



**Federal Subsistence Board
Work Session Materials
July 17-18, 2017**

Anchorage, Alaska



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Federal Subsistence Board Work Session

July 17-18, 2017

Work Session Agenda

*** Indicates Action Item**

Location:

BP Energy Center
900 E. Benson Blvd.
PO Box 196612
Anchorage, Alaska 99519-6612

17 July (Arrive 0830)

1. Review and Adopt Agenda*
2. Information Sharing
3. Open Session-Review annual reports from the Regional Advisory Councils – Carl Johnson*
4. Open session-History of OSM funding from the Departments of Agriculture and Interior– Gene Peltola Jr. and Tom Doolittle
5. Status Update: Request for Reconsideration – Kenai River Community Gillnet Fishery– Jennifer Hardin and Theo Matuskowitz
6. 1200 – Lunch
7. Fisheries Delegation of authority letters for in-season managers:
 - a. Approve language for administrative clarity for border river in-season manager’s letter of delegation to close fishing. Ken Lord and Dawn Collinsworth*
 - b. Draft revisions: Yukon Delta National Wildlife Refuge Manager letter of delegation – George Pappas
8. Update on Hunter Ethics Education Program - Katerina Wessels
9. Executive session- Review and approve Regional Advisory Council nominees for submission to the Departments of Agriculture and Interior for Secretarial approval. Carl Johnson*

18 July

Field trip to Kenai River Community Gillnet Fishery (RSVP)

Itinerary:

0800 - Meet at FWS Regional Office

0815 - Leave ANC

1130 - Arrive Kenai River mouth to observe the personal use fishery

1200 - Lunch at the Kenai Refuge visitor center. Discussions about the Kenai River community gillnet fishery with Ninilchik Traditional Council representatives, Refuge management, and Kenai fisheries staff

1330 - Arrive at the Keystone Drive area for viewing of the community gillnet fishing location

1430 - Depart for ANC with possible stop at Russian River (time dependent)

1730 - Arrive back in ANC

BUDGET REPORT

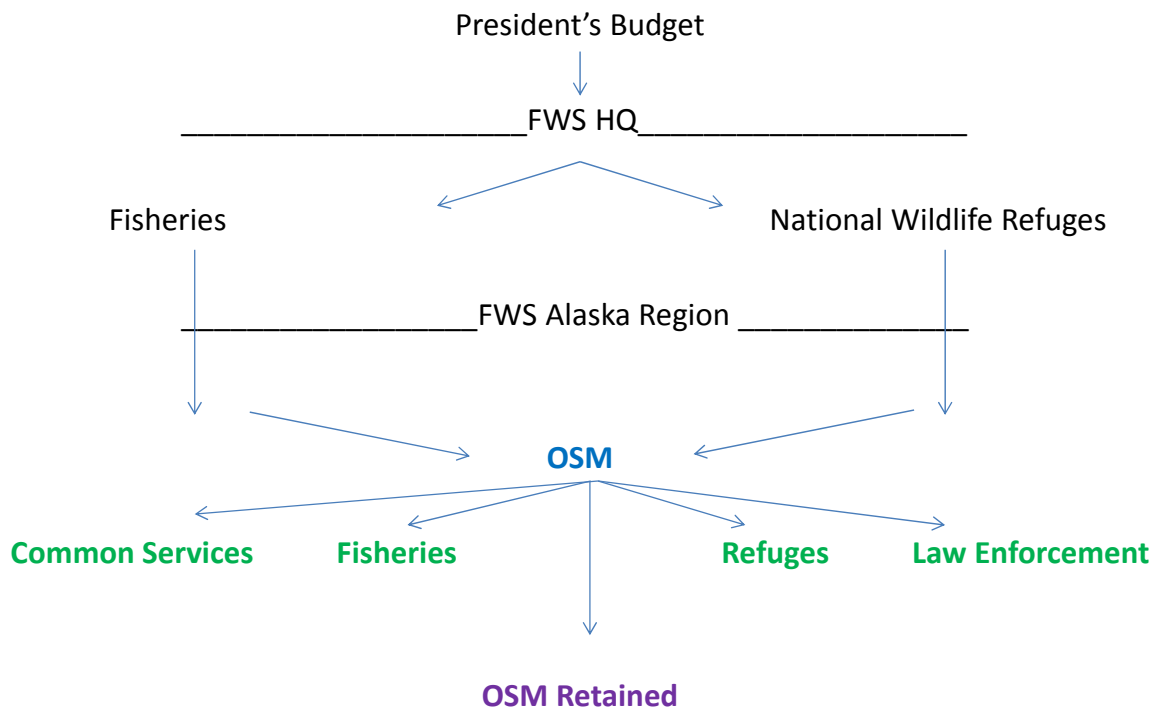
Budget Report

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Recent OSM Budget History

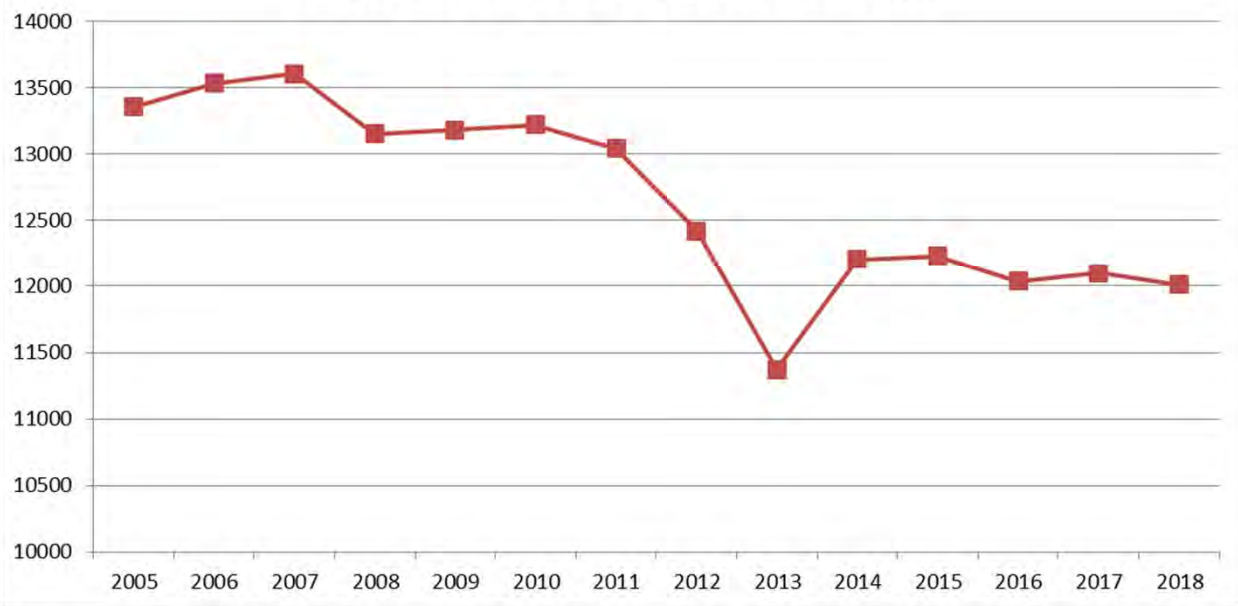
Thomas C. J. Doolittle
Prepared for the Federal Subsistence
Board Work Session
July 17, 2017

FWS & OSM Budget Overview



Presented to FSB June, 2013

TOTAL OSM BUDGET BY FISCAL YEAR



*2008 \$500K program reduction
*2013 sequestration
*2018 estimate only based on President's budget.

United States Senator for Alaska Lisa Murkowski

- *Chairman, Senate Energy and Natural Resources Committee
- *Member, Senate Appropriations Committee
- *Chairman, Interior-Environment Subcommittee
- *Member, Senate Indian Affairs Committee
- *Member, Senate Health, Education, Labor & Pensions Committee

*Source:

<https://www.murkowski.senate.gov>

06.14.2017

- “Fish and game management is a complicated and controversial subject in Alaska. The state of Alaska must be able to manage its resources for the maximum benefit of all Alaskans – without federal interference. But we must also recognize the challenges our native communities face in maintaining a traditional lifestyle. Subsistence is a deeply emotional and spiritual issue that goes to the heart of Alaska native cultures and we must do what we can to protect it for future generations.”
- The Senate Energy and Natural Resources Committee has jurisdiction over ANCSA and ANILCA. Thursday’s hearing marked the first time since enactment that the committee has held a hearing on either law.

*Source:

<https://www.murkowski.senate.gov>

Press/Press Releases 09.19.13

Washington Office Cut (1335 Fisheries)

| FISCAL YEAR | ENACTED FES 1335 | WO ASSESS FES | BAS TABLE FES 1335 | WO Special Assessments | FES ALLOCATION 1335 | Total WO 1335 |
|-------------|------------------|---------------|--------------------|------------------------|---------------------|---------------|
| 2017 | \$9,554,000 | \$157,111 | \$9,396,889 | \$81,082 | \$9,315,807 | \$238,193 |
| 2016 | \$9,554,000 | \$157,111 | \$9,396,889 | \$130,317 | \$9,266,572 | \$287,428 |
| 2015 | \$9,554,000 | \$23,885 | \$9,530,115 | \$133,226 | \$9,396,889 | \$157,111 |
| 2014 | \$9,554,000 | \$23,885 | \$9,530,115 | \$133,226 | \$9,396,889 | \$157,111 |
| 2013 | \$8,916,000 | \$23,885 | \$8,892,115 | \$124,307 | \$8,767,808 | \$148,192 |
| 2012 | \$10,054,000 | \$225,822 | \$9,828,178 | \$207,393 | \$9,620,785 | \$433,213 |
| 2011 | \$10,070,000 | \$50,350 | \$10,019,650 | -\$98,080 | \$10,117,738 | -\$47,730 |
| 2010 | \$10,070,000 | \$50,350 | \$10,019,650 | -\$107,149 | \$10,126,799 | -\$56,799 |
| 2009 | \$10,054,000 | \$67,630 | \$9,986,370 | -\$142,168 | \$10,128,538 | -\$74,538 |
| 2008 | \$10,070,000 | \$50,350 | \$10,019,650 | -\$103,229 | \$10,122,879 | -\$52,879 |
| 2007 | \$10,730,000 | \$53,650 | \$10,676,350 | \$107,182 | \$10,569,168 | \$160,832 |

*Numbers in red indicate years where "uncontrollable" funds were provided to OSM through Fisheries funding.

Washington Office Cut (1261 Refuges)

| FISCAL YEAR | ENACTED REFUGES | WO | BAS TABLE REFUGES | WO Special Assessments | Total WO 1261 | REFUGES ALLOCATION |
|-------------|--------------------|----------|----------------------|---------------------------|-------------------|-----------------------|
| 2017 | \$2,835,000 | \$0 | \$2,835,000 | \$52,000 | \$52,000 | \$2,783,000 |
| 2016 | \$2,835,000 | \$0 | \$2,835,000 | \$68,000 | \$68,000 | \$2,767,000 |
| 2015 | \$2,835,000 | \$0 | \$2,835,000 | \$28,000 | \$28,000 | \$2,807,000 |
| 2014 | \$2,835,000 | \$0 | \$2,835,000 | \$28,000 | \$28,000 | \$2,807,000 |
| 2013 | \$2,645,000 | \$36,578 | \$2,608,422 | -\$578 | \$36,000 | \$2,609,000 |
| 2012 | \$2,835,000 | \$33,022 | \$2,801,978 | \$0 | \$33,022 | \$2,801,978 |
| 2011 | \$2,840,000 | \$28,488 | \$2,811,512 | -\$111,488 | -\$83,000 | \$2,923,000 |
| 2010 | \$2,840,000 | \$26,803 | \$2,813,197 | -\$278,803 | -\$252,000 | \$3,092,000 |
| 2009 | \$2,840,000 | \$28,562 | \$2,811,438 | -\$242,562 | -\$214,000 | \$3,054,000 |
| 2008 | \$2,840,000 | \$14,278 | \$2,825,722 | -\$203,278 | -\$189,000 | \$3,029,000 |
| 2007 | \$2,885,000 | \$14,503 | \$2,870,497 | -\$164,503 | -\$150,000 | \$3,035,000 |

*Numbers in red indicate years where "uncontrollable" funds were provided to OSM through Fisheries funding.

