 9, 2016 meeting in Anchorage. The information shared at this meeting, the user's guide to accessing inholdings, and the SF299 right of way form are enclosed. As always NPS staff are available for more information or discuss questions and concerns. At the Councils request, NPS staff will provide further updates at the next scheduled meeting of the North Slope Subsistence Regional Advisory Council.

4. Adequate time to conduct Council business and engage with public participation.

The Council requests again more time to conduct Council business and fully engage with public participants. Based on experience, the Council feels strongly that three days is a minimal requirement to be able to convene, share information with each other to be apprised of subsistence knowledge and concerns from throughout the region, hear public and tribal feedback and be able to discuss and fully deliberate critical subsistence issues before making recommendations.

The Council has on numerous occasions felt rushed to take action without the opportunity to fully understand, ask questions, and deliberate with the people we serve in the region and amongst the Council itself. The Council takes to heart the gravity of the potential impacts of the decisions made through the Federal Subsistence Management Program and seeks to carefully and thoroughly consider all aspects before making a recommendation to the Board.

The Council requests that it routinely be permitted to hold three day meetings (as the Southeast Alaska Subsistence Regional Advisory Council always does without seeking special permission) to cover all agenda items thoroughly when it is full of complex proposals or challenging issues. Members of the Council are appointed to serve the subsistence users in the region, and it is critical to have ample time for public involvement and adequate Council deliberation when making fully informed recommendations on regulatory proposals and generating positive solutions to complex subsistence management issues. The Council greatly appreciates that the Office of Subsistence Management has been supportive of meeting in villages in the North Slope region outside of Barrow in order to engage directly with subsistence communities. The Council is very pleased at the broad level of participation, testimony and feedback on subsistence issues when meeting in Nuiqsut and recently in Anaktuvuk Pass. These were important opportunities for the Council to connect with the many and diverse people that attended the meetings; however, the Council received feedback that the very full agenda prevented adequate time to listen and for all who wanted to address the Council on important subsistence issues of the community. The Council requests three day meetings to accomplish its work effectively and for understanding of cultural ways of communication that may take more time to fully engage with the people we are appointed to serve.

Response:

The Board appreciates and understands that the Council desires to have adequate time to conduct its business. The only time that the Office of Subsistence Management has placed any restrictions on time limits in recent years was in FY 2012, when it asked Councils during the winter 2012 meeting cycle to restrict its business to one day. At this point, it is up to the Councils to identify how many days they need to conduct their business, within reason. The typical meeting length for a Council is two days. Meeting length should be determined by the number and complexity of relevant issues to discuss, and OSM will schedule meetings based on that. If the Council has relevant issues that require a longer meeting time for discussion, then it needs to be justified through your Coordinator.

All Councils are provided the tools they need to conduct their business, but they also have a responsibility to move diligently through their agendas. For the most part, all Councils should be able to get through their typical agendas in two days. They should plan accordingly unless, as noted above, a heavy agenda requires additional time. It is also the Board's understanding that this Council has recently engaged in the practice of having a work session the day before in order to understand and prepare for the agenda, and that this has been helpful. The Board encourages the Council to take advantage of that opportunity if it will aid in the completion of its business in a timely manner.

As for the Southeast Alaska Subsistence Regional Advisory Council, it is difficult to compare to that Council. It has thirteen members, represents far more communities, addresses more game management units, and regularly has more complicated issues. And while the Council may regularly have three-day meetings, it uses that time very efficiently and routinely gets through a busy agenda and on time.

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

Sincerely,

Tim Towarak
Chair

Enclosures

cc: North Slope Subsistence Regional Advisory Council
Federal Subsistence Board
Interagency Staff Committee
Eugene R. Peltola, Jr., Assistant Regional Director, OSM
Stewart Cogswell, Acting Deputy Assistant Regional Director, OSM
Carl Johnson, Council Coordination Division Chief, OSM
Eva Patton, Subsistence Council Coordinator, OSM
Administrative Record

An Interim User's Guide to Accessing Inholdings in National Park System Units in Alaska

July 2007

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An Interim User's Guide to Accessing Inholdings in National Park System Units in Alaska July 2007

Notwithstanding any other provisions of this Act, or other law, in any case in which State owned or privately owned land, including subsurface rights of such owners underlying public lands, or a valid mining claim or other valid occupancy is within or is effectively surrounded by one or more conservation system units, national recreation areas, national conservation areas, or those public lands designated as wilderness study, the State or private owner or occupier shall be given by the Secretary such rights as may be necessary to assure adequate and feasible access for economic and other purposes to the concerned land by such State or private owner or occupier and their successors in interest. Such rights shall be subject to reasonable regulations issued by the Secretary to protect the natural and other values of such lands.

Section 1110(b) of the Alaska National Interest Lands Conservation Act

INTRODUCTION

Owners of non-federal lands and holders of valid occupancies that lie within units of the National Park System in Alaska were granted the right of adequate and feasible access to their lands by Section 1110(b) of the Alaska National Interest Lands Conservation Act (ANILCA). This guide presents the process for obtaining an ANILCA 1110(b) Right-of-Way Certificates of Access (RWCAs) from the National Park Service (NPS), and presents other information that may be useful in understanding this subject.

As the stewards of America's National Park System, the NPS has responsibilities to manage public land in ways that protect the values Congress recognized in establishing these parks, monuments, and preserves. The NPS also has the responsibility to faithfully implement Section 1110(b) by working with the owners and valid occupiers of non-federal lands that lie within National Park System units in Alaska, to see that they obtain the access rights they need to use and enjoy their lands. The NPS wants the process of obtaining RWCAs to be as simple and straightforward as possible.

This guide is intended to address all types of access needs to inholdings, from unimproved trails for Off Road Vehicles, to new road construction, to installation of utilities. It also addresses all types of inholdings, from small homesites to tracts that contains thousands of acres.

This guide is considered an “interim” document. It follows the preparation of “draft” guides in 2005 and 2006. Those drafts were distributed for public comment. Public meetings were held, as well as meetings with numerous “stakeholder” groups. Written comments and the comments from those meetings were used to revise the guide. This interim guide will be used by the NPS to begin issuing RWCAs. The experience gained in processing and issuing RWCAs will be used to revise the guide as necessary. It is expected that a final guide will be prepared within two years. There will be opportunities for public input for the final guide.

Definitions of the key terms used in this Access Guide are provided in Appendix A.

Guiding Principles

The following principles will guide the NPS in fulfilling its responsibilities under Section 1110(b) of ANILCA.

- Residents within Alaska's national parks are part of the essential fabric of the parks. We acknowledge their value in providing services to park visitors and continuing traditional lifestyles.
- The NPS wants to see residents and communities within and around parks thrive. The NPS seeks to establish mutually respectful long-term relationships with all of our neighbors.
- ANILCA 1110(b) requires the NPS to give the owners of properties within National Park System units such rights as may be necessary to assure adequate and feasible access to their properties for economic and other purposes.
- ANILCA 1110(b) gives the NPS the responsibility to reasonably regulate access to inholdings to protect natural and other values of National Park System units.
- The NPS recognizes that access is crucial to the use and enjoyment of the non-federal lands in National Park System units in Alaska. The NPS will work with the owners of these non-federal lands and holders of valid occupancies to meet their access needs across NPS lands.
- Documenting ANILCA 1110(b) access rights across park lands provides certainty to the landowner and to the NPS. Certainty of access will allow landowners to make long-term plans and insure that access occurs in ways that minimize effects on park resources.
- The documentation and authorization process should be as quick, simple, inexpensive and enduring as possible. This process should be transparent to the public and fully understood by all NPS managers.
- Access under ANILCA 1110(b) does not affect the status or validity of other access rights under other state and federal authorities (such as RS 2477).
- The NPS will treat all landowners fairly and consistently across the state and over time.

Inholdings and Access

Inholdings are private, state and other non-federal lands or valid occupancies within the boundaries of National Park System units, or are effectively surrounded by one or more conservation system units.

Some National Park System units in Alaska are quite old. The original Mount McKinley National Park was established in 1917, Katmai National Monument was established in 1918, and Glacier Bay in 1925. These parks were generally established from federal public land and included few non-federal parcels.

The majority of Alaska's national park areas were established in 1980 with passage of ANILCA. Coming after years of staking of homesteads, homesites, mining claims, and Native allotments, and passage of laws such as the Alaska Statehood Act and the Alaska Native Claims Settlement Act, the boundaries of the new parks and park expansions included many parcels of private and state land. There are approximately 1,666,500 acres of private, state, and municipal lands within

the boundaries of National Park System units in Alaska. All Alaska parklands are subject to ANILCA 1110(b) provisions.

In 1980, methods of accessing inholdings varied greatly. Today people continue to use many different means to get to their properties. In some cases, private property is along a state road or a park road. In other cases owners reach their property by air or water. There are cases where access across federal land began at some time in the past without a right of way or other authorization. While such use was generally allowed by the federal land managing agency, this did not create a right of way or easement.

Section 1109 of ANILCA recognizes that some owners and occupiers may already have rights of way or easements to their lands. It states “Nothing in this title shall be construed to adversely affect any valid existing right of access.” Such valid existing rights of access most commonly are state highways. The NPS will respect any valid existing rights of access.