Total Cut from Washington Office

| FISCAL YEAR | Total to WO 1261 and 1335 |
|-------------|---------------------------|
| 2017 | \$290,193 |
| 2016 | \$346,428 |
| 2015 | \$185,111 |
| 2014 | \$185,111 |
| 2013 | \$184,192 |
| 2012 | \$466,235 |
| 2011 | -\$130,330 |
| 2010 | -\$252,000 |
| 2009 | -\$288,538 |
| 2008 | -\$241,879 |
| 2007 | \$10,882 |

*Numbers in red indicate years where "uncontrollable" funds were provided to OSM through Fisheries funding.

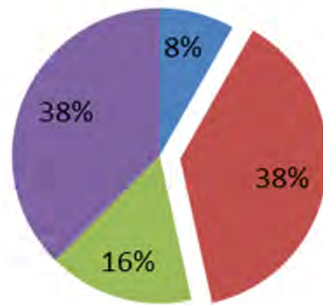
- **Alaska Subsistence:** A year after Senator Murkowski pushed back against the administration's attempt to cut the Fish and Wildlife Service's budget for the Alaska Subsistence Program, its funding level this year remained constant at \$12.4 million. The program promotes and regulates subsistence use on federal lands by overseeing harvest assessments and resource monitoring, conducting population assessments, and participating in Native outreach and education. In addition, the Forest Service's proposal to eliminate \$2.5 million for the subsistence program was rejected and these funds were restored in the bill.

*Source:

<https://www.murkowski.senate.gov>

Press/Press Releases 08.01.14

OSM BUDGET EXPENSE FY2016



| | | |
|--------------|-----|---------------------------|
| \$989,000 | 8% | Partners Program |
| \$4,610,000 | 38% | FRMP |
| \$1,919,000 | 16% | Support |
| \$4,516,000 | 38% | Staff, Travel, Operations |
| \$12,034,000 | | Total |

Regional Allocations of Fisheries funds (1335)

| FISCAL YEAR | FES ADMIN TARGET 1335 | REFUGES ADMIN TARGET 1335 | REFUGES PROJECT TARGET 1335 | FES PROJECT TARGET 1335 | FES/OSM CONSUMABLE BUDGET |
|--------------------|----------------------------------|--|--|------------------------------------|--|
| 2017 | \$931,581 | \$652,106 | \$28,092 | \$1,059,408 | \$6,644,620 |
| 2016 | \$960,923 | \$614,395 | \$136,178 | \$1,041,310 | \$6,513,767 |
| 2015 | \$1,023,447 | \$616,324 | \$112,754 | \$1,055,282 | \$6,594,759 |
| 2014 | \$1,023,450 | \$616,325 | \$140,781 | \$1,070,558 | \$6,402,887 |
| 2013 | \$1,002,905 | \$607,383 | \$23,400 | \$1,237,753 | \$5,694,837 |
| 2012 | \$1,074,926 | \$650,596 | \$13,200 | \$1,385,455 | \$6,602,238 |
| 2011 | \$1,109,464 | \$663,873 | \$12,600 | \$1,193,181 | \$8,135,329 |
| 2010 | \$1,109,464 | \$663,873 | \$12,000 | \$1,392,583 | \$8,286,464 |
| 2009 | \$1,109,464 | \$663,873 | \$9,000 | \$1,470,299 | \$8,096,390 |
| 2008 | \$1,109,464 | \$662,501 | \$10,451 | \$1,804,602 | \$8,009,056 |
| 2007 | \$1,093,977 | \$673,000 | \$41,364 | \$1,484,262 | \$8,648,755 |

Regional Allocations of Refuges Funds (1261)

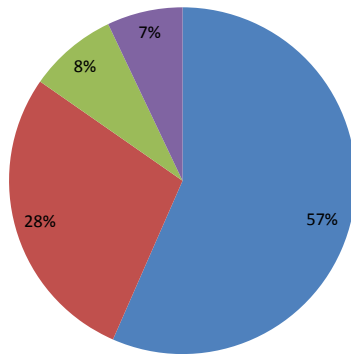
| FISCAL YEAR | COMMON SERVICES TARGET 1261 | LE ADMIN TARGET 1261 | REFUGES/OSM CONSUMABLE BUDGET |
|--------------------|------------------------------------|-----------------------------|--------------------------------------|
| 2017 | \$223,552 | \$135,000 | \$2,424,448 |
| 2016 | \$208,338 | \$135,000 | \$2,423,662 |
| 2015 | \$128,543 | \$135,000 | \$2,672,000 |
| 2014 | \$142,888 | \$135,000 | \$2,672,000 |
| 2013 | \$193,985 | \$135,000 | \$2,474,000 |
| 2012 | \$155,378 | \$135,000 | \$2,667,000 |
| 2011 | \$209,072 | \$150,000 | \$2,773,000 |
| 2010 | \$112,329 | \$150,000 | \$2,896,669 |
| 2009 | \$109,755 | \$150,000 | \$2,860,516 |
| 2008 | \$182,455 | \$145,481 | \$2,860,265 |
| 2007 | \$179,080 | \$147,786 | \$2,861,570 |

| FISCAL YEAR | PRESIDENT BUDGET USDAFS | ACTUAL PER PRESIDENT BUDGET |
|-------------|-------------------------|-----------------------------|
| 2018 | 2 | * |
| 2017 | 2 | * |
| 2016 | 3 | 3 |
| 2015 | 0 | 3 |
| 2014 | 0 | 3 |
| 2013 | 0 | 3 |
| 2012 | 0 | 3 |
| 2011 | 3 | 3 |
| 2010 | 3 | 3 |
| 2009 | 0 | 5 |
| 2008 | 5 | 5 |
| 2007 | 5 | 5 |
| 2006 | 5 | 5 |
| 2005 | 6 | 6 |
| 2004 | 6 | 6 |
| 2003 | 6 | 6 |
| 2002 | 5 | 5 |
| 2001 | 6 | 6 |
| 2000 | 0 | 0 |
| 1999 | N/A | 3 |

*2017 and 2018 actual numbers not published

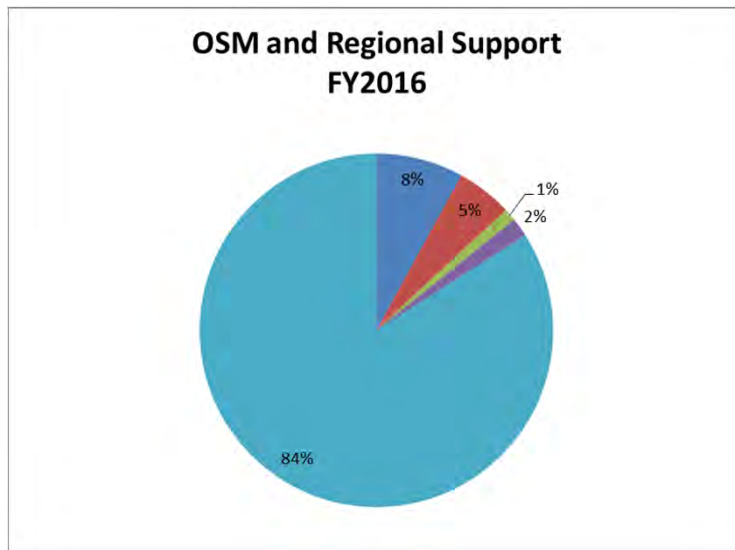
*Budget Authority from President's Budget

Fisheries Resource Monitoring Program FY2016



| | |
|-------------|--------------------------------------|
| \$2,607,587 | 57% State |
| \$1,296,440 | 28% Federal |
| \$380,858 | 8% Alaska Native/Rural Organizations |
| \$325,378 | 7% Private |
| \$4,610,263 | Total |

*Many of the State and Federal projects have subcontracts with Alaska Native/Rural Organizations



| | | | | |
|------------|-----|-----------------|--|--|
| 10,115,000 | 84% | OSM | | |
| 960,923 | 8% | Fisheries | | |
| 614,395 | 5% | Refuges | | |
| 208,338 | 2% | Common Services | | |
| 135,000 | 1% | Law Enforcement | | |
| 12,034,000 | | Total | | |

Space Costs

| FISCAL YEAR | GSA SPACE COST |
|-------------|------------------|
| 2017 | \$457,518 |
| 2016 | \$457,518 |
| 2015 | \$286,371 |
| 2014 | \$285,050 |
| 2013 | \$232,416 |
| 2012 | \$232,416 |
| 2011 | \$220,009 |
| 2010 | \$220,009 |
| 2009 | \$270,000 |
| 2008 | \$355,433 |
| 2007 | \$375,000 |

- **Alaska Subsistence (FS and FWS):** Provides funds for the Forest Service and the Fish and Wildlife Service to conduct activities relating to the Federal Subsistence Board, and works with Alaska Natives to gather information, expand employment and capacity building, and assist subsistence users with law enforcement compliance activities, such as obtaining essential permits and meeting harvest reporting requirements.

*Source:

<https://www.murkowski.senate.gov>

Press/Press Releases 06.16.16

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Annual Report Replies

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

Federal Subsistence Board

1011 East Tudor Road, MS 121
Anchorage, Alaska 99503 - 6199



FOREST SERVICE

OSM 17045. DP

Mr. Michael Bangs, Chair
Southeast Alaska Subsistence
Regional Advisory Council
c/o Office of Subsistence Management
1011 E. Tudor Rd. MS 121
Anchorage, Alaska 99503-6199

Dear Chairman Bangs:

This letter responds to the Southeast Alaska Subsistence Regional Advisory Council's (Council) fiscal year 2016 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. Poor Returns of Sockeye Salmon

The Council is concerned about poor returns of Sockeye Salmon throughout Southeast Alaska and feels there is a need to explore the causes of poor returns and find strategic ways to address those causes. The Council would appreciate information on the effects climate change is having on salmon returns.

Response:

The Board recognizes the importance of Sockeye Salmon to Federally qualified subsistence users in Southeast Alaska. We are aware that poor returns of Sockeye Salmon have been recently documented at several Fisheries Resource Monitoring Program (FRMP) projects and also at other locations by subsistence users. Conversely, 11 out of 13 Sockeye Salmon indicator stocks in Southeast Alaska monitored by the Alaska Department of Fish and Game met their escapement goal in 2016.

Sockeye Salmon returns fluctuate naturally and are subject to many environmental variables that are outside the purview of the Federal Subsistence Management Program. Variability in lake rearing conditions, extreme high and low flow events, high water temperatures, ocean conditions, and commercial fisheries interception all affect the number of Sockeye Salmon that return to watersheds that are important to subsistence. Environmental conditions, including those influenced by climate change, cannot be addressed through the Federal Subsistence Management Program. The only ways to address commercial fisheries interception of Sockeye Salmon destined for waterbodies important to subsistence are to submit proposals to the Alaska Board of Fisheries (BOF) and through filing petitions for extraterritorial jurisdiction with the Secretaries of the Interior and Agriculture.

The BOF and the Board continue to be important venues to address fisheries management issues in the form of proposals to change regulations. Since the State subsistence Sockeye Salmon limits in State-managed waters are put into regulation by the Alaska Board of Fisheries, they can no longer be adjusted in-season by State Area Management Biologists. Submitting proposals to the Alaska Board of Fisheries is the only way to change these limits for State-managed waters.

The FRMP is an available tool in the Federal Subsistence Management Program to monitor and manage Sockeye Salmon stocks of highest interest to subsistence users. Projects funded through the program have provided valuable information used for managing and conserving these stocks. The Board appreciates the Council's continued participation in choosing priority fisheries for study under the FRMP.

2. Unguided Fishermen: Subsistence Users versus Other Users

Council members have noted an increase in “unguided fishermen” throughout Southeast Alaska. The Council has identified the need to address training of unguided fishermen on the environment and safety. There is also a need to address the amount of fish that they take, which is not recorded. There are also takes from lodges (from non-resident fishermen) that are unaccountable with effects on subsistence users. This Council has submitted previous proposals to address this with Board of Fisheries which haven't been accepted (specifically Sockeye Salmon). The Council requests suggestions from the Board about how to address these concerns.

The Council would like to know if it is appropriate for the Board or the Office of Subsistence Management to request data from all user groups to make proper and informed decisions, specifically regarding unguided fishermen:

- *Obtain lodge information from the State. How many lodges have unguided clients or guided clients vs unguided? Minimally, make inquiries of what information is available.*
- *Request data from the U.S. Forest Service (USFS) on the groups that stay in the bay at Kake. Only USFS would know if they have a permit and there are concerns with amount of fish being taken.*

Chairman Bangs

3

Response:

The Board appreciates the concern with the perceived increase in the presence of “unguided fishermen.” We understand that term to refer to the practice of lodges or other businesses equipping non-resident anglers with boats, gear, and local knowledge, so that they can fish without the assistance of a licensed guide. While this practice appears to be becoming more widespread, there are no requirements for lodges to report the number of unguided fishermen, so it is difficult to assess the trend.

The special uses staff in the Petersburg Ranger District is unaware of any permits that have been issued for groups camping on Forest Service lands in the Kake area. A floating lodge in the Bay of Pillars area receives an annual permit for clients to go ashore in the Kutlaku area, but they have reported no use in the past few years.

In general, data on harvest and effort by guided anglers is available once the guide log books are submitted and information is entered, but similar data available for unguided anglers generally contains less precise detail due to the nature of the Statewide Harvest Survey. Information on the harvest of salmon by guided anglers is available from logbook data collected by the Alaska Department of Fish and Game (ADF&G). Charter operators and fishing guides are required to keep and submit daily logbooks of all fish that are caught by their clients, and data from these logbooks are compiled by ADF&G. Based on logbook data, the harvest of Sockeye Salmon by guided anglers is relatively small compared to other user groups. In 2014, the most recent year for which logbook data are available, 865 Sockeye Salmon were reported harvested in all of Southeast Alaska. This number is probably quite accurate, as the reporting requirements for guides are stringent and consequences for non-compliance are severe.

In contrast, the only estimate of harvest by unguided sport anglers (both resident and non-resident) comes from the annual Statewide Harvest Survey. This is a voluntary survey mailed to a subset of fishing license holders, asking them to report their effort and catch. While it is suitable for estimating sport harvest in broad areas, it is not usable to monitor harvest at a specific location, especially if participation in the fisheries at that location takes place at low levels. It also does not distinguish between resident and non-resident anglers. According to the Statewide Harvest Survey, about 20,000 Sockeye Salmon are harvested by sport anglers in Southeast Alaska each year. That number has remained relatively stable since 1997, so there does not appear to be any general trends of increasing sport harvest of Sockeye Salmon. However, it would be impossible to determine if there was a pattern of harvest at a specific location that might lead to a conservation concern.

Given the disparity in reporting requirements between guided and “unguided” non-resident anglers, one possible solution would be to require logbook-style record keeping and reporting requirements for certain unguided non-resident anglers, such as those fishing from a boat provided by a lodge. Legislation proposed in 2011 (Senate Bill 24) would have required logbook data to be collected from certain unguided angler trips, but the legislation failed to pass.

3. Extraterritorial Jurisdiction Process

The Council remains interested in how the petition for extraterritorial jurisdiction for the marine waters in Chatham Strait is being resolved as the Alaska Board of Fisheries further defined the Amounts Necessary for Subsistence. The Council would like the Board to advise what avenues are available to work with the State on ensuring actions are taken within Council recommendations.

Response:

Two proposals were submitted to the BOF requesting the revision of the amounts reasonably necessary for subsistence for salmon in Southeast Alaska Commercial Fisheries Districts 12 and 14. The BOF considered Record Copy number 3 from ADF&G. These options were published by ADF&G in Special Publication BOF 2014-06, Customary and Traditional Uses of Salmon and Options for Revising Amounts Reasonably Necessary for Subsistence Uses of Salmon in Districts 12 and 14, Southeast Alaska, which provided a total of 7 options for the BOF to consider during its deliberations. The BOF selected Option B, which based the revised Amounts Necessary for Subsistence (ANS) on the 5-year (2008–2012) average harvest of all salmon species combined, as estimated from permit returns, plus or minus the standard deviation for those years. Under this new regulation, the ANS for District 14 will be 600 – 1,500 salmon and District 12 it will be 1,100 – 1,700 salmon. The new ANS for salmon was established specifically for Districts 12 and 14 and do not include the ANS for salmon for the other districts.

At the same meeting, the BOF established the new ANS for Districts 12 and 14, the Chatham Strait and other commercial salmon fisheries management plans were modified to reduce harvest on migrating Sockeye Salmon for multiple reasons – including addressing the referenced extraterritorial jurisdiction petition. The BOF reduced commercial fishing opportunity by establishing new seasonally closed areas with the intent of allowing greater than 80 percent of the Kanalku Sockeye Salmon stock to pass through the area prior to commercial fishing by the purse seine fleet. New information collected through the genetic sampling of the commercial fisheries in the area was used as part of the justification for establishing the closure dates.

This response to the Council’s concern was written by interpreting the phrase “within standards” as meeting escapement goals and ANS for stream and subsistence fishermen within Districts 12 and 14. If either of these fall short of established goals, the Council should act following the recommendations below.

If the Council determines the recently-modified fisheries management plans for the commercial fisheries in the Chatham Strait did not sufficiently provide the sought timely protection of salmon migrating through the area, it should communicate such a determination, and the basis for it, to the ADF&G local and regional management staff. Similarly, the Council should also inform ADF&G if subsistence fisheries are not providing reasonable opportunity to harvest salmon due to interception by commercial fisheries. The Council should also then invite ADF&G staff to attend a Council meeting and hear testimony and discussion on the issue.

Chairman Bangs

5

If the Council determines State fisheries management actions are not providing reasonable opportunity in the State managed subsistence fisheries and the management actions are a result of the existing fisheries management plans or management practices, the Council should submit an emergency petition to the State of Alaska for temporary regulatory relief or submit a proposal to the BOF when Southeast Alaska finfish are in cycle. The deadline for submitting proposals for the Southeast finfish cycle meeting was April 11, 2017. The next open window to submit proposals to the BOF will be in about three years. If the Council determines a proposal should be taken out of cycle, the Council could submit an Agenda Change Request, seeking the BOF to assign the proposal to a 2017/2018 meeting. The Federal subsistence management program will assist the Council with whatever direction it chooses.

4. Outstanding National Resource Water Designation

The Council received a request for the Yakutat Forelands to be deemed an Outstanding National Resource Water Designation (ONRWD) as a Tier 3 area. This designation is provided by the Environmental Protection Act, but it is up to the State Legislature to implement statutes that allow the State to adopt regulations to implement a Tier 3 designation. There are currently no State avenues to process nominations for this designation. The Council would like to request the Board to send a letter to the Secretaries of the Interior and Agriculture requesting that they communicate a request to the Governor of Alaska to seek legislation that would allow the Alaska Department of Environmental Conservation to pass regulations and move forward on a designation allowed in federal law.

Response:

Upon further consultation with Yakutat council member Ray Sensmeier and reviewing the current status on this process, the Board has drafted a letter to be sent to the Secretaries of the Interior and Agriculture, with the following content:

We are forwarding a concern from the Council regarding designation of the Yakutat Forelands as an Outstanding National Resource Water Designation (ONRWD) Tier 3 area. The Council has been asked by their Yakutat based member to submit a letter of support for the designation, as nominated by the Yakutat Tlingit Tribe. ONRWDs or Tier 3 waters are provided the highest level of protection under the antidegradation policy of the State of Alaska, which is required by the Clean Water Act. The purpose of an ONRWD is to offer special protection for waters of “exceptional recreational or ecological significance.” The Yakutat Forelands qualify as both an exceptional recreational area and as having special ecological significance. Additionally, these lands contain many historic, traditional, sacred and cultural sites vital to the Yakutat Tlingit Tribe.

This designation was established by the Environmental Protection Act [40 CFR 131.12(a)(3)]. Federal regulations state the “The State shall develop and adopt a statewide antidegradation policy and identify the methods for implementing such

policy.” This includes the identification and designation of Tier 3 waters. The state’s antidegradation policy is in regulation at [18 AAC 70.015(a)(3)]. There are currently no avenues under State of Alaska regulations to process nominations for and designate; however, the state has begun the process. During the 2016 legislative session, the Governor introduced legislation (SB163 and HB283) to establish a nomination and designation process. The Governor then requested the bills be set aside and committed to more dialog with Tribes and stakeholders before offering another proposal.

The Alaska State Department of Environmental Conservation (DEC) has developed three possible alternative nomination and designation processes, and has been holding public workshops to allow for public discussion and input. The Board thereby requests that the Secretaries communicate a request to Alaska Governor Scott Walker, Lieutenant Governor Byron Mallot, with a courtesy copy to DEC Department of Water Division Director Michelle Hale, to prioritize moving forward with a process that is science-based, includes consideration of ecological and cultural values, incorporates public participation, and places the decision-making authority with the DEC, the agency that has water quality experience.

5. Overpopulation of Bears

The Council feels it is imperative that the Board be aware of the increasing population of bears in Southeast Alaska. Bears have shown an increase in aggressive behavior recently which have resulted in more human-bear contact and, in some instances, maulings. It is the intention of the Council to obtain further information on this matter and to identify the causes of increased bear population so that the issue can be appropriately addressed.

Response:

Thank you for alerting us to your concerns regarding bear populations and behavior. The Board consulted with ADF&G for more information on recent bear attacks and population trends. Regarding the five brown bear attacks in Southeast Alaska during 2016, there were no fatalities and all were deemed by ADF&G to be defensive attacks. Low salmon runs, particularly Pink Salmon, were reported for most of Southeast, causing bears to be stressed, which may have led to increased negative interactions between bears and people.