Categories of Access

Title XI of ANILCA addresses many types of access, including major systems, like pipelines, highways, and power transmission lines that cross National Park System units in Alaska, as well as other conservation system units. Section 1110(b) of Title XI is specific to access to inholdings. This user’s guide addresses access to non-federal lands where there is a need to cross NPS managed lands.

Section 1110(a) authorizes the public’s use of motorboats, airplanes (fixed-wing), and snowmachines, as well as non-motorized methods, for traditional activities, in National Park System units. Snowmachine access requires adequate snow cover. Access to some inholdings is effectively provided by the means authorized by Section 1110(a). Access by these means generally does not require an authorization from the NPS.

Section 1110(b) and this Access Guide specifically address access to non-federal lands within NPS areas, otherwise known as inholdings. Section 1110(b) is a statutory guarantee that non-federal landowners will be given the rights they need to access their lands, subject to reasonable regulation. Section 1110(b) applies to access to non-federal lands that would require use of an access method not authorized by 1110(a) or would require construction or maintenance of a road, trail, powerline, landing strip, or other access improvements. The NPS will issue ANILCA 1110(b) Right-of-Way Certificates of Access (RWCAs) unless adequate and feasible access to non-federal properties is available using methods that do not require a RWCA.

When is an ANILCA 1110(b) Right-of-Way Certificate of Access not needed?

Generally you do not need a RWCA if: 1) you will be using a motorboat, airplane (fixed-wing), snowmachine or a non-motorized means of travel to access your land; 2) this access does not require construction or maintenance of a facility on national park areas; and 3) there are no other park regulations otherwise restricting or controlling access to the area. Also, a RWCA is not necessary if there is a valid, existing right of way (such as a state highway) to your land, or if there is a designated park road or trail to your land that is open to use by the general public.

When is an ANILCA 1110(b) Right-of-Way Certificates of Access needed?

If the paragraph above does not describe your type of access, then you most likely will need a RWCA. RWCA's to inholdings are usually needed when operating motorized highway vehicles or ORVs on National Park System lands where no designated road or trail exists, or when construction or maintenance of a trail, road, powerline, or a landing strip occur on National Park System lands. Please note that specific park requirements (such as for vessels during the summer in Glacier Bay National Park and Preserve) may apply.

Established Access Routes and Facilities at Wrangell-St. Elias National Park and Preserve

Wrangell-St. Elias is unique among Alaska parks because it contains many more inholdings than any other unit. To evaluate access routes or facilities, existing as of 2006, to land holdings within or effectively surrounded by Wrangell-St. Elias National Park and Preserve, in 2007 the NPS is preparing a programmatic Environmental Assessment (EA) pursuant to the National Environmental Policy Act (NEPA).

In consultation with individual landowners, the NPS will

- Obtain a description of the established access route or facility.
- Visit the site to map or record the route or facility.
- Inventory existing environmental conditions, and assess the sustainability/manageability of the established route or facility.
- Prepare a programmatic EA to evaluate the route and means of access prior to issuing a RWCA.

The programmatic EA will document the footprint of the established access, identify reasonable, sustainable maintenance options available to the landowner, and provide guidance to mitigate and/or avoid unnecessary impacts of the access route or facility. The authorization process should generally be straightforward for access routes and facilities that can be maintained within the established footprint in their present condition and character, with negligible to minor new impacts on park resources and values. Once the programmatic EA is completed, RWCA's will be issued for qualifying routes and facilities.

Some existing access facilities may not be sustainable, and may require extensive construction, realignment and/or investigation of alternative access means because of ongoing or potential new environmental impacts. Addressing these more complex access cases and any proposed new access route or facility will require a separate environmental document (EA or EIS).

Programmatic EAs may also be prepared for other National Park System units that have existing, sustainable access routes that require RWCA's.

THE PROCESS FOR OBTAINING AN ANILCA 1110(b) RWCA

The 1110(b) RWCA process allows the NPS to manage and protect public resources, for example, salmon streams, wildlife habitat, and historical sites, while assuring access to non-federal properties. The NPS is committed to assisting and working with people who need RWCA's and making it as simple and easy as possible to obtain a RWCA.

For access across federal land that requires authorization by the NPS, planning ahead and working with the park superintendent are essential to expedite issuance of RWCA. Processing time will depend upon several factors, including the complexity of the access, availability of information, and staff availability. Authorization for complex projects with substantial new construction can take a year or longer.

Step 1: Starting the Process

To apply for a RWCA for access across National Park System land to your property, you will need to identify what kind of physical access you need or are currently using. As stated above, if access by snowmachine, motorboat, airplane, or by non-motorized means is sufficient for you, it's likely no RWCA will be needed. However, if you need to use other modes of transportation, or if you need to construct or maintain a road, airstrip or utility line on NPS lands, then a right-of-way is generally required. Consider what modes of access, as well as what routes of access would be adequate and feasible for your needs. Then contact the superintendent of the national park area to schedule a pre-application meeting. Park superintendents' addresses and phone numbers are included in Appendix B.

Step 2: Pre-Application Meeting

A pre-application meeting provides an opportunity for you to discuss your access needs in detail and for the park staff to further explain the process. The pre-application meeting will cover information needs, timelines, any applicable fees and other topics. This meeting can save you and the NPS time and expense. The meeting will help determine if you even need a RWCA. Discussing your ideas about the types and routes of access with park staff can help everyone focus on practical and feasible options that will expedite a decision. The meeting also can help identify other agencies that will need to consider your proposed access. Be sure to bring any information that may be useful during this session, particularly useful are maps and drawings of your proposed access route and facilities.

Existing ANILCA regulations (43 CFR 36) require the use of the SF 299 application form. To get the most out of the pre-application meeting, we recommend that prior to the meeting you review this application form. NPS staff can assist in determining what information is needed on your application for your specific access request, and can indicate which sections of the application do not need to be filled out. You can obtain the application either from the park superintendent or from the website:

<http://www.gsa.gov/portal/forms/download/117318>

Step 3: Applying for an 1110(b) RWCA

Based on the information gained at the pre-application meeting, complete the application (SF 299) to the best of your ability. The SF 299 is used for all accesses, from a minor road to a major highway, so some sections of the SF 299 will not apply to small-scale access, and the amount of detail needed will vary greatly. Only those sections of the SF 299 relevant to your access need to be completed. The NPS may be able to assist you in preparing the SF 299 or relevant support documents. An incomplete application or insufficient information can slow processing. Send the completed application to the park superintendent.

Step 4: Processing the Application

The NPS will review the submitted application for completeness and has up to 60 days to inform you of the need for any additional information. If additional information is needed you will be asked to provide it. The application process and related deadlines (noted below) begin when the application is determined to be complete.

Issuance of a RWCA for access across National Park System lands requires environmental analysis under NEPA (for a description of NEPA requirements see Appendix C). If you are applying for access on a road, trail or other facility that already exists and is sustainable in its present condition, it may be covered by a programmatic EA, and your RWCA will be considered for approval under a categorical exclusion (CE). Requests for new or more complex access routes and means will require their own EAs or EISs.

The NPS has up to nine months from receipt of a complete application to prepare an EA or draft EIS and has an additional three months to prepare the final EIS. Following completion of the EIS, the NPS has up to four months to make a final decision on the request. These are maximum periods established by law and regulation (43 CFR 36.6), but they may be extended for good cause, for example at the applicant's request to consider new information. EAs generally take significantly less time than EISs.

As specified in the Title XI regulations (43 CFR 36.10(e)(1)), the NPS will approve the route and method of access desired by the applicant unless: 1) the requested access would result in significant impacts on natural or other values; or 2) the requested access would jeopardize health or human safety; or 3) the requested access is inconsistent with the management plan(s) for the area or purposes for which the area was established; or 4) the requested method of access is unnecessary to accomplish the applicant's land use objective. If none of these conditions exists, then the applicant is to receive a RWCA for the access as requested. However, if the NPS makes findings that any of these four conditions exists, after consultation with the applicant, the NPS must specify an alternative route(s) and/or method(s) in a RWCA that will provide the applicant with adequate and feasible access.

In the end, the applicant must be provided adequate and feasible access to his/her land. Another possibility is that no RWCA is needed. For example, if an inholding is on the shore of a large lake, and access is available by float or ski-equipped plane, a new road might not be necessary or economically practicable. In this example, if air access would provide adequate and feasible access, there would be no need for a RWCA for overland access.

Step 5: Other Agency Involvement

Depending on the complexity of an access request and the issues involved, other agencies may have roles in evaluating your request. For example, if stream crossings are involved, the State of Alaska has an interest in protecting fish populations and habitat, especially for anadromous species such as salmon. The Alaska Department of Natural Resources may require State authorization(s) for activities in anadromous streams, as well as navigable water bodies. If gravel, sediment or other materials are discharged into a stream or connected wetlands, a Clean Water Act Section 10 or 404 permit may be required by the U.S. Army Corps of Engineers.