Regarding bear populations, a study of brown bears was recently completed for the Yakutat forelands in Unit 5A, and can be found online.¹ This is the most current and accurate estimate of brown bears for a specific region within Southeast. The most recent brown bear management

¹http://www.adfg.alaska.gov/static/home/library/pdfs/wildlife/research_pdfs/brown_bear_population_estimation_in_yakutat_southeast_alaska.pdf

reports are for the reporting period from July 2012 to June 2014, and can be found online.² The first four chapters provide information on Southeast. Both brown and black bear harvest has declined following peak harvest rates in 2007 (relative to records dating back to the 1970s). The decline in harvest may be partially attributable to lower hunter effort during the recession starting in 2008; however, increasing female harvest in some subunits could be an indication of lower population levels, and could certainly precipitate further declines if populations are at a lower density. As well, conservation concerns for these species generated a number of recent management actions by ADF&G and the Alaska Board of Game (BOG) to deliberately decrease harvest (i.e. black bear non-resident unguided draw, and Emergency Orders in GMU 4). The following is a summary of the known information on brown bears for each unit:

Unit 1 (mainland): Most of the information used to assess and manage mainland brown bear populations comes from mandatory sealing data, registration permit hunt reports, observations by staff, density estimates, and anecdotal information from the public. These sources indicate that the brown bear population is relatively stable across Unit 1. Brown bear observations have, however, increased from the Taku River south to Endicott Arm in Unit 1C.

Unit 3 (Islands of the Petersburg, Kake, and Wrangell areas): Quantitative population estimates are not available for bears in Unit 3. Management is informed by hunter registration data and anecdotal observations, staff observations, and defense of life and property (DLP) kills. The population is believed to be stable at low levels.

Unit 4 (Admiralty, Baranof, Chichagof, and adjacent islands). Extensive brown bear research has been conducted on Admiralty and Chichagof islands from the early 1980s through 2004. Unit 4 brown bear populations are believed to be stable.

Unit 5 (Cape Fairweather to Icy Bay, Eastern Gulf Coast): ADF&G estimated the 2013 brown bear population in Unit 5A to be 354 ± 29.2 bears, lower than the previous estimate of 522 ± 130.5 bears in 1993. Given uncertainty in the methods used to produce the 1993 estimate (no specific research was conducted for this estimate), it is unknown whether the lower estimate in 2013 equates to a reduction in population size. Data gathered from sealing certificates, incidental observations, and hunter interviews indicate no notable changes in the Unit 5 brown bear populations in recent years.

In summary, as of 2014, no notable increases in brown bear populations have been reported by ADF&G. Alternatively, there may be conservation concerns in some areas. We appreciate continued information from the Council and ADF&G on bear behavior, bear-human interactions, and observations of changes in abundance in the future.

² <http://www.adfg.alaska.gov/index.cfm?adfg=wildliferesearch.smr20151>

6. Central SE Game Unit 3 issues with Deer Population & Harvest Limits

The Council recognizes that there is a problem with the Sitka black-tail deer population and bag limits in Game Unit 3 and would seek the Board's support in identifying where subsistence needs are not being met in Unit 3 and a strategy to meet that need.

Response:

The Board recognizes that deer populations in Unit 3 have historically fluctuated in response to severe winters and predation. Severe winters in the late 1960s and early 1970s, and more recently from 2006-2009, resulted in significant declines in the Unit 3 deer population. As a result, both Federal and State deer seasons and harvest limits in Unit 3 are generally more restrictive than those found in other game management units in the Southeast Region. With access to most Unit 3 hunting areas being by water, the Board understands the difficulties for subsistence users to adequately meet their subsistence needs.

Following multiple years of deer hunting closure in the unit, limited harvest opportunity has existed since the early 1990's. In the fall of 2000, in order to comply with the State's Intensive Management (IM) Law, the Alaska Board of Game set Unit 3 deer IM population objectives at 15,000 and harvest objectives at 900. Since 2005, the annual harvest objective for Unit 3 deer has not been achieved, resulting in portions of the Unit having been identified as a BOG authorized predator control area. To better assess how the reduced levels of harvest may be affecting subsistence users, household use surveys should be implemented within the Unit.

The Board recognizes that winter severity, predation by wolves and bears, potential competition with an increasing moose population, and reductions in deer habitat capability resulting from development activities, all play important roles in the ability of deer to recover from population declines. The Board strongly encourages both ADF&G and the U.S. Forest Service (USFS) to work cooperatively in an attempt to effectively address these issues, and achieve management objectives ADF&G has set for Unit 3 deer.

With the majority of Unit 3 land under federal ownership, the USFS Petersburg and Wrangell District Rangers have been delegated authority for deer on Federal lands within the unit. The delegations allow for the issuance of emergency special actions not to exceed 60 days or temporary special actions to set Federal subsistence harvest quotas, close or reopen Federal seasons, and adjust harvest and possession limits for deer. USFS District Rangers also have authority to close Federal Public lands to the take of deer by all users. If the Council believes additional regulatory changes are needed beyond the delegated authority process, then the Council may either submit a Special Action Request to the Board and/or formal regulatory proposals to both the Board and to the Alaska Board of Game through their regulatory cycles.

7. Wolf Management Plan Development for Unit 2

The Council encourages development of a Unit 2 wolf management plan to address Federal management of wolves in the Prince of Wales area of Southeast Alaska. We envision a cooperative effort with Alaska Department of Fish and Game (ADF&G), US Fish and Wildlife Service (USFWS), USFS, and Federal subsistence scientists and managers and ask that the Board task the Office of Subsistence Management with bringing the right agencies together to work on a Unit 2 wolf management plan. Further, the Council requests that one or two Council members participate in the development of this plan.

Response:

The Board recognizes the controversy associated with wolf management in Unit 2 and appreciates the efforts of the Council to craft a solution that works for all users. Since the Council's March 2017 meeting, the Tongass National Forest has released a report entitled "Interagency Wolf Habitat Management Program: Recommendations for Game Management Unit 2." The report was mailed to all Council members following its publication, and is available online.³ An interagency team consisting of members from ADF&G, USFS (including Forest Service Subsistence Management) and the USFWS, with review by Forest Service Subsistence staff, produced the report with the objective of addressing the Tongass Forest Plan standard to develop and implement a Wolf Habitat Management Program for Unit 2, where wolf mortality concerns have been identified. As per standards and guidelines in the Forest Plan and key components of wolf management in Unit 2, the Program provides recommendations for deer habitat management, road management, wolf management and mortality, den management, and human dimensions. The human dimensions component includes:

- Inform the Southeast Alaska Subsistence Regional Advisory Council, local advisory committees, the Federal Subsistence Board and the Alaska Board of Game on an annual or more frequent basis of current wolf research and management efforts.
- Hold public meetings or solicit public input and information sharing when setting wolf harvest management quotas.

The Interagency Wolf Habitat Management Program is not a decision document. It provides recommendations for wolf management to be considered as on the ground projects are planned and implemented in Unit 2. Throughout these processes the Forest Service is committed to coordinating with and involving all users, including the Council, regarding all aspects of wolf management in Unit 2. The Forest Service believes another wolf management planning effort at this time would be redundant. The Board is also aware of the proposals that the Council submitted to adjust wolf management in Unit 2 and looks forward to working with the Council to find solutions that work for subsistence users as well as all users.

³ https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd537975.pdf

8. Eulachon Harvest on the Unuk River

The Council is concerned about the closures affecting eulachon harvest on the Unuk River. This issue has been presented to the Council and Board many times in the last 15-20 years. There is concern about the current monitoring process and how the closures of this harvest in the past several years have affected this subsistence opportunity. The Council would like to know if the Board could take special action to offer a test fishery, which could provide traditional ecological knowledge, as an effective tool to track the eulachon and get a better idea on escapement. The Council does not want to propose a harvest that might jeopardize the stock and is looking for avenues that will provide more information on eulachon returns. This information is crucial when weighing the protection of a resource against protecting a way of life. The Council requests that the Board advise what options may be best to monitor / study the Unuk River eulachon.

Response:

The Board understands the significance of Eulachon both culturally and biologically. Your suggestion of a “test fishery” to be used as a method for monitoring Eulachon, while providing some harvest, is appreciated. The institution of a “test fishery,” however, is beyond the authority of the Board. If this action were within the Board’s authority, it would not in the best interest of Eulachon management at this time.

While Eulachon abundance can exhibit considerable year-to-year variability, there has been a historic, northward trend of Eulachon populations being in decline from California to Southeast Alaska over the past 20 years. Since 2006, Federal and State managers have closed their respective fisheries on the Unuk River for conservation reasons. Outside of Alaska, State, Federal and Provincial agencies manage Eulachon extra-conservatively, with recent management activity driven by recent documented declines in ocean productivity. With the Unuk River being geographically located near these other systems it is not surprising that Eulachon returns in southern Southeast Alaska are showing similar trends to British Columbia and Washington returns.

The USFS has monitored the Unuk River since the early 2000s. Eulachon are not as easy to enumerate as salmon returns, so visual surveys are utilized to monitor returns. While the clear, shallow water of the Unuk can allow for excellent visual observation, it can also make Eulachon easily vulnerable to fishing activity. Although Eulachon have been noted returning to the Unuk since 2011, managers do not believe returns are sufficient enough for resuming subsistence fishing opportunity at past levels because the return strength continues to vary in observed numbers (from “very weak” in 2014 to “good” in 2012 and 2016). Should Eulachon populations in the Unuk recover enough to resume fishing opportunity, the Federal in-season manager is delegated to set harvest limits and gear restrictions to conservatively allow for subsistence fishing opportunity.

The Fisheries Resource Monitoring Program previously funded a four year study during the period of 2014-2017 for Eulachon monitoring within both the Unuk River and fishing District 1.

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A proposal to continue monitoring during 2018-2021 has been submitted for consideration and is currently under review by the Technical Review Committee (TRC). With TRC approval, this monitoring proposal may be brought forth to the Council to recommend for funding at the upcoming fall meeting in October 2017.

| Year | Eulachon Abundance |
|-------------|---------------------------|
| 2001 | Good? |
| 2002 | Moderate? |
| 2003 | Abundant? |
| 2004 | Weak |
| 2005 | Very weak |
| 2006 | Very weak |
| 2007 | Very weak |
| 2008 | Very weak |
| 2009 | Very weak |
| 2010 | Very weak |
| 2011 | Moderate? |
| 2012 | Good? |
| 2013 | Weak |
| 2014 | Very weak |
| 2015 | Moderate? |
| 2016 | Good? |

9. Continuing Dialogue

Lastly, the following issues are carried over from 2015, and the Council would like to build dialogue on these previously identified needs and issues:

- Fisheries Resource Monitoring Program, with stress on a strategy of continued funding.
- Transboundary mining strategy.
- Baseline water monitoring. Taku/Stikine have strategies, but we need to address the issue of no access to Unuk River. The U.S. Department of Agriculture needs to facilitate monitoring.
- Use of cabins on National Park Service lands for subsistence use.
- Customary & Traditional Use. Presentations have been made and discussions heard, and the Council would like to continue discussions with Office of Subsistence Management staff in potential consideration of a proposal.
- Terminal Area Escapement.
- Salmon and halibut interception. Sea Otter – continued issue of sea otters moving into interior waters of SE Alaska

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Response:

The Board appreciates keeping these matters at the forefront of discussion, and looks forward to continuing to work with the Council on these and other matters.