The NPS will work with applicants to help identify other agency authorizations that may be necessary, but it is the applicant's responsibility to obtain the necessary permits and authorizations from these or other agencies. RWCA's will be issued with a requirement that the applicant obtain required permits from other agencies and that these permits are issued before construction or maintenance begins.

The following links will take you to additional resource agencies that may be involved in some access projects.

1. U.S. Army Corps of Engineers: www.poa.usace.army.mil/reg/PNnew.htm
2. State of Alaska Department of Natural Resources (DNR) Office of Habitat Management & Permitting: www.dnr.state.ak.us/habitat/
3. State of Alaska DNR Public Information Center: www.dnr.state.ak.us/pic/

Step 6: 1110(b) RWCA Issued

Where the NPS determines that a RWCA is needed, the NPS will issue a RWCA to the landowner or holder of a valid occupancy. Appropriate terms and conditions will be included in the RWCA. Terms may, for example, specify the route and width of a road, types of vehicles, maintenance requirements, seasonal restrictions or other measures to protect park resources and values. Mitigation measures to avoid or reduce impacts on resources and other park uses will also be specified in the RWCA. RWCA's will be signed by the NPS Alaska Regional Director and the landowner or the holder of a valid occupancy. Appendix D contains a sample ANILCA 1110(b) RWCA. This sample presents some of the standard stipulations that will be in RWCA's. Each RWCA will need to address the specific conditions applicable to individual routes, facilities and environments.

STIPULATIONS FOR ANILCA 1110(b) RWCA's

The Alaska Region of the NPS will implement the following policies regarding access to non-federally owned lands and valid occupancies within National Park System units in Alaska. Stipulations in 1110(b) RWCA's will reflect the following statements:

Fees

- The Title XI regulations (43 CFR 36.6(c)) state that fees are to be charged in accordance with agency-specific laws and procedures, except for access requests that require an environmental impact statement (EIS). EISs require cost reimbursement pursuant to the regulations implementing the Federal Land Policy and Management Act. It is the policy of the NPS not to charge fees and costs regarding the exercise of rights (not privileges)(NPS

Reference Manual 53, C5-1 & C10-2), such as the ANILCA 1110(b) access right, to the extent allowable by law and regulation. Accordingly, the NPS will charge fees only for an access request that requires an EIS. RWCA's for established access and for some new accesses are not expected to require EISs.

- The fee for EIS cost recovery will be determined by the NPS Regional Director, based on the applicable regulations of 43 CFR 2804.14. These regulations allow for reductions and waivers of fees.
- Except in the case of an EIS, the NPS will not charge applicants for mitigation, as required by NPS policy, for replacement of wetlands or the costs associated with an NPS wetlands delineation. Any wetlands delineation or compensation required by the Corps of Engineers, however, will be the responsibility of the applicant.
- If the NPS lacks sufficient funds or other resources to process an 1110(b) access request, the applicant may pay for the costs to expedite processing.
- NPS does not have authority to waive fees charged by the State of Alaska or other federal agencies.

Wetlands

NPS policy is to limit impacts to wetlands and to compensate for any loss of wetlands from any project. Compensatory mitigation refers to those actions, such as restoration and creation of wetlands, that are designed to offset wetland losses.

- Impacts to wetlands will be avoided where possible.
- The NPS will provide wetlands compensation if the 1110(b) access request can be evaluated in an Environmental Assessment.
- Landowners will need to obtain U.S. Army Corps of Engineers Section 404 permits as required by that agency for filling wetlands or other "waters of the US," and compensate for the loss of wetlands as required by that agency.
- Landowners will generally be responsible for wetlands compensation if an EIS is required. Wetlands compensation could take the form of restoration or creation of wetlands by the landowner where practical, or payment that would be used for these purposes. Wetlands compensation (both actual restoration and/or compensation payments) will be treated in a manner similar to EIS cost recovery (43 CFR 2804.14). These regulations allow for reductions and waivers of cost recovery in certain circumstances.
- Wetlands compensation required by the NPS will not be additive to the Corps of Engineers' requirements, rather the Corps' requirements will fulfill all or part of the NPS requirement.

Duration

The NPS will generally issue 1110(b) RWCA's that have no fixed expiration dates. These RWCA's will be valid as long as they are needed for access to the subject inholding. However, the duration of RWCA's may vary. In some instances, RWCA terms may be relatively short, if that meets the needs of the owner. For example, if the overland transport of building supplies using heavy equipment is needed for a single season, after which access will be by foot or snowmachine, a RWCA can be written to reflect that temporary need. The duration of a RWCA may also be tied to the duration of a valid occupier's use, for example, the RWCA may be issued to a lessee for the duration of his/her lease.

Amendments

An approved RWCA may be amended to adjust the stipulations for changed conditions, to correct oversights, or to address conditions not previously contemplated. Either party may initiate an amendment by notifying the other in writing and providing a justification for the proposed revision or supplement. Amendments by mutual consent of the NPS and RWCA holder may occur, but the NPS may require an amendment without the consent of the holder if the RWCA conditions become inconsistent with the regulatory standards of Title 43 CFR 36.9 and 36.10(e)(1). The NPS will consult with the holder when any amendment is initiated. Any amendment must result in the RWCA holder continuing to have adequate and feasible access to his/her property.

Transfer or Assignment

Any proposed transfer or assignment of an existing RWCA due to a change in ownership must be filed in writing with the Superintendent and must be supported by a written, signed statement that the transferee/assignee agrees to comply with and be bound by the terms and conditions of the current RWCA. If these conditions are met, the NPS Regional Director will approve the transfer of the RWCA.

Compliance with Terms of a RWCA

1110(b) of ANILCA guarantees property owners and holders of valid occupancies adequate and feasible access to their inholdings for as long as they need the access. This statutory right cannot be revoked, though it is subject to reasonable regulation to protect natural and other values. Securing the 1110(b) access right in a RWCA serves the interests of both the inholder and the NPS. Should violations of RWCA terms or other violations of law occur, the NPS will take appropriate action, including civil or criminal action to protect park resources or uses.

Reconsideration of a Decision

The Title XI regulations (43 CFR 36.10(g)) provide that the agency decision is the final administrative decision, which means it can be challenged in Federal District Court. If an applicant disagrees with the decision of the Regional Director on an application for an 1110(b) RWCA, the applicant has the option to request reconsideration of the decision before filing a lawsuit. The applicant must submit a written request for reconsideration to the Regional Director within thirty (30) days of his/her receipt of the decision. The request for reconsideration must state the reasons for the reconsideration. A hearing on the reconsideration may be conducted, at the discretion of the Regional Director. The Regional Director will inform the applicant in writing of the result of the reconsideration. If the applicant requests reconsideration, the NPS will not regard its decision as final until the conclusion of the reconsideration. If the applicant does not request reconsideration, NPS decision will be treated as final upon its issuance.

CONCLUSION

The owners of non-federal lands and the holders of valid occupancies in NPS units in Alaska are assured adequate and feasible access by Congress in Section 1110(b) of ANILCA. The NPS is committed to working with owners and valid occupiers to provide access to their lands, while also protecting National Park System units for the enjoyment of present and future generations.

FREQUENTLY ASKED QUESTIONS

An Interim User's Guide to Accessing Inholdings in a National Park System Units in Alaska

The following questions came from the public, NPS employees, and people living and working in Alaska's national parks. If we have not adequately answered questions you have, please contact the appropriate park superintendent. Park addresses and phone numbers are given in Appendix B of this guide.

NEED FOR AN 1110(b) RIGHT-OF-WAY CERTIFICATE OF ACCESS (RWCA)

1) Why do I need an 1110(b) RWCA?

A RWCA allows you to do things in NPS parklands that otherwise would generally be prohibited, such as construct or maintain roads, install utilities, and drive most types of motorized vehicles off state highways or designated park roads.

2) What laws and regulations apply to 1110(b) RWCA and access to inholdings?

Most of the National Park System units in Alaska were created or expanded by the Alaska National Interest Lands Conservation Act (ANILCA) in 1980. Section 1110(b) of ANILCA directs the Secretary of the Interior to give owners of non-federal lands and other valid occupancies adequate and feasible access to those inholdings, subject to reasonable regulation. The regulations implementing Section 1110(b) of ANILCA are at 43 CFR 36.10. These regulations direct that the NPS will use rights of way to authorize needed access to inholdings while protecting park values. These regulations are available at the park headquarters or online at: <http://www.nps.gov/akso/regulations/index.htm>. As directed by these regulations, all requests for access to inholdings that require an authorization from the NPS will be processed under the regulations at 43 CFR 36.10 (Access to Inholdings), rather than other regulatory provisions, such as 43 CFR 36.12 (Temporary Access).

3) Do I need an 1110(b) RWCA to travel across national park areas to reach my inholding?

You **do not need** a RWCA if you are traveling over an established public right of way or a designated park road (an exception is the Denali Park Road, where a RWCA is needed for access to inholdings). You **do not need** a RWCA to use a state highway. Also you do not need a RWCA if you are walking or using non-motorized means of surface transportation, such as sled dogs or a pack or saddle animal, or if you are using a motorboat, snowmachine, or airplane (fixed-wing aircraft) (ANILCA 1110(a) and 43 CFR 36.11(a)). Snowmachine use is dependent upon adequate snow cover. In Kenai Fjords National Park and Denali National Park and Preserve, the park superintendent announces when adequate snow cover exists. Snowmachines are prohibited at all times within the former Mt. McKinley National Park (36 CFR 13.952). Additional regulations regarding boat access at Glacier Bay National Park also apply. You **do not need** a RWCA to use ORVs if you are traveling only on trails designated by the NPS for such use. National Park System units may occasionally be closed to some access methods to protect park resource values. There will be public notice of these closures.

You will need an 1110(b) RWCA:

- To use other motorized surface transportation vehicles on NPS managed lands (except as discussed above for snowmachines and ORVs, or on designated park roads or highways).
- To reroute roads or trails on National Park System lands.
- To build new roads or trails on National Park System lands.
- To construct or maintain a landing strip with motorized tools on National Park System lands.
- To install utilities, such as telephone lines and repeaters, communication sites, power lines, and waterlines, on National Park System lands.

4) Instead of getting an 1110(b) RWCA, can I use a park road to access my property?

In some situations access routes or facilities not only serve as access to inholdings but also are open to public travel or serve NPS administrative needs. The NPS has the authority to designate such routes or facilities as park roads, trails and facilities. We intend to work with the users of these access routes and facilities and either issue RWCA's or designate them as park roads.

5) My property predates the national park. Do I need an 1110(b) RWCA?

Depending on your access needs, you may need a RWCA. Most inholdings predate creation of the national parks. Most lands that are now parklands were previously managed by the Bureau of Land Management (BLM). Until 1968, most lands were open to homesteaders, Native allottees, and miners. Until the mid-1970s many federal lands were open to selection by the state and Native corporations.

Even though your property predated the national park, unless there is an existing authorization for your access, you will need to obtain an authorization from the NPS. Two Appeals Court decisions hold that when the United States government granted title to private lands, such as homesteads, it did not grant easements across the public lands (*Fitzgerald Living Trust v. U.S.*, 460 F.3d 1259 (9th Cir. 2006) and *U.S. v. Jenks*, 129 F. 3d 1348, 1354 (10th Cir. 1997)). ANILCA is the statutory authority for giving access rights to owners of inholdings in NPS units in Alaska.

6) My neighbor won't let me cross his land. Therefore, I have to cross a national park to reach my property. Can I receive an 1110(b) RWCA?

We encourage you to explore other routes across private land to access your inholding. However, it is not required that you obtain access to your inholding across non-federal lands before applying for a right of way. The NPS will work with you to file an application and help you find adequate and feasible access to your land.

7) If an access route is used by more than one private property owner, does each owner need authorization from the NPS?

If the method of access is not already allowed and National Park System lands must be crossed in order to reach separate properties, then each owner would need a separate authorization. There may be some circumstances where adjoining property owners join together to file a shared application. Joining with neighboring private landowners and agreeing on a single physical access route could simplify the process with the NPS.

8) How is access gained to state lands and Native corporation lands within a park area?

As with accessing other non-federal lands within National Park System lands, no NPS authorization is generally needed to cross park lands if you access the state or Native corporation lands by non-motorized means, snowmachine, motorboat, fixed-wing aircraft, ORV on a route designated for ORV use, or by a state road right of way. However, if the public needs to use a means of access that is not already authorized to reach state lands, an RWCA will be required. It will generally be the responsibility of the State of Alaska to obtain such authorization, rather than individual citizens. In a similar situation, for shareholder access across parklands to their Native corporation lands, it will generally be the responsibility of a Native corporation to obtain any necessary right of way, rather than individual shareholders.

9) Although my property isn't within a park area, the only feasible access to it is across parklands. Can I access my property across parklands?

The owners and occupiers of properties that are outside but "effectively surrounded" by a unit of the National Park System in Alaska, due to rugged terrain or waterways or other physical obstructions, are entitled to the same access rights across parklands as are the owners or valid occupiers of properties that lie within the boundaries of a National Park System unit. Such owners and occupiers can apply for and obtain rights of way to cross the parklands.

ACCESS VIA OTHER LAWS AND LEGAL RIGHTS

1) What about Revised Statute (RS) 2477 Right of Way?

An RS 2477 right of way is a public highway right of way owned by the State of Alaska or a borough or municipality.

The State of Alaska has asserted many RS 2477 rights of way in Alaska, including many within NPS units. The NPS acknowledges these assertions, however, a 2005 decision of the U.S. Court of Appeals for the Tenth Circuit (*Southern Utah Wilderness Alliance v. Bureau of Land Management*, 425 F.3d 735, 2005) declared that only a federal court has the authority to determine the validity of an asserted RS 2477. The Secretary of the Interior has stated that Department of Interior agencies will be guided by that Tenth Circuit opinion. There have been no court determinations of RS 2477 rights of way in NPS units in Alaska. Until an asserted RS 2477 is determined to be valid by a federal court, the NPS will work with landowners to issue an 1110(b) RWCA for access on whatever routes are needed for such access.

2) Can I use a section line easement?

A section line easement is a kind of RS 2477 right of way asserted by the State of Alaska under state law. Neither the federal courts nor the Department of the Interior has confirmed the validity of any section line easements across federal lands in Alaska's national park areas. Therefore, a landowner would need a 1110(b) RWCA to use of a section line on federal lands.

There may be valid section line easements on park lands that were acquired from the State or private owners. Research will be required on individual cases. On federal lands the validity of section line easements, as with other asserted RS 2477 rights of way, can be determined only by a federal court, and no such determinations have occurred to date within National Park System units in Alaska.

3) I'm on a state road; do I still need an 1110(b) RWCA?

State roads are on rights of way belonging to the State of Alaska. Within units of the National Park System these rights of way overlie NPS lands. The Alaska Department of Transportation and Public Facilities (ADOT&PF) manages the road and has the right to use the right of way for "road purposes." The NPS and ADOT&PF share management of the road right of way. If your property abuts or is inside the state-owned road right of way you will need a driveway permit from ADOTPF (<http://www.dot.state.ak.us/permits/index.html>).

The NPS may require an 1110(b) RWCA for that portion of your driveway covered by the ADOT&PF driveway permit if there are particular resource or public use issues. You will need an RWCA for the portions of a driveway crossing National Park System lands outside the state right of way. You will also need an RWCA for other access, such as utilities or a developed parking lot in the state-owned road right of way. If you have questions about whether an 1110(b) RWCA is needed, please contact the park superintendent.

4) Do I need an 1110(b) RWCA to access my property on or across a navigable water body?

If you are using a motorboat, snowmachine, or airplane to access your property, then the navigability of the water body is not an issue because both the NPS and the State already generally allow these access modes without a RWCA. If you want to use other motor vehicles or construct a facility such as a dock, other state and federal laws may apply and permits may be required. Check with both the Alaska Department of Natural Resources (ADNR) and the park superintendent.

5) Do I need an 1110(b) RWCA to use an Alaska Native Claims Settlement Act 17(b) easement to reach my property?

No. 17(b) easements provide public access across lands belonging to Alaska Native corporations. The easements were reserved to provide public access from public lands and waters across Native corporation land to other public lands and waters. You should learn the allowable uses of the easement before using it. These easements have limitations on types of vehicular use and season of use. Depending on your route and use, you may need a RWCA once you reach National Park System lands.

GENERAL ACCESS QUESTIONS

1) I do not own the land, but the owner gave me permission to drive out there this summer. Can I do that?

Yes, but you will need to have permission from the landowner to use the landowner's 1110(b) RWCA. It is also necessary for you to comply with the terms of the RWCA.

2) I'm not the owner of the land (inholding), but I have a lease from the owner. Can I get an 1110(b) RWCA?

Yes. An 1110(b) RWCA can be issued to the landowner, with the right to use the RWCA by lessees, or in some cases can be issued to the lessee. If the RWCA is to be issued to a lessee, there will need to be documentation of the lease and coordination with the landowner. Anyone using the RWCA will need to comply with its terms.

3) I tried to get to my inholding by snowmachine last winter, but some trappers told me I can't use the trail because they have some wolf traps set and claim the trail as their own. Is that right?

No. Trapping trails do not confer rights of exclusive use. Misunderstandings can often be avoided by talking with the trappers and trying to identify a suitable solution. Any conflicts may also be brought to the attention of the park superintendent or the Alaska Department of Fish and Game (ADF&G).

4) There is platted access in my subdivision, but it is in a terrible location. Can I get access through the park?

Generally you will be required to use platted access, but if it is prohibitively expensive or physically infeasible to use the platted right of way, you may be able to obtain an 1110(b) RWCA to cross National Park System lands.

AIRCRAFT AND AIRSTRIP ACCESS

1) When would airplane access on a lake, gravel bar, or dry ridge, within walking distance of my land be required rather than less expensive overland travel?

Adequate and feasible access must be economically practicable but does not necessarily have to be the least costly way to access your property (43 CFR 36.10(a)(1)). Fixed-wing aircraft access is generally allowed and does not require a right of way or other authorization (43 CFR 36.11(f)). To the extent air access is economically practicable it could be a reasonable alternative to avoid significant adverse impacts of other access methods (43 CFR 36.10(e)(1)). Many landowners currently use air and boat access to their properties and find it an appropriate method of access.