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,

Anthony Christianson
Chair

cc: Federal Subsistence Board

Southeast Alaska Subsistence Regional Advisory Council

Eugene R. Peltola, Jr., Assistant Regional Director, Office of Subsistence Management

Thomas Doolittle, Deputy Assistant Regional Director, Office of Subsistence Management

Carl Johnson, Council Coordination Supervisor, Office of Subsistence Management

DeAnna Perry, Subsistence Council Coordinator, U.S. Forest Service

Jill Klein, Special Assistant to the Commissioner, Alaska Department of Fish and Game

Interagency Staff Committee

Administrative Record



Federal Subsistence Board

1011 East Tudor Road, MS 121
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FISH and WILDLIFE SERVICE
BUREAU of LAND MANAGEMENT
NATIONAL PARK SERVICE
BUREAU of INDIAN AFFAIRS

FOREST SERVICE

OSM 17046. DM

Richard Encelewski, Chair
Southcentral Alaska Subsistence
Regional Advisory Council
c/o 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 2016 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. Nonrural Policy Implementation

The Council appreciated the opportunity to receive a briefing on the draft Nonrural Determination Policy, and has some thoughts on how the policy should be implemented. The Board should consider the use of fish and game household surveys and data. Existing data and surveys are available from the Alaska Department of Fish and Game and the Office of Subsistence Management (OSM) for staff to compile, interpret and provide in their analyses. This information would assist the Council in developing informed decisions prior to submitting its recommendation to the Board when making nonrural determinations.

Response:

The Board values the input from the public and the Council in the development of the policy. Because of the elimination of specific criteria from regulation, the Councils and the Board will be free to include whatever criteria or information may be relevant to guide Board decisions on nonrural determinations. This especially includes information that may be relevant for one

region but not another – regional flexibility has been a goal of changing the rural determination process to its present form. So, when the Council is presented with a proposal to change the rural status of a community within its region, it can include whatever information it believes is appropriate. Additionally, it is intended that anthropology staff at OSM tasked with conducting proposal analyses will be using household survey data from the Alaska Department of Fish and Game.

However, it is important to note that the U.S. Circuit Court of Appeals has placed some limits on how data may be utilized in identifying rural status. In *Kenaitze Indian Tribe v. State of Alaska*, 860 F.2d 312 (9th Cir. 1988), the court rejected the State’s definition of “rural,” which was limited to those areas where the economy was dominated by subsistence hunting and fishing. So, to the extent that fish and game household surveys may be utilized, it would not be permissible to use such data to establish an area as nonrural because it is not dominated by subsistence hunting and fishing (as the State was attempting to do with regard to the Kenaitze in that case).

2. Cook Inlet Fishery Regulations

At its fall 2016 meeting, the Council discussed the need to review the Cook Inlet subsistence fishery regulations to streamline regulations for consistency and clarification. The regulations for subsistence harvest of salmon by dip net and rod and reel cover several areas on the Kenai Peninsula with various methods and means for the harvest of salmon, which results in a complex and confusing regulatory environment for subsistence users. It is also, apparently, quite confusing to staff as well.

The Council suggests convening a workgroup to review existing Federal subsistence regulations with support from the Board to provide technical guidance to review the Federal subsistence regulations. The workgroup should consist of Federal and State fishery biologists, and other user groups to review the existing Federal regulations and provide a recommendation for the Council to consider. The product of the workgroup will be focused on streamlining the regulations for consistency and clarification for the Kenai Peninsula. The goal would be to submit a proposal during the next fisheries regulatory cycle to simplify the Kenai regulations.

Response:

The Board recognizes that the Cook Inlet regulations are overly complex. As such, we have directed OSM staff to initiate the rulemaking process to provide clarification and consistency in the regulations. The rulemaking process will come in the form of a proposed rule outlining the possible revisions to the Cook Inlet area regulations and initiating a public comment period. The rulemaking process has been delayed with the transition to a new Administration. We are unable to provide a timeline for publication of the proposed regulatory revisions in the Federal Register at this time. However, we are able to outline the steps that will follow publication. OSM will conduct an analysis of the proposed regulatory changes. The public will be notified of the proposed changes and provided an opportunity to provide written public comment on them.

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Affected Regional Advisory Councils will review the analysis of the proposed regulatory changes and provide recommendations to the Board. In addition, comments will be solicited from the Interagency Staff Committee and the State of Alaska. Tribal and ANCSA corporation consultations about the proposed revisions will be held. Finally, the Board will deliberate on the proposed rule. We will update the Council about the timing of this process when we have additional information.

3. Delegation of Authority

The Council discussed the Delegation of Authority (DA) authorized for each land manager for Federal public lands for the Southcentral Region with authority to close or open harvest of wildlife during situations of biological concerns or public safety. The Council requests specifics for each DA and for the Board to establish clear administrative authority for each species or unit for uniform consistency in administering Delegation of Authority for in-season managers on Federal public lands, and that the rural subsistence priority should be paramount regardless of the implementation of land use plans. The Council also requests OSM staff to compile a list of all DA letters issued to land managing agencies in the Southcentral region.

Response:

At the Council's meeting in February 2017, OSM staff presented the Council with a list of wildlife Delegation of Authority (DA) letters for review. All wildlife DA letters have been carefully written so that the language is clear and consistent, with the Scope of the Delegation to the land manager written in unambiguous terms. This Scope of Delegation details the regulatory authority being delegated, making it clear that this authority is limited to those set forth in 36 CFR 242.26 and 50 CFR 100.26. Furthermore, the Guidelines for Delegation in each letter require the land manager to provide a summary of special actions to the Council Coordinator for the appropriate Regional Advisory Council at the end of each calendar year for presentation to the Council. Use of delegated authority does not negate the requirement for maintaining a rural subsistence priority, but merely allows for management flexibility and a more nimble response to changing resource conditions.

Although not specifically mentioned by the Council, the Board will also provide information on fisheries delegation letters. Fisheries Delegation of Authority letters issued across the state are undergoing review in 2017. The previous version of Southcentral Region's delegation letters were issued in 2004. The current updates reflect changes to in-season managers' duties and mirror updates recently implemented in the wildlife division's Delegation of Authority letters.

For Southcentral Alaska fisheries, the following agency representatives have been delegated authority by the Board:

- Cook Inlet Area – Project Leader, Kenai Fish and Wildlife Field Office (currently Jeffrey Anderson)
- Prince William Sound Area – Cordova District Ranger, Chugach National Forest (currently Robert Skorkowsky)

- Copper River Drainage – Superintendent, Wrangell-St. Elias National Park and Preserve (currently Ben Bobowski)

4. Sterling Highway Improvement

The Council had the opportunity to review and comment to the Alaska Department of Transportation and Public Facilities and the Federal Highway Administration on the issue of the Cooper Landing/Kenai River Bypass on the Sterling Highway MP 45-60 Project. The ecological health and wellbeing of the Kenai River has a direct impact on the access and opportunity for Federally qualified subsistence users to fish and hunt in their customary and traditional use areas on Federal public lands of the Kenai Peninsula. Additionally, the Kenai River supports many uses by other key user groups that also depend upon healthy populations of fish and wildlife.

The Council voted unanimously to request a reconsideration of the selection of G South Alternative as the preferred alternative on the Sterling Highway MP45-60 project. The Council requests that this selection is reevaluated in consideration of the following comments in opposition to the preferred alternative of G South, which fails to provide necessary long-term protections for a healthy Kenai River. We support the more Kenai River friendly Juneau Creek Alternative, which is the best route to bypass both Cooper Landing and the Kenai River.

The Council strongly opposes the selection of any alternative that fails to protect the Kenai River and believes that the protection of such a crucial resource should receive the highest priority in the decision making process.

Response:

The Board notes that the public comment period on the Draft Environmental Impact Statement ended on December 15, 2016. The Board also forwarded this issue to the U.S. Forest Service, which provides this response:

The Alaska Department of Transportation and Public Facilities and the Federal Highway Administration are the lead agencies for the Sterling Highway MP 45-60 Project. The USDA Forest Service, Chugach National Forest, is a cooperating agency on the highway project. To date, the Forest Service has provided input to their environmental analysis for all alternatives. The Forest Service will not identify a preferred alternative since they are not the lead agency and decision maker.

The Sterling Highway MP 45-60 Project website¹ provides detailed information, including appropriate lead agency contacts.

¹ <http://www.sterlinghighway.net>

5. Salmon Biology and Ocean Acidification

Salmon and other marine finfish species harvested by subsistence, recreational and other users have observed those species' growth patterns decline to half the size they were about a decade ago. The decline in Chinook Salmon on the Copper River, observed changes in the sex ratios of Chinook Salmon, and in-season management restrictions are all a concern.

The abundance and size of fish are changing. Managers need marine indicators to help determine and forecast run timing in Alaska's freshwaters. Ocean acidification is another potential factor in the marine environment that affects productivity for salmon and other finfish species, whether from global climate change or acid rain from nations along the North Pacific Rim.

The Council encourages the Board to engage with the National Oceanic and Atmospheric Administration and other entities managing the Bering Sea and Gulf of Alaska fisheries to fund research focused on marine productivity to address declining Chinook populations and why the changes are occurring. The National Oceanic and Atmospheric Administration and other marine fishery management agencies can include in their basic research to investigate weather and transportation patterns coming from East Asia to help begin a dialogue between the United States and other nations.

Response:

The decline of Chinook Salmon has been an issue of concern across the state for the past few years. However, funding research on marine productivity is outside of the Federal Subsistence Board's authority. The Board is able to fund research through the Fisheries Resource Monitoring Program by approving proposals forwarded by the Technical Review Committee based on Priority Information Needs identified by the Regional Advisory Councils.

The State initiated a Chinook Salmon Research Initiative (CSRI) in 2012 to better understand the factors affecting Chinook Salmon abundance in Alaska. State scientists, in collaboration with Federal and academic partners, developed a five-year research plan. The initial \$30 million requested allocation was ultimately cut to \$15 million due to the State's recent fiscal crisis. It should be noted that none of the State-funded research focused on marine productivity.

The last appropriation for the CSRI was received two years ago and funds are essentially exhausted. While 2016 was the last year of the work funded, some of the original long-term projects have by necessity continued past that time. For example, the Division of Subsistence still has active projects for the following Chinook Salmon stocks: Chilkat, Chignik, Nushagak, Kuskokwim and Yukon. As projects are completed, final results will be reported and made available through the Alaska Department of Fish and Game website.²

² For a summary of CSRI projects, go to <http://www.adfg.alaska.gov/index.cfm?adfg=chinookinitiative.main>.

6. Klutina and Gulkana River Chinook Salmon

The Klutina and Gulkana River Chinook Salmon are experiencing population declines. Factors for the decline are overfishing in these rivers and efficiency of the fishwheel, and Chinook Salmon harvested by fisheries along with the targeted Sockeye Salmon by subsistence and personal use fishers.

Inseason managers should review the management plan for Chinook Salmon on the Klutina and Gulkana Rivers to assess current and future returns and take action to protect the Chinook Salmon from further decline. Options to consider include shortening the recreational users' time on the river and limiting the fishwheel fishery when Sockeye Salmon returns are at their most abundant.

Response:

The Board is also concerned with the decreased returns of Chinook Salmon to the Copper River, and the effects they have on rural Alaskans. The Alaska Department of Fish and Game's 2017 Copper River forecast for Chinook Salmon was 29,000 fish, the lowest forecast to date and only 5,000 fish over the drainage-wide minimum escapement goal. In light of this, both the Alaska Department of Fish and Game and the Federal in-season manager issued pre-season restrictions for the 2017 season.