2) Do I need a permit to maintain the airstrip in a park area that I use to access my property?

If you use non-motorized hand tools to maintain an existing landing strip that is used to access your property, an 1110(b) RWCA is not necessary. You do need authorization from the NPS in National Park System units to construct or expand a landing site with non-motorized tools or to construct, expand, or maintain a landing site with motorized tools.

3) I need to get from my airstrip to my inholding. Do I need an 1110(b) RWCA to drive my off road vehicle (ORV) from the airstrip to the inholding?

You need an 1110(b) RWCA to cross park lands with an ORV if the access is off state highways or designated park roads or designated ORV trails.

MINING ACCESS

1) I am going to lease a mining claim. I need access across parklands and want to do it in the summer time. How should I do that?

Mining activities on federal patented and unpatented mining claims within the boundaries of National Park System units are regulated under Title 36 CFR part 9(a). These regulations require the submission and approval of a Plan of Operations. The Plan of Operations may authorize access, or the NPS may issue a separate right of way under the Access to Inholdings regulations

(43 CFR 36.10(c)). Contact the park superintendent for specific information about accessing mining claims.

2) I am considering leasing some unpatented placer claims and want to go in and check them out in the summer by ORV before deciding whether I want to enter into a formal agreement and work the ground. Can I do that?

First check with the claim holder to see if he already has an 1110(b) RWCA that allows ORV access to the claims. If he does, then he can authorize you to use the RWCA for access. If the claim holder does not have a RWCA, he will need to apply for one from the NPS.

OBTAINING AN ANILCA 1110(b) RWCA

1) What laws and regulations govern access to private lands and where can I look for further information regarding access?

The primary law addressing access to non-federal lands in National Park System units in Alaska is the Alaska National Interest Lands Conservation Act (ANILCA). Section 1110(b) of ANILCA is specific to access to inholdings. The regulations dealing with access to inholdings in National Park System units in Alaska are found at Title 43 of the Code of Federal Regulations part 36 (43 CFR 36.10). These regulations are available at the park headquarters or online at:

<http://www.nps.gov/akso/regulations/index.htm>

2) Is getting an 1110(b) RWCA going to be difficult?

Simple proposals with few potential environmental impacts take less time to process. Complex proposals and those involving new uses require more time to process. The better the NPS understands your proposed access, the easier it will be to process your application and issue the right of way.

A pre-application meeting with the park superintendent is highly recommended. The pre-application meeting allows you to explain your needs, proposed route, types of vehicles, and any construction or maintenance that is necessary. The pre-application meeting is a good time to explore options on how to provide access while protecting park resources.

Once you have filed a complete application, the NPS will conduct an environmental analysis, which is usually an environmental assessment (EA) or, in some cases, an environmental impact statement (EIS). An EIS may be necessary if the proposal has the potential for significant environmental effects. The environmental analysis will evaluate your proposal and reasonable alternatives, and most likely, recommend terms and conditions to protect park resources. These terms and conditions would then be included in your RWCA.

3) Why does the NPS want to know my land use objectives?

Knowing your plans will enable the NPS to assess whether the requested access is adequate and feasible to meet your needs.

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE

1. Why is NEPA required for an 1110(b) RWCA?

Issuing a 1110(b) RWCA—whether new or existing access—is considered a potentially major federal action with measurable impacts on the human environment that requires analysis under NEPA. Applications for RWCAs for routes or facilities on National Park System lands are not categorically excluded from preparation of an environmental assessment (EA) or environmental impact statement (EIS), so an environmental analysis must be conducted. The NEPA documentation will generally be an EA.

2. Why does the NPS need to consider the “no action” alternative when my access is assured under ANILCA?

Inclusion of the “no action” alternative in the NEPA document is based on NEPA regulations and NPS policy, and in this case provides a baseline for analysis of existing impacts against which to compare impacts of the proposed access. Your access is assured under ANILCA, and the regulations require the NPS to issue a right of way unless adequate and feasible access already exists without one.

3. Why is issuing an 1110(b) RWCA not categorically excluded?

A “categorical exclusion” is a class of actions which agency experience has indicated will not have individual or cumulatively significant environmental effects. Most federal agencies have a list of specific actions, based on past experience, that have been shown to have no significant effects and which are listed as categorical exclusions. It has not been demonstrated that the action of issuing a right of way would not result in environmental impacts. Establishing a new categorical exclusion requires the NPS to follow certain notification procedures, and to demonstrate a rationale and history that shows the action will not individually or cumulatively have significant effects on the human environment.

USE OF AN ANILCA 1110(b) RWCA

1) Can the public also use my road that’s authorized by an 1110(b) RWCA?

Regulating motorized use of an 1110(b) RWCA by others is a NPS responsibility. The RWCA allows you and your guests to use a specified location on National Park System lands for access. In many cases, use of the RWCA will be limited to the inholder and the NPS. However, in some situations it may be appropriate to allow the public to use the RWCA. If a non-federal parcel is being subdivided, State of Alaska regulations may require that the right of way to the subdivision be open to the public (11 AAC 53.630. Legal Access). Other users of the RWCA will be addressed during the processing of the application, and the RWCA will specify who is authorized to use the road or trail. Public access that is generally allowed on adjacent park lands, such as hiking, snowmobiling and subsistence activities, will continue to be allowed on the RWCA. A landowner who has a RWCA will not be held responsible for damage to parklands caused by public use of the RWCA. The NPS also recognizes that inholders should not bear the burden of the additional maintenance that may be required for public use of a RWCA for park purposes.

2) If I subdivide my land, will I need to obtain an 1110(b) RWCA to it?

Current State of Alaska regulations (11 AAC 53.630. Legal Access) require that subdivisions have public access. However, the Alaska Department of Natural Resources (DNR) has determined that the access guarantees provided by Title XI of ANILCA are sufficient to fulfill the public access requirements of these regulations, and DNR does not require that RWCAs be issued to subdivisions within National Park System units in the Unorganized Borough. However, if 1110(b) RWCAs are to be issued for access to new subdivisions, DNR will likely require, as a condition of approval of the subdivision plats, that the RWCAs be open to public access.

3) With an 1110(b) RWCA, can I make route improvements along the access route to my private land?

The terms and conditions in your RWCA will specify what maintenance and improvements are authorized.

4) When I get to my property I will need to go on national park areas to cut firewood or conduct other activities. Can I use my truck, car, or ORV?

Your right of way is only for access to your property. Consult the park superintendent regarding access needs for other activities on National Park System lands.

5) I may need to drive back to the highway for materials or emergencies. Can I do that?

1110(b) RWCAs generally will not set limits on the number of trips. In unusual cases where unlimited vehicle use may result in impacts to park resources, the number of trips would be limited. However, RWCA terms will insure that the frequency of travel will meet the needs of the applicant.

6) Will special restrictions for maintaining my access route be required in the RWCA?

The Environmental Assessment will evaluate the access and will include a section on maintenance. The RWCA will specify the types of allowable and any required maintenance.

Appendix A

DEFINITIONS

An Interim User's Guide to Accessing Inholdings in a National Park System Units in Alaska

Access means how you, your family, clients, lessees, employees, business partners, friends, and guests get to your private land. Access is also how utilities such as fuel, power, and communication are delivered to your property.

- **Physical access** refers to the land used and the improvements constructed, such as roads, trails, poles, power and telephone lines.
- **Legal access** is the authorized right to use or occupy National Park System lands for access. A right of way provides for legal access across NPS lands.

Adequate and feasible access means a route and method of access that is shown to be reasonably necessary and economically practicable, but not necessarily the least costly alternative for achieving the use and development by the applicant on the applicant's non-federal land or occupancy interest. See 43 CFR 36.10 (a) (1).

Airstrip means visible, marked, or known aircraft landing areas in park areas. Airstrips may be marked with cones, lights, flagging, or windsocks, or be unmarked but recognizable because they have been cleared of vegetation or other obstructions. See 36 CFR 13.1.

Categorical Exclusion means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which are described in one of the categorical exclusion lists in the NPS DO-12 Handbook and for which no exceptional circumstances exist.

Effectively surrounded by means that physical barriers prevent adequate and feasible access to state or private lands or valid interests in land except across a park area. See 43 CFR 36.10(a)(3).

Environmental Assessment is a public document in which a proposed agency action and any alternatives are described and evaluated. An EA is a useful planning tool that helps inform the public about a proposal and solicit their ideas and concerns, and that also helps the decision-maker understand the implications of an action before making a decision. Agencies also use EAs to determine whether potential environmental impacts are significant and an Environmental Impact Statement would be warranted. See 40 CFR 1508.9.

Environmental Impact Statement is a detailed study prepared when an agency knows the impacts of a proposed action would be significant. EISs require more extensive public involvement than EAs, including public scoping, a 60-day public comment period on the draft EIS, and a 30-day waiting period after the final EIS is published and before a decision is made. See 40 CFR 1508.11.

Inholding (for the purposes of access) means state owned or privately owned land, including subsurface rights underlying park areas or a valid mining claim or other valid occupancy within or effectively surrounded by one or more park areas. See 43 CFR 36.10(a)(4).

Major Federal Action for the purposes of NEPA means actions that have the potential for significant impacts to the human environment. They include adopting policy, implementing rules or regulations; adopting plans, programs, or projects; ongoing activities; issuing permits; or financing projects completed by another entity.

Off-road vehicle (ORV) means any motor vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, wetland, or other natural terrain, except snowmachines or snowmobiles. See 36 CFR 13.1(m).

Park road means the main-traveled surface of a roadway open to motor vehicles, owned, controlled or otherwise administered by the NPS. See CFR 36 CFR 1.4.

Snowmachine or Snowmobile means a self-propelled vehicle intended for off-road travel primarily on snow having a curb weight of not more than 1,000 pounds (450 kg), driven by a track or tracks in contact with the snow and steered by a ski or skis in contact with the snow. See 36 CFR 13.1.

Appendix B CONTACT INFORMATION

National Park System Units in Alaska—July 2007

ALASKA AFFILIATED AREAS (AFAR) Aleutian WWII National Historic Area Inupiat Heritage Center Superintendent 240 West 5 th Avenue, Room 114 Anchorage, Alaska 99501 Phone: (907) 644-3503/Fax: (907) 644-3816	LAKE CLARK NATIONAL PARK AND PRESERVE (LACL) Superintendent 240 West 5 th Avenue, Suite 236 Anchorage, AK 99501 Phone: (907) 644-3626/Fax (907) 644-3810 Port Alsworth: (907) 781-2218/Fax (907) 781-2119 Port Alsworth physical address: Port Alsworth, AK 99653
DENALI NATIONAL PARK AND PRESERVE (DENA) Superintendent P.O. Box 9 Denali Park, Alaska 99755 Phone: (907) 683-2294/Fax: (907) 683-9612 Physical address: Milepost 238, Parks Highway	SITKA NATIONAL HISTORICAL PARK (SITK) Superintendent 103 Monastery Street Sitka, Alaska 99835 Phone: (907) 747-6281/Fax: (907) 747-5938
GLACIER BAY NATIONAL PARK AND PRESERVE (GLBA) Superintendent Box 140 Gustavus, Alaska 99826 Phone: (907) 697-2232/Fax: (907) 697-2654 Physical address: #1 Park Road	WESTERN ARCTIC PARKLANDS (WEAR=CAKR, KOVA, NOAT, BELA) Superintendent Cape Krusenstern National Monument (CAKR) Kobuk Valley National Park (KOVA) Noatak National Preserve (NOAT) P.O. Box 1029 Kotzebue, Alaska 99752 Phone: (907) 442-3890/Fax: (907) 442-8316 Physical address: 333 Shore Ave, rear of Eskimo Bldg
KATMAI NATIONAL PARK AND PRESERVE (KATM) Aniakchak National Monument and Preserve (ANIA) Superintendent P.O. Box 7 King Salmon, AK 99613 Phone: (907) 246-3305/Fax (907) 246-2116 Physical address: #1 King Salmon Mall	Superintendent Bering Land Bridge National Preserve (BELA) P.O. Box 220 Nome, Alaska 99762 Phone: (907) 443-2522/Fax: (907) 443-6139 Physical address: 214 Front Street, Suite 121
KENAI FJORDS NATIONAL PARK (KEFJ) Superintendent P.O. Box 1727 Seward, Alaska 99664 Phone: (907) 224-7500/Fax: (907) 224-7505 Physical address: HQ: 500 Adams St./VC: 1212 4 th Ave.	WRANGELL-ST. ELIAS NATIONAL PARK AND PRESERVE (WRST) Superintendent P.O. Box 439 Copper Center, Alaska 99573 Phone: (907) 822-5234/Fax: (907) 822-7216 Physical address: 106.8 Richardson Highway
KLONDIKE GOLD RUSH NATIONAL HISTORICAL PARK (KLGO) Superintendent P.O. Box 517 Skagway, Alaska 99840 Phone: (907) 983-2921/Fax: (907) 983-9249 Physical address: 2 nd & Broadway	YUKON-CHARLEY RIVERS AND GATES OF THE ARCTIC (YUGA) Yukon-Charley Rivers National Preserve (YUCH) Gates of the Arctic National Park and Preserve (GAAR) Superintendent 4175 Geist Road Fairbanks, Alaska 99709 Phone: (907) 457-5752/Fax: (907) 455-0601 Eagle: (907) 547-2233/Fax: (907) 547-2247

Appendix C

National Environmental Policy Act (NEPA) Requirements

Approving a right of way is a federal action with potential environmental impacts that requires the NPS to comply with NEPA. Depending on the degree or severity of impact, requests for ANILCA 1110(b) Right-of-Way Certificates of Access (RWCA) will be evaluated in environmental assessments (EA) or environmental impact statements (EIS). The NEPA document is an objective, scientific analysis of the environmental effects of your proposal and reasonable alternatives, which helps the park superintendent and regional director make informed decisions.

Most RWCA requests will be analyzed in EAs. However, if there are potentially significant impacts, an EIS must be prepared. NEPA regulations present significance criteria (40 CFR 1508.27) that trigger an EIS. The criteria include consideration of the context of the proposed action, the intensity of the impacts, the proximity to or impact on wetlands, threatened and endangered species, and areas of recognized scenic, recreational, archeological or historic value, impacts on health and human safety, and whether the proposal is highly controversial or involves unknown risks.

EA Process

Prepare EA (up to 9 months including public review)

30-day public review of EA

Decision: Finding of No Significant Impact (FONSI)

EIS Process

Notice of Intent: Public Scoping

Prepare draft EIS (up to 9 months from complete application)

Notice draft EIS: 60-day public review

Prepare final EIS, addressing public comments (up to 4 months from the draft EIS)

Notice final EIS: 30-day No Action period

Decision: Record of Decision (ROD) (up to 4 months from the final EIS)

Appendix D
SAMPLE--ANILCA 1110(b) Right-of-Way Certificate of Access (RWCA)
July 21, 2007 DRAFT

National Park Service Alaska Region 240 West 5th Avenue, Room 114 Anchorage, Alaska 99501	RWCA No.: _____
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1. An ANILCA 1110(b) Right-of-Way Certificate of Access (hereinafter "RWCA") is hereby issued pursuant to Section 1110(b) of the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980 (16 USC 3170).

2. Nature of Interest:

a. By this instrument _____ (Holder's Name) (hereinafter "Holder"), whose address is _____, receives a right to construct, operate, use, maintain, and terminate a _____ (road, trail, airstrip, etc.) on National Park Service (hereinafter "NPS") managed lands in _____ (NPS Unit Name) and within an area described as follows:

(Description of area of use authorized by RWCA)

Located in Township _____, Range _____, _____ Meridian, Alaska,
Section(s) _____, _____ Recording District, Alaska.

The area of use authorized by this RWCA is illustrated on the attached map(s) (Exhibit B).

b. The area authorized by this RWCA is _____ feet wide, _____ feet long, and contains _____ acres, more or less. If a site type facility, the facility contains _____ acres.

c. This RWCA shall not be construed as an interest in the land authorized for use by this RWCA, or as an abandonment of use and occupancy by the United States, but shall be considered a use of the land as described, anything contained herein to the contrary notwithstanding.

d. The stipulations, plans, maps, or designs set forth in Exhibit(s) _____, dated _____, attached hereto, are incorporated into and made part of this instrument as fully and effectively as if they were set forth herein in their entirety.

3. Rental Fee. No rental fees apply because it is NPS policy not to charge fees when a requested use involves exercise of a right (not a privilege).

4. General Terms and Conditions:

a. The Holder shall comply with all applicable State and Federal law and existing regulations in the construction, operation and/or maintenance within the area authorized by this RWCA.