The Alaska Department of Fish and Game issued an emergency order in March 2017 to close the Chinook Salmon sport fishery completely, to limit the Subsistence fishery to the retention of 2 Chinook Salmon by fish wheel or dip net, and to prohibit the retention of Chinook Salmon in the personal use fishery. Additionally, they required that fish wheels be closely-attended while in operation to provide for the immediate release of Chinook Salmon beyond the limits.

The Federal subsistence in-season manager issued two special actions in April to delay the opening date of the Upper Copper River District (Chitina and Glennallen subdistricts) subsistence fishery from May 15 to June 1, and to limit retention of Chinook Salmon in these fisheries taken by dip net or rod and reel between June 1 and July 15 to two fish. This reduced limit did not apply to harvest by fish wheel.

The Superintendent of Wrangell-St. Elias National Park and Preserve is the Federal in-season manager for this fishery through delegation of authority from the Board. Consistent with the delegation of authority and tribal consultation responsibilities, the park consulted with the Chair of the Southcentral Alaska Subsistence Regional Advisory Council, the Wrangell-St. Elias National Park Subsistence Resource Commission, tribal councils in the communities eligible to participate in the fishery, and local management biologists with the Alaska Department of Fish and Game prior to taking these management actions.

Early season indicators through the commercial fishery at the mouth suggested the run could be larger than initially forecasted. Harvest of Chinook Salmon by the commercial fishery was high

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even though the fleet was strictly limited by both time and area, prompting relaxation of restrictions on the State subsistence and sport fisheries in early June. Federal subsistence regulation restrictions were rescinded shortly after, following run strength indication from the Native Village of Eyak fish wheel project that also suggested that run was looking larger than initially forecasted. Lastly, in light of favorable return indicators, the State opened the personal use fishery to retention of a single Chinook salmon per household on June 19.

State and Federal managers are continuing to monitor the run and adjust harvest opportunity as appropriate.

The Council should submit Federal and/or State regulatory proposals if it believes more restrictive regulations should be enacted to protect Chinook Salmon on the Klutina and Gulkana rivers. These regulatory proposals could be discussed at the fall 2017 Council meeting with the aim of submitting the proposals during the next fisheries regulatory cycles.

7. Unit 13 Subsistence Community Hunt

The community hunt program for moose in Unit 13, which allows harvest of any bull, has greatly benefited rural residents within Unit 13. It is also managed by the Alaska Department of Fish and Game and is now open to all State residents according to testimony received at our fall meeting. However, the intent was to benefit primarily the residents of Unit 13. The result has been competition among Alaska residents and Unit 13 residents.

The Unit 13 community hunt is unsustainable if left open to all Alaska residents. It would be helpful to see data on what communities are participating in the Unit 13 community hunt. The Board can begin dialogue with the Alaska Board of Game to address the situation, reduce the competition for the resource, and hopefully assist Unit 13 residents to find ways to meet their subsistence needs.

Response:

As a result of the numerous proposals submitted to the Alaska Board of Game (BOG) on issues surrounding the community caribou and moose hunts, a special meeting on Copper Basin moose and caribou hunting was held on March 18-21, 2017 at Glennallen, Alaska. A summary of information presented at this meeting can be found online.³

The BOG noted that residents of communities in the hunt area (Unit 13) typically travelled shorter distances than non-local hunters and have traditionally hunted moose throughout the year. Harvest by local users was traditionally conducted without regard to antler configuration as this was the most efficient way to obtain their food. Hunting regulations that specify specific antler configuration, which are usually done to protect the most important segment of the population, also allow for more hunters in the field as not all animals are available. In addition, restrictions on the season and antler configuration may also reduce the success of local users.

³ <http://www.adfg.alaska.gov/index.cfm?adfg=gameboard.meetinginfo&date=03-18-2017&meeting=glennallen>

In 2009, the BOG established the CSH, with an earlier starting date and a quota for the number of moose that could be harvested that did not meet the general antler restrictions, to provide a community-based hunt following the pattern of use that had been established and used by the Ahtna people. In addition, they provided other regulatory options to provide reasonable opportunities for those individuals and families that chose not to organize as a community. These options included a general hunt with a harvest ticket (antler restrictions), a winter “any bull” moose hunt, and drawing hunts.

Between 2009 and 2017 the number of groups and participants in the CSH has increased from 1 to 73 and 378 to 3,023, respectively (Table 1). Although the number of groups, households, and participants increased from 2009-2014, the CSH (approximately 19% of total harvest) and total moose harvest has not increased at the same rate (Table 1). Currently the moose population in Unit 13 is stable based on the 2015 population estimates and composition surveys.

Table 1. Characteristics of the Community Subsistence Hunt for moose and total harvest in Unit 13 from 2009-2016

| Regulatory Year | Number of Groups | Number of Communities | Number of Households | Number of Individuals | CSH Harvest | Total Harvest |
|------------------------|------------------|-----------------------|----------------------|-----------------------|-------------|---------------|
| 2009/2010 | 1 | 19 | 246 | 378 | 98 | 866 |
| 2010/2011 ^a | - | - | - | - | - | - |
| 2011/2012 | 9 | 31 | 416 | 814 | 83 | 952 |
| 2012/2013 | 19 | 29 | 460 | 969 | 92 | 720 |
| 2013/2014 | 45 | 41 | 955 | 2,066 | 152 | 723 |
| 2014/2015 | 43 | 41 | 893 | 1,771 | 149 | 937 |
| 2015/2016 | 43 | 43 | 1,039 | 1,984 | 170 | 1,050 |
| 2016/2017 ^b | 73 | 48 | 1,527 | 1,300 | 201 | 1,037 |

^a A community hunt was not offered in 2010/2011

^b Harvest is not finalized

A majority of the hunters currently participating in the CSH are non-local residents living outside of Unit 13. From 2008-2012, residents of Unit 13 averaged 49 moose and nonlocal residents averaged 591. For the Tier II hunt permits, Copper Basin residents harvested most of the moose from 1995-2001 (78%), but only 45% from 2002-2007. To address concern that communal pattern of use was not providing reasonable opportunity, the BOG adopted amended Proposal 20 (RC25) at the special meeting in Glennallen to retain the CSH moose hunt for resident hunters for the fall (Aug 20 – Sept. 20) and winter (Dec. 1 - Dec. 31; subsistence hunt only) hunts with the following restrictions: *One bull per by community harvest permit only; however, no more than 100 bulls that do not meet antler restrictions may be taken by Tier II permit during the August 20 – September 20 season, up to 350 Tier II permits may be issued, one Tier II permit per household.* The BOG clarified that permit holders for regulatory year 2017 and 2018 will not be bound by the two year commitment for regulatory year 2018.

The Board would like to see if the changes made for the State of Alaska’s CSH in Unit 13 are effective before contacting the BOG for additional ways to increase the opportunity for local residents in Unit 13 to efficiently meet their subsistence needs for moose. Although Federal public lands in Unit 13 are limited, local rural residents are also able to hunt in Unit 13 under

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Federal subsistence regulations with a season of August 1 to September 20 and an any antlered bull moose harvest limit.

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,

Anthony Christianson
Chair

cc: Federal Subsistence Board
Southcentral Alaska Subsistence Regional Advisory Council
Eugene R. Peltola, Jr., Assistant Regional Director, Office of Subsistence Management
Thomas Doolittle, Deputy Assistant Regional Director, Office of Subsistence Management
Carl Johnson, Council Coordination Supervisor, Office of Subsistence Management
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Administrative Record



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BUREAU of LAND MANAGEMENT
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Federal Subsistence Board

1011 East Tudor Road, MS 121
Anchorage, Alaska 99503 - 6199



FOREST SERVICE

OSM 17047. KD

Speridon Simeonoff, Chair
Kodiak/Aleutians Subsistence Regional Advisory Council
c/o Office of Subsistence Management
1101 East Tudor Road, MS 121
Anchorage, Alaska 99503-6199

Dear Chairman Simeonoff:

This letter responds to the Kodiak/Aleutians Subsistence Regional Advisory Council's (Council) fiscal year 2016 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.

Issue 1. Council Meeting in Unalaska and Aleutian Life Forum

The Council wishes to express its sincere appreciation for the opportunity to hold the fall 2016 meeting in Unalaska, as well as attend the Aleutian Life Forum (ALF). This was an extraordinary opportunity to meet for the first time in the Aleutian Chain, hear from local tribes, Native associations and corporations, and learn about important subsistence challenges for users in the region. In particular, the Council would like to recognize Aaron Poe and Douglas Burns who helped secure the funding needed to assist with Council travel.

Recommendation: The Council recommends that the Board support meeting venues outside of designated hubs at least once during a two-year meeting cycle.

Response:

The Board is pleased that the Council found its meeting in Unalaska to be productive. Everyone can agree that meetings in rural communities have considerable potential to benefit both the public and the Council. In recent years, it has been the practice of the Office of Subsistence Management (OSM) to authorize meetings in non-hub communities approximately every two

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years, so long as the Council could provide a justification for meeting in that particular location and the costs were not too prohibitive. Several Councils have enjoyed the opportunity to meet outside of their hub communities, and the benefits of those meetings have been shown. However, in the face of anticipated steepening budget cuts, it may likely be the case that meetings in non-hub communities will be authorized under increasingly rare circumstances.

Issue 2. Council Coordination

The Council would like to formally recognize its Coordinator, Karen Deatherage, for her work on behalf of the membership. Karen has done a tremendous amount of research for our Council which has contributed greatly to the Council's ability to effectively complete its work. She has provided important clarification, expanded participation with local groups and increased the public's opportunities to share their concerns. The Council also wishes to extend a very special thank you for her diligent work to secure funding, and arrange for Council attendance and participation at the Aleutian Life Forum in Unalaska.

Recommendation: The Council recommends that Karen Deatherage receive an appropriate award in recognition for her outstanding service.

Response:

The Board and OSM appreciate your feedback regarding Ms. Deatherage's performance. Even after the initial denial of the request by OSM for the Council to meet in Unalaska, Ms. Deatherage worked diligently to secure additional funding from another program within the U.S. Fish & Wildlife Service that closed the budget gap. This additional funding is what made the difference in ultimately authorizing the meeting at Unalaska. Her hard work and diligence in this effort is definitely commendable, and she has been recognized for her extraordinary performance on this matter.

Issue 3. NWRS Resource Information Technicians (RIT's)

Earlier this year, the Council received news that Tonya Lee had left her position as the RIT for the Kodiak National Wildlife Refuge. As noted in our FY2015 report, Tonya Lee has been an exceptional asset to the Council and to our community, and will be sorely missed. The Council was told the Refuge will fill the position in 2017; however, the Council remains concerned this may not occur due to decreasing budgets and administration changes.

Recommendation: The Council urges the U.S. Fish and Wildlife Service to continue their support for the RIT program as it has proven critical to fostering relationships between Refuges and local communities.

Response: The Board understands that the Refuge is currently pursuing options to fill the position through a local hire, however, that will be subject to current hiring restrictions and

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funding availability. The Board also forwarded your concern to the U.S. Fish and Wildlife Service Refuges program, which provides this response:

The U.S. Fish and Wildlife Service (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.