- b. This RWCA will expire when it is no longer needed for the purposes for which it is issued unless, prior thereto, it is relinquished, abandoned, or modified pursuant to the terms and conditions of this instrument or of any other applicable federal law or regulation.
- c. This RWCA may be amended to adjust the terms and conditions for changed conditions, to correct oversights, or to address conditions not previously contemplated. Either the NPS or Holder may initiate an amendment by notifying the other in writing and providing a justification for the proposed revision or supplement. Amendments by mutual consent of the NPS and Holder may occur, but the NPS may also require an amendment without the consent of the Holder if uses within the area authorized by this RWCA or other conditions become inconsistent with the regulatory standards of Title 43 CFR 36.9 and 36.10(e)(1). The NPS will consult with the Holder when any amendment is initiated. Any amendment must result in the Holder continuing to have adequate and feasible access to his/her property.
- d. The Holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and health and safety of the public.
- e. This RWCA is for the purpose of providing the Holder with access across NPS lands to his/her non-federal land or valid occupancy. It does not authorize the Holder to use the area authorized by this RWCA for any activities other than access.
- f. This RWCA may be assigned. The proposed assignee must state in writing that he/she agrees to comply with and to be bound by the terms and conditions of the existing RWCA. With such a written statement from the proposed assignee, the NPS Regional Director will approve the assignment of the RWCA to the assignee, who shall become the Holder. The assignment becomes effective upon the written approval of the NPS Regional Director, Alaska Region.
- g. The Holder shall take adequate measures as directed and approved by the superintendent of the NPS unit to prevent or minimize damage to resources. This may include restoration, soil conservation and protection measures, landscaping with indigenous grasses and shrubs, and repairing roads, trails, etc. The superintendent or his/her representative may enter and inspect the area authorized by this RWCA and any facilities in it, as deemed necessary by the NPS and without restriction.
- h. The Holder will halt any activities in the area authorized by this RWCA and notify the superintendent of the NPS unit upon discovery of archeological, paleontological or historical artifacts. All artifacts unearthed remain the property of the United States.
- i. Use of pesticides or herbicides is prohibited within the area authorized by this RWCA.
- j. Use by the Holder is subject to the right of the NPS to establish trails, roads, and other improvements and betterments over, upon or through the area authorized by this RWCA. Also, at the discretion of the NPS, the area authorized by this RWCA may be open to use by the public and others. If it is necessary for the NPS to exercise such right, every effort will be made

by the NPS to refrain from unduly interfering with use of this area by the Holder for the purposes intended under this RWCA. The Holder agrees and consents to the occupancy and use by the NPS and by individuals and entities authorized by the NPS, of any part of the area authorized by this RWCA. The Holder's right to "adequate and feasible access" under Title XI of ANILCA will be respected by the NPS.

k. No deviations from the locations authorized in this RWCA shall be undertaken without the prior written approval of the superintendent of the NPS unit. The superintendent may require the filing of a new or amended application for a proposed deviation.

l. Notwithstanding the relinquishment or abandonment of this RWCA by the Holder, the provisions of this RWCA, to the extent applicable, shall continue in effect and shall be binding on the Holder, its successors, or assigns, until they have fully satisfied the obligations and/or liabilities accruing herein.

m. Upon expiration or termination of this RWCA, in the absence of any agreement to the contrary, the Holder will be allowed six (6) months or such additional time as may be granted in which to remove from the area authorized by this RWCA all property or improvements of any kind, other than a road and usable improvements to a road, placed thereon by the Holder; but if not removed within the time allowed, all such property and improvements shall become the property of the United States.

n. Upon expiration or termination of this RWCA the Holder may be required by the NPS to restore the NPS lands affected by the RWCA.

o. This RWCA has no effect on any valid existing rights of access pursuant to any other authority.

p. The Holder agrees that in undertaking all activities pursuant to this RWCA, it will not discriminate against any person because of race, color, religion, sex, or national origin.

q. No member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this RWCA or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this RWCA if made with a corporation for its general benefit.

r. This agreement is made upon the express condition that the United States, its agents and employees shall be free from all liabilities and claims for damages and/or suits for or by reason of any injury, or death to any person or property of any kind whatsoever, whether to the person or property of the Holder, its agents or employees, or third parties, from any cause or causes whatsoever while in or upon said premises or any part thereof during the term of this agreement or occasioned by any occupancy or use of said premises or any activity carried on by the Holder in connection herewith, and the Holder hereby covenants and agrees to indemnify, defend, save and hold harmless the United States, its agents and employees from all liabilities, charges, expenses and costs on account of or by reason of any such injuries, deaths, liabilities, claims, suits or losses however occurring or damages growing out of the same.

- s. Any alterations to this instrument must be in writing and signed by the NPS and Holder.
- t. Nothing herein contained shall be construed as binding the NPS to expend in any one fiscal year any sum in excess of appropriations made by Congress or administratively allocated for the purpose of this RWCA for the fiscal year, or to involve the NPS in any contract or other obligation for the further expenditure of money in excess of such appropriations or allocations.
- u. The waiver of any breach of any provision of this RWCA, whether such waiver be expressed or implied, shall not be construed to be a continuing waiver or a waiver of, or consent, to any subsequent or prior breach of the same or any other provision of this RWCA.

IN WITNESS WHEREOF, the Regional Director, Alaska Region of the National Park Service, acting on behalf of the United States, in the exercise of the delegated authority from the Secretary of the Department of the Interior, has caused this ANILCA 1110(b) Right-of-Way Certificate of Access (RWCA _____) to be executed this _____ day of _____, 2007.

Regional Director, Alaska Region
National Park Service
United States Department of the Interior

ACCEPTED this _____ day of _____, 2007.

Printed name of Holder

Signature of Holder

Appendix D (Continuation)
SAMPLE--ANILCA 1110(b) Right-of-Way Certificate of Access (RWCA)
July 21, 2007 DRAFT

Exhibit A (of Sample 1110(b) RWCA): Specific Stipulations

RWCA No.: _____

Stipulations specific to the RWCA are listed here, for example:

- Vehicle classes
- Maintenance methods
- Use of culverts
- Season of use or maintenance, if applicable
- Signing and/or gating, if applicable

Exhibit B A (of Sample 1110(b) RWCA): Map

RWCA No.: _____

Standards

- a. Survey or engineer's drawing not generally required
- b. Map drawn by NPS or Holder (reviewed and accepted by NPS)
- c. Minimum scale 1 inch equals 1 mile
- d. Map based on USGS quadrangle map or rectified orthographic photograph.

Required

1. Name of the USGS 15' (1 inch equals 1 mile) quadrangle map
2. Orthographic photograph (if used): flight line, date filmed, frame number
3. Legal description of the inholding: US Survey, State of Alaska Survey, or lot and aliquot parts
4. Authorized area beginning and ending: latitude and longitude. Bearing and distance from a United States or State of Alaska survey monument can be used instead of latitude and longitude.
5. Centerline plot of authorized area using Global Positioning System (GPS) or other method acceptable to NPS.

**APPLICATION FOR TRANSPORTATION AND
UTILITY SYSTEMS AND FACILITIES
ON FEDERAL LANDS**

FORM APPROVED
OMB Control Number: 0596-0082
Expiration Date: 10/31/2012

FOR AGENCY USE ONLY

NOTE: Before completing and filing the application, the applicant should completely review this package and schedule a preapplication meeting with representatives of the agency responsible for processing the application. Each agency may have specific and unique requirements to be met in preparing and processing the application. Many times, with the help of the agency representative, the application can be completed at the preapplication meeting.

Application Number

Date Filed

1. Name and address of applicant (*include zip code*)

2. Name, title, and address of authorized agent if
different from item 1 (*include zip code*)

3. Telephone (area code)

Applicant

Authorized Agent

4. As applicant are you? (*check one*)

- a. ☐ Individual
- b. ☐ Corporation*
- c. ☐ Partnership/Association*
- d. ☐ State Government/State Agency
- e. ☐ Local Government
- f. ☐ Federal Agency

* If checked, complete supplemental page

5. Specify what application is for: (*check one*)

- a. ☐ New authorization
- b. ☐ Renewing existing authorization No.
- c. ☐ Amend existing authorization No.
- d. ☐ Assign existing authorization No.
- e. ☐ Existing use for which no authorization has been received *
- f. ☐ Other*

* If checked, provide details under item 7

6. If an individual, or partnership are you a citizen(s) of the United States? ☐ Yes ☐ No

7. Project description (describe in detail): (a) Type of system or facility, (*e.g., canal, pipeline, road*); (b) related structures and facilities; (c) physical specifications (*Length, width, grading, etc.*); (d) term of years needed; (e) time of year of use or operation; (f) Volume or amount of product to be transported; (g) duration and timing of construction; and (h) temporary work areas needed for construction (*Attach additional sheets, if additional space is needed.*)

8. Attach a map covering area and show location of project proposal

9. State or Local government approval: ☐ Attached ☐ Applied for ☐ Not Required

10. Nonreturnable application fee: ☐ Attached ☐ Not required

11. Does project cross international boundary or affect international waterways? ☐ Yes ☐ No (*if "yes," indicate on map*)

12. Give statement of your technical and financial capability to construct, operate, maintain, and terminate system for which authorization is being requested.

13a. Describe other reasonable alternative routes and modes considered.

b. Why were these alternatives not selected?

c. Give explanation as to why it is necessary to cross Federal Lands.

14. List authorizations and pending applications filed for similar projects which may provide information to the authorizing agency. (*Specify number, date, code, or name*)

15. Provide statement of need for project, including the economic feasibility and items such as: (a) cost of proposal (construction, operation, and maintenance); (b) estimated cost of next best alternative; and (c) expected public benefits.

16. Describe probable effects on the population in the area, including the social and economic aspects, and the rural lifestyles.

17. Describe likely environmental effects that the proposed project will have on: (a) air quality; (b) visual impact; (c) surface and ground water quality and quantity; (d) the control or structural change on any stream or other body of water; (e) existing noise levels; and (f) the surface of the land, including vegetation, permafrost, soil, and soil stability.

18. Describe the probable effects that the proposed project will have on (a) populations of fish, plantlife, wildlife, and marine life, including threatened and endangered species; and (b) marine mammals, including hunting, capturing, collecting, or killing these animals.

19. State whether any hazardous material, as defined in this paragraph, will be used, produced, transported or stored on or within the right-of-way or any of the right-of-way facilities, or used in the construction, operation, maintenance or termination of the right-of-way or any of its facilities. "Hazardous material" means any substance, pollutant or contaminant that is listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq., and its regulations. The definition of hazardous substances under CERCLA includes any "hazardous waste" as defined in the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6901 et seq., and its regulations. The term hazardous materials also includes any nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq. The term does not include petroleum, including crude oil or any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under CERCLA Section 101(14), 42 U.S.C. 9601(14), nor does the term include natural gas.

20. Name all the Department(s)/Agency(ies) where this application is being filed.

I HEREBY CERTIFY, That I am of legal age and authorized to do business in the State and that I have personally examined the information contained in the application and believe that the information submitted is correct to the best of my knowledge.

Signature of Applicant

Date

Title 18, U.S.C. Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

GENERAL INFORMATION
ALASKA NATIONAL INTEREST LANDS

This application will be used when applying for a right-of-way, permit, license, lease, or certificate for the use of Federal lands which lie within conservation system units and National Recreation or Conservation Areas as defined in the Alaska National Interest Lands Conservation Act. Conservation system units include the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, National Wilderness Preservation System, and National Forest Monuments.

Transportation and utility systems and facility uses for which the application may be used are:

1. Canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other systems for the transportation of water.
2. Pipelines and other systems for the transportation of liquids other than water, including oil, natural gas, synthetic liquid and gaseous fuels, and any refined product produced therefrom.
3. Pipelines, slurry and emulsion systems, and conveyor belts for transportation of solid materials.
4. Systems for the transmission and distribution of electric energy.
5. Systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals, and other means of communications.
6. Improved right-of-way for snow machines, air cushion vehicles, and all-terrain vehicles.
7. Roads, highways, railroads, tunnels, tramways, airports, landing strips, docks, and other systems of general transportation.

This application must be filed simultaneously with each Federal department or agency requiring authorization to establish and operate your proposal.

In Alaska, the following agencies will help the applicant file an application and identify the other agencies the applicant should contact and possibly file with:

Department of Agriculture
Regional Forester, Forest Service (USFS)
Federal Office Building,
P.O. Box 21628
Juneau, Alaska 99802-1628
Telephone: (907) 586-7847 (or a local Forest Service Office)

Department of the Interior
Bureau of Indian Affairs (BIA)
Juneau Area Office
Federal Building Annex
9109 Mendenhall Mall Road, Suite 5
Juneau, Alaska 99802
Telephone: (907) 586-7177

Department of the Interior
Bureau of Land Management
222 West 7th Avenue
P.O. Box 13
Anchorage, Alaska 99513-7599
Telephone: (907) 271-5477 (or a local BLM Office)

U.S. Fish & Wildlife Service (FWS) Office of the Regional Director 1011 East Tudor Road Anchorage, Alaska 99503 Telephone: (907) 786-3440	National Park Service (NPA) Alaska Regional Office, 2225 Gambell St., Rm. 107 Anchorage, Alaska 99502-2892 Telephone: (907) 786-3440
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Note - Filings with any Interior agency may be filed with any office noted above or with the Office of the Secretary of the Interior, Regional Environmental Office, P.O. Box 120, 1675 C Street, Anchorage, Alaska 9513.

Department of Transportation
Federal Aviation Administration
Alaska Region AAL-4, 222 West 7th Ave., Box 14
Anchorage, Alaska 99513-7587
Telephone: (907) 271-5285

NOTE - The Department of Transportation has established the above central filing point for agencies within that Department. Affected agencies are: Federal Aviation Administration (FAA), Coast Guard (USCG), Federal Highway Administration (FHWA), Federal Railroad Administration (FRA).

OTHER THAN ALASKA NATIONAL INTEREST LANDS

Use of this form is not limited to National Interest Conservation Lands of Alaska.

Individual department/agencies may authorize the use of this form by applicants for transportation and utility systems and facilities on other Federal lands outside those areas described above.

For proposals located outside of Alaska, applications will be filed at the local agency office or at a location specified by the responsible Federal agency.

SPECIFIC INSTRUCTIONS
(Items not listed are self-explanatory)

- 7 Attach preliminary site and facility construction plans. The responsible agency will provide instructions whenever specific plans are required.
- 8 Generally, the map must show the section(s), township(s), and range(s) within which the project is to be located. Show the proposed location of the project on the map as accurately as possible. Some agencies require detailed survey maps. The responsible agency will provide additional instructions.
- 9, 10, and 12 The responsible agency will provide additional instructions.
- 13 Providing information on alternate routes and modes in as much detail as possible, discussing why certain routes or modes were rejected and why it is necessary to cross Federal lands will assist the agency(ies) in processing your application and reaching a final decision. Include only reasonable alternate routes and modes as related to current technology and economics.
- 14 The responsible agency will provide instructions.
- 15 Generally, a simple statement of the purpose of the proposal will be sufficient. However, major proposals located in critical or sensitive areas may require a full analysis with additional specific information. The responsible agency will provide additional instructions.
- 16 through 19 Providing this information in as much detail as possible will assist the Federal agency(ies) in processing the application and reaching a decision. When completing these items, you should use a sound judgment in furnishing relevant information. For example, if the project is not near a stream or other body of water, do not address this subject. The responsible agency will provide additional instructions.

Application must be signed by the applicant or applicant's authorized representative.

EFFECT OF NOT PROVIDING INFORMATION: Disclosure of the information is voluntary. If all the information is not provided, the application may be rejected.

DATA COLLECTION STATEMENT

The Federal agencies collect this information from applicants requesting right-of-way, permit, license, lease, or certification for the use of Federal lands. The Federal agencies use this information to evaluate the applicant's proposal. The public is obligated to submit this form if they wish to obtain permission to use Federal lands.

SUPPLEMENTAL

NOTE: The responsible agency(ies) will provide instructions	CHECK APPROPRIATE BLOCK	
I - PRIVATE CORPORATIONS	ATTACHED	FILED*
a. Articles of Incorporation	<input type="checkbox"/>	<input type="checkbox"/>
b. Corporation Bylaws	<input type="checkbox"/>	<input type="checkbox"/>
c. A certification from the State showing the corporation is in good standing and is entitled to operate within the State	<input type="checkbox"/>	<input type="checkbox"/>
d. Copy of resolution authorizing filing	<input type="checkbox"/>	<input type="checkbox"/>
e. The name and address of each shareholder owning 3 percent or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote and the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.	<input type="checkbox"/>	<input type="checkbox"/>
f. If application is for an oil or gas pipeline, describe any related right- of-way or temporary use permit applications, and identify previous applications.	<input type="checkbox"/>	<input type="checkbox"/>
g. If application is for an oil and gas pipeline, identify all Federal lands by agency impacted by proposal.	<input type="checkbox"/>	<input type="checkbox"/>
II - PUBLIC CORPORATIONS		
a. Copy of law forming corporation	<input type="checkbox"/>	<input type="checkbox"/>
b. Proof of organization	<input type="checkbox"/>	<input type="checkbox"/>
c. Copy of Bylaws	<input type="checkbox"/>	<input type="checkbox"/>
d. Copy of resolution authorizing filing	<input type="checkbox"/>	<input type="checkbox"/>
e. If application is for an oil or gas pipeline, provide information required by item "I - f" and "I - g" above.	<input type="checkbox"/>	<input type="checkbox"/>
III - PARTNERSHIP OR OTHER UNINCORPORATED ENTITY		
a. Articles of association, if any	<input type="checkbox"/>	<input type="checkbox"/>
b. If one partner is authorized to sign, resolution authorizing action is	<input type="checkbox"/>	<input type="checkbox"/>
c. Name and address of each participant, partner, association, or other	<input type="checkbox"/>	<input type="checkbox"/>
d. If application is for an oil or gas pipeline, provide information required by item "I - f" and "I - g" above.	<input type="checkbox"/>	<input type="checkbox"/>

*If the required information is already filed with the agency processing this application and is current, check block entitled "Filed." Provide the file identification information (e.g., number, date, code, name). If not on file or current, attach the requested information.

NOTICES

Note: This applies to the Department of Agriculture/Forest Service (FS)

This information is needed by the Forest Service to evaluate the requests to use National Forest System lands and manage those lands to protect natural resources, administer the use, and ensure public health and safety. This information is required to obtain or retain a benefit. The authority for that requirement is provided by the Organic Act of 1897 and the Federal Land Policy and Management Act of 1976, which authorize the secretary of Agriculture to promulgate rules and regulations for authorizing and managing National Forest System lands. These statutes, along with the Term Permit Act, National Forest Ski Area Permit Act, Granger-Thye Act, Mineral Leasing Act, Alaska Term Permit Act, Act of September 3, 1954, Wilderness Act, National Forest Roads and Trails Act, Act of November 16, 1973, Archeological Resources Protection Act, and Alaska National Interest Lands Conservation Act, authorize the Secretary of Agriculture to issue authorizations or the use and occupancy of National Forest System lands. The Secretary of Agriculture's regulations at 36 CFR Part 251, Subpart B, establish procedures for issuing those authorizations.

BURDEN AND NONDISCRIMINATION STATEMENTS

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082. The time required to complete this information collection is estimated to average 8 hours hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720- 2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.