Issue 4. Final Rule on Non-Subsistence Take of Wildlife on Alaska National Wildlife Refuges

The Council is extremely disappointed in the Final Rule recently adopted by the U.S. Fish and Wildlife Service (USFWS). The Council believes that the final rule reduces opportunities to harvest predators in Alaska's wildlife refuges. Many of the Councils opposed this Rule prior to adoption and believe this opposition was ignored by the USFWS, as further expressed in the letter cited below.

Recommendation: The Council has prepared a letter to be sent to the Board requesting they contact the Secretary's office regarding our concerns with the Final Rule. This letter will be circulated to all councils during the winter 2017 meeting cycle for adoption. It is the Council's hope that the Secretary's office will work to overturn this Rule and allow for effective hunting practices to continue on all national wildlife refuges in Alaska. The Council also believes that communities had few opportunities to substantially comment on this Rule before it was finalized. In response to this and other predator management issues, the Council established a working group to review proposed policies and/or proposals regarding predators would help to ensure that the Council and communities have adequate time to respond to potential changes. Members Della Trumble, Pat Holmes, Melissa Berns, Coral Chernoff, and Tom Schwantes have volunteered to serve on this working group.

Response: The Refuges Final Rule was nullified when the President of the United States signed House Joint Resolution 69 into law on April 3, 2017. The Resolution invoked the Congressional Review Act, a law that permits Congress to overturn regulations passed during the last six months of a previous administration, to reverse the Final Rule.

However, the Board also forwarded your concern on to USFWS Refuges, which provides this response:

Hunting is deeply rooted in American tradition and is a way of life for Alaskans who depend on the land and resources. We all share the same goal of conservation of wildlife and habitat for future generations, and we look forward to working closely with the Regional Advisory Councils and State of Alaska to ensure that mission is met.

The USFWS appreciates the input from the Regional Advisory Councils during the outreach campaign. The USFWS sent multiple letters to Tribes and ANCSA Corporations to develop a dialog during the regulation development process. Several meetings were held by USFWS staff across Alaska to seek public input. Further, USFWS staff presented information at Regional Advisory Council meetings, Alaska Federation of Natives, and hosted multiple teleconferences. The USFWS took the public requests for more time to comment seriously and therefore extended the public comment period. The comments received from the Regional Advisory Councils helped in the development of the final regulations.

On August 5, 2016, the U.S. Fish and Wildlife Service (FWS) published a final rule in the Federal Register (81 FR 52248) to amend our regulations for refuges in Alaska to clarify how our existing mandates for the conservation of natural and biological diversity, biological integrity, and environmental health on national wildlife refuges in Alaska relate to predator control; to prohibit several particularly effective methods and means for take of predators; and to update our public participation and closure procedures. The regulations were effective September 6, 2016.

On February 16, 2017, the House of Representatives passed a resolution to nullify these regulations under chapter 8, title 5 of the United States Code. On March 21, 2017, the Senate also passed a resolution to nullify the regulations, and on April 3, 2017, President Trump signed the resolution, thereby rendering the regulations without force and effect. The nullification of the regulation will not change the FWS approach to wildlife management on Refuges, as mandated by ANILCA, the National Wildlife Refuge System Improvement Act, and the Wilderness Act.

Issue 5. Emperor Geese Update

The Council is very pleased that the USFWS and others are moving forward with a planned Emperor Geese hunt in spring 2017. It has been decades since many subsistence users have hunted Emperors, and elders and youth alike are thrilled with this new opportunity. The Council will continue to work with the USFWS, the Alaska Department of Fish and Game (ADF&G), Pacific Flyway Council and the Alaska Migratory Bird Co-Management Council (AMBCC) to bring this hunt to fruition. The Council has remaining concerns, however, that the Western Gulf of Alaska area will have few if any opportunities to hunt birds during the season established for the spring because the birds are not present in our area at that time.

Recommendation: The Council would appreciate guidance from the USFWS Migratory Bird division on the possibility of opening the Spring hunt earlier so that subsistence users in the Kodiak area and the Aleutians will have the opportunity to hunt Emperor geese when they are present. Alternatively, the Council could also consider a subsistence hunt in the Fall when the birds are present.

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The Council would like to recognize the USFWS, ADF&G, and the AMBCC for their hard work and continued communication regarding an Emperor Geese hunt in the region. The Council would especially like to recognize Dan Rosenberg from ADF&G for effectively listening to Council concerns, recognizing local needs and keeping the Council updated on the process at regular intervals.

Response: The Board forwarded your concern to the USFWS Migratory Birds program, which provides this response:

In general, the available dates for spring-summer subsistence hunting are March 11 through August 31. Season length is limited to 124 days per the Mexico Migratory Bird Treaty and hunting seasons must be closed during the principal nesting periods interpreted as a minimum of 30 days per the Japan Migratory Bird Treaty. In order to provide a 124-day season within the available March 11 through August 31 period, and with the required minimum 30-day nesting period closure period, the season must be closed for an additional 20 days. The Alaska Migratory Bird Co-Management Council recommended that the 22 days be taken off at the beginning of the available dates, which resulted in a season running from April 2 through August 31 plus any closures necessary during the principal nesting periods (maximum of 122 day season).

The Kodiak/Aleutians Subsistence Regional Advisory Council could develop and submit a proposal to open their specific region as early as March 11; however, because the total season length is limited to 124 days, the Council must also recommend when the season would be closed as well as any shifts to the minimum 30-day closure for the principal nesting period.

If the Kodiak/Aleutians Subsistence Regional Advisory Council were to recommend an earlier spring-summer subsistence season for their region, the U.S. Fish and Wildlife Service will review potential implications to the current regulatory cycle. Currently, the Service is required to conduct a Service Regulations Committee Meeting in October whereby spring-summer regulations are reviewed and voted upon. The proposed regulations are then published in the Federal Register for a 60-day public review and comment period. Further, the Service must complete a Biological Opinion for potential impacts of the spring summer subsistence hunt on protected species including Spectacled and Steller's eiders. In 2017, despite significant efforts by both the U.S. Fish and Wildlife Service Alaska Region and Headquarters, subsistence hunt regulations were not published prior to the opening (2 April 2017) of the spring-summer subsistence season. Thus, if the Kodiak/Aleutians Subsistence Regional Advisory Council were to recommend an earlier spring-summer subsistence season opening date, the Service will determine how this will impact our current regulations and publication schedule.

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The U.S. Fish and Wildlife Service, in collaboration with the State of Alaska, offers a fall-winter waterfowl season. These regulations including state-specific selections, are published in the federal register. The fall-winter waterfowl season is not a subsistence season as the season includes specific requirements (e.g., daily bag and possession limits; plugged shotguns), but rather a general season. The Migratory Bird Treaties and Migratory Bird Treaty Act place specific sideboards on the subsistence season (see above) and the general season (107 days for any species and between September 1 and March 10).

Issue 6. Nonrural Determination

At its public meeting held on August 15-16, 2016 in Unalaska, the Council heard a brief presentation from Orville Lind, Office of Subsistence Management Native Liaison, on the proposed Nonrural Determination Policy which outlines the administrative process for future nonrural determinations. The Council appreciates the Board's efforts to include flexibility in this policy. However, there now appears to be no guidance on proposing a status change. There are no limits on who may propose a status change, or how often. This lack of criteria could allow for numerous frivolous or arbitrary proposals, which for obvious reasons would make communities nervous.

Recommendation: The Council would like for the Board to stipulate that any proposal to change the status of a community come from either a member of the community or the Council itself. The Council is also asking that the Board give deference to the Councils on nonrural determinations. The Council believes it is best suited to determine the status for the community it serves. The Council would also like to know what baseline information will be used to substantiate a "demonstrated change" in the community under Limitation on Submission of Proposals to Change from Rural to Nonrural. Will the conditions of the community be based on 2007 when nonrural communities were identified, or on the current conditions of the community?

Response:

The Board appreciates the Council's thoughtful articulation of concerns related to the Federal Subsistence Management Program's Nonrural Determination Policy, adopted in January 2017. The intent of the policy is to clarify an administrative process for identifying rural residents of Alaska who may harvest fish and wildlife for subsistence uses on Federal public lands in Alaska. While we understand that the Council's preference that proposal submission be limited to either a member of the community or the affected Subsistence Regional Advisory Council, Federal rulemaking undertaken by the Federal Subsistence Management Program requires that any individual, organization, or community be given the opportunity to submit proposals to change Federal regulations, in accordance with the Administrative Procedures Act (APA).

The Board recognizes that Council members possess specialized knowledge and expertise about the unique community characteristics within each region. The Board will look to affected

Councils for confirmation that any relevant information brought forth during the nonrural determination process accurately describes the unique characteristics of the affected community or region. The Board will also rely heavily on recommendations received from affected Councils when making decisions about whether a submitted proposal to change a community or area's status meets minimum threshold requirements and final decisions about status changes. However, as noted in the policy, Regional Advisory Council recommendations *will not* be subject to deference as are recommendations regarding the take of fish and wildlife under Section 805 of ANILCA.

Finally, the Council's questions about the baseline information that will be used to substantiate a "demonstrated change" in a community are addressed in the final version of the Nonrural Determination Policy under *Limitation on Submission of Proposals to Change from Rural to Nonrural*. The Policy clarifies that the Board's most recent decision on the nonrural status of a community or area will be the "baseline" for any future proposals for that community or area. Therefore, a "demonstrated change," as referred to in this portion of the process, is defined as a change that was not previously considered by the Board and must have occurred after the Board's most recent decision on the community/area's nonrural status. The final Policy also stipulates that it is the burden of the proponent to illustrate whether or not there has been a "demonstrated change" to the rural identity of a community or area. The final Nonrural Determination Policy is enclosed for your reference.

Issue 7. Funding for cattle and caribou removal on Alaska Maritime National Wildlife Refuge

As indicated in our FY2015 report to the Board, the Council opposes the removal of cattle from Chirikof and Wosnesenski Islands, and caribou from Kagalaska Island near Adak. While the Council appreciates the donation of meat to Adak from the removal of caribou in 2016, the Council does not believe this activity is necessary or feasible, particularly given the reduction of funding availability across State and Federal agencies in Alaska.

Recommendation: The Council would like to inform the Board that it supports Congress's decision to withhold funding for the removal of caribou and cattle from lands in the Alaska Maritime National Wildlife Refuge. The Council would like to see a withdrawal of funding continued.

Response:

The Board is not a part of the process that led to the Refuge's actions with regard to the Kagalaska Caribou or cattle on Chirikoff and Wosnesenski Islands. However, the Federal Subsistence Board, like the U.S. Fish and Wildlife Service, has laws that govern its activities and must follow a public process with regard to actions taken pursuant to those laws, and therefore understands the process the USFWS undertook with respect to its legal obligations. The Council is correct that the fiscal year 2016 federal budget prohibited USFWS from using any funds

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toward those two issues. The Board will not, however, endorse either a reduction or increase in funding to the activities of other agencies.

The Board also forwarded your concern to the USFWS Refuges program, which provides this response:

The Alaska Maritime National Wildlife Refuge 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.

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,

Anthony Christianson
Chair

cc: Federal Subsistence Board
Kodiak/Aleutians Subsistence Regional Advisory Council
Eugene R. Peltola, Jr., Assistant Regional Director, Office of Subsistence Management
Thomas Doolittle, Deputy Assistant Regional Director, Office of Subsistence Management
Carl Johnson, Council Coordination Supervisor, Office of Subsistence Management
Karen Deatherage, Subsistence Council Coordinator, Office of Subsistence Management
Jill Klein, Special Assistant to the Commissioner, Alaska Department of Fish and Game
Interagency Staff Committee
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1011 East Tudor Road, MS 121
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FOREST SERVICE

OSM 17048. DM

Molly Chythlook, Chair
Bristol Bay Subsistence Regional Advisory Council
c/o 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 2016 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. Meshik River Salmon

Residents of Port Heiden depend on the Meshik River, one of several salmon tributaries on the Alaska Peninsula, for their subsistence Sockeye and Chinook Salmon needs. Over the past several years, residents of Port Heiden were not able to meet all their subsistence needs due to commercial activities and low run returns.

The Council considered various Fisheries Resource Monitoring Program priority information needs for the Bristol Bay region at its fall meeting and supported funding for the Meshik River priority information needs. It is important to develop a monitoring program for the Meshik River for managers to have the data available for reference when making management decisions on subsistence and commercial activities and to manage for a sustainable fishery.

Response:

This issue is being addressed through the Office of Subsistence Management's (OSM) Fisheries Resource Management Program. OSM fisheries and anthropology staff worked

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closely with the Bristol Bay Subsistence Regional Advisory Council in 2016 to develop the priority information needs for the Southwest Alaska region. The following priority information need, developed by the Council, was included in the 2018 Notice of Funding Opportunity (Call for Proposals):

Reliable estimates of salmon escapement and evaluation of “quality of escapement” measures (for example, potential egg deposition, sex and size composition of spawners, spawning habitat quality and utilization) for determining the reproductive potential of spawning stocks in Big Creek, Naknek River, Alagnak River, Nushagak River, Chignik River, **Meshik River** and Togiak River. (emphasis added)

Despite being listed in the priority information needs, no proposals were received which addressed the salmon stocks of the Meshik River. This priority information need can be included in the next Notice of Funding Opportunity for projects starting in 2020.

2. Outreach

Public meetings of the Council are held in Dillingham and King Salmon/Naknek each fall and winter cycles, respectively. These two communities are able to accommodate the Council meetings due to availability of hotels, lodges, and restaurants.

Whereas, communities outside these two communities are limited to host a public meeting with limited accommodations and limited meeting venues.

*The Council recognizes the need to engage other subsistence communities during public meetings and recognizes the need to improve outreach efforts to the surrounding communities of upcoming scheduled public meetings, and to encourage the communities to participate on important subsistence resource related issues. Public meetings of the Council typically begin at **8:30 am** and end at **5:00 pm**, during normal working hours. Community members involved in natural resource issues usually work day jobs and cannot attend the public forum to bring forth their concerns.*

Accommodating the public wishing to participate in subsistence resource-related management issues is challenging when meetings are held during the day. Outreach efforts to include communities to participate in public meetings should include social media, and incorporate automatic email notices, for those that wish to be notified via email, that public meetings are being scheduled. Direct email to Tribal and city offices should also be included to notify the public and encourage them to attend in person or via teleconference.

The Council therefore requests that the Board, through the Office of Subsistence Management, ensure that all possible venues of outreach are being considered, and to also consider possibly holding meetings outside of the normal business day.

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Response:

Ahead of each Regional Advisory Council meeting cycle, public hearing, or other opportunity for involvement (such as calls for proposals), OSM sends news releases to the Federal Subsistence Management Program email listserve, posts the information to the Federal Subsistence Management Program Facebook page,¹ advertises in local newspapers, and updates the website. OSM also frequently runs ads on radio and television. For example, OSM ran a radio ad campaign on 25 public radio stations throughout Alaska to announce the winter 2017 Council meetings. As of April, 2017, the email listserve has 1,200 members, comprised of individuals, organizations, and various media outlets. Anyone is welcome to join the listserve at any time, and information on how to do so is included on every outreach item OSM produces. Information on the Facebook page and website is also included on every outreach item. OSM is always available to assist in providing information as needed, and the Councils with additional outreach requests can contact OSM's Subsistence Outreach Coordinator. Individual Councils determine the dates and times they meet. The Board encourages Councils to consider the needs of their local public in determining suitable meeting times. The chair has the prerogative to set a later meeting time, if needed, and should coordinate with the Council Coordinator on that issue when the meeting agenda is being developed.

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,

Anthony Christianson
Chair

cc: Federal Subsistence Board
Bristol Bay Subsistence Regional Advisory Council
Eugene R. Peltola, Jr., Assistant Regional Director, Office of Subsistence Management
Thomas Doolittle, Deputy Assistant Regional Director, Office of Subsistence Management
Carl Johnson, Council Coordination Supervisor, Office of Subsistence Management
Donald Mike, Subsistence Council Coordinator, Office of Subsistence Management
Jill Klein, Special Assistant to the Commissioner, Alaska Department of Fish and Game
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¹ <https://www.facebook.com/subsistencealaska>



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Federal Subsistence Board

1011 East Tudor Road, MS 121
Anchorage, Alaska 99503 - 6199



FOREST SERVICE

OSM 17049. EP

Lester Wilde, Sr., Chair
Yukon-Kuskokwim Delta Subsistence
Regional Advisory Council
c/o Office of Subsistence Management
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 2016 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 Council had addressed dip nets in the FY2015 Annual Report and in reviewing the Boards' reply wanted to further specify that while the Council is aware that dip nets are provided as an additional option for use, we want to reiterate that 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. The Council heard feedback from many communities represented that due to the nature of the river and tidal influence near their villages that it is not possible to catch salmon with a dip net. Council members from Tuntutuliak, Eek, Kwethluk, and Marshall relayed specific challenges from their experiences as well as feedback from the community they represent that dip nets do not provide a subsistence opportunity for them. The Council would like for both the Board and managers to recognize that for many communities it is not feasible to catch salmon with a dip net, and therefore should not be considered as a real subsistence opportunity even if it is offered as an option in place of traditional fishing methods.

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Response:

In the Yukon Area, the Board has not adopted dip nets as a legal gear type for the harvest of salmon in the subsistence fishery. It is worth noting, however, that Federal subsistence regulations do provide the following: “For the Yukon River drainage, Federal subsistence fishing schedules, openings, closings, and fishing methods are the same as those issued for the subsistence taking of fish under Alaska Statutes (AS 16.05.060), unless superseded by a Federal Special Action.” This means that if the State issued an emergency order authorizing the use of dip nets, that emergency order could apply to Federal subsistence fishing.

In the Kuskokwim Area, dip nets have been legal gear in Federal salmon subsistence regulations since 2014. The Yukon-Kuskokwim Delta and Western Interior Alaska Subsistence Regional Advisory Councils recommended that the Board adopt dip nets as a legal gear type. When Yukon Delta National Wildlife Refuge (Refuge) waters are closed to the harvest of Chinook Salmon, the Federal in-season manager (the Yukon Delta National Wildlife Refuge Manager) allows the harvest of other salmon species using all other legal gear. These include dip nets, beach seines, fish wheels, and rod and reel. The Board is aware that people use dip nets to harvest smelt rather than salmon. The Federal in-season manager has also been notified during Kuskokwim River Salmon Fisheries Management Working Group meetings that dip nets are inefficient and ineffective in harvesting salmon due to the fast flowing morphology of the Kuskokwim River. As a consequence, the Federal in-season manager has never restricted the subsistence harvest of salmon to only the use of dip nets.

2. Timing of subsistence fishing opportunities when weather is conducive to safely dry fish.

At its fall 2016 meeting the Council heard testimony from members of the public about concerns that subsistence salmon harvest opportunities have been provided too late in the season, when rainy weather and flies pose a real problem to prepare and dry salmon properly to put away for the year. The Council is supportive of conservation efforts to protect Chinook salmon but also wants to bring to the attention of the Board and managers that weather conducive to drying salmon on open air racks is also an important conservation consideration so that harvested salmon are not lost to spoilage later in the summer when wet weather is prevalent and flies emerge and lay eggs on the fish.

Response:

Since 2010, Chinook Salmon escapements into the Kuskokwim River drainage have been some of the lowest on record. As a consequence, in May 2014 and 2015 and June 2016, the Federal in-season manager determined Refuge waters must be closed for most of June to the harvest of Chinook Salmon by all user groups; commercial, sport, and both State and Federal subsistence. The Board is aware of the negative effects of these actions on Federally qualified subsistence users, especially those who reside in the drainage and are most reliant on the salmon runs. The Board has directed its staff to document these hardships in several ways. One has been the Section 804 subsistence user prioritization included in each of three analyses of special action

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requests received since 2014 requesting that Refuge waters be closed to the harvest of Chinook Salmon except by a prioritized group of Federally qualified subsistence users. Residents of Kipnuk, Kwigillingok, Tuntutuliak, Kasigluk, Nunapitchuk, Atmauthluak, Bethel, Kwethluk, Akiachak, Akiak, Tuluksak, Lower Kalskag, Kalskag, Aniak, and Sleetmute specifically described the difficulty of drying and smoking salmon after June. A resident of Tuntutuliak said in 2012, “Drying fish in wet weather is more demanding, takes longer, and produces an inferior product, if it works at all.” Additionally, rainy weather can be rough and dangerous, he said: “Better to let the weather make the windows.” The windows are when there are opportunities allowing the harvest of salmon with gillnets.

During the public hearing that was held in Bethel on April 18, 2017, concerning two special action requests to the Board, FSA17-03 and FSA17-04, people described the necessity of having Chinook Salmon harvest opportunities as early in June as possible to avoid spoilage due to wet weather more likely to occur after mid-June. Ethnographic research also describe Chinook Salmon’s importance in the seasonal round of villages harvesting wild foods and the tremendous efforts people make to harvest and preserve salmon in early June to take advantage of the runs and avoid spoilage.

The Board is hopeful that with increasing run sizes, there will be additional opportunities to harvest, dry, and smoke salmon in June in the coming years.

3. Timing of fall subsistence moose hunt.

The Council discussed the experience of the fall moose hunt with members of the public attending the meeting and concurred that warmer weather in recent years is making it difficult to harvest and safely protect the meat. Also many people do not have freezers and have to dry meat and need cooler temperatures to preserve the meat for the winter. The Council recommends consideration of shifting the fall moose hunt opening back by a week or two from the current September 1 opening date in order to start the hunt when the weather conditions may be cooler and more conducive to safe preservation of the meat.

Additionally, the Council also discussed that the moose tend to be further up near the headwaters of tributary rivers and into the foothills of the mountains. To pool resources and save on gas many hunters will travel together in one boat to access where the moose are in Unit 18. The current requirement to report harvest within three days poses hardship when having to travel far for the hunt and ensuring that both hunters have an opportunity to harvest a moose before having to return back to file a report. Due to these circumstances, the Council requests consideration of more time to submit a moose harvest report.

Response:

The Yukon Delta National Wildlife Refuge Manager is aware that this is an issue and has been responsive to the needs and ideas of Federally qualified subsistence users. Despite the Refuge’s willingness to accommodate local needs, the in-season manager has limited flexibility under the

authority delegated to him by the Federal Subsistence Board. The Refuge manager is able to set the quota, which happens annually in consultation with the Alaska Department of Fish and Game, and to close the season once the quota has been met. However, the Refuge manager does not have the authority to open the season later than September 1, or to reopen the season later in the fall or winter in cases where the quota was not met during the initial opening.

This sort of issue should be addressed through the regulatory process. The Council has several options for revising the regulatory structure to better accommodate subsistence users' needs. On a year-to-year basis, the Council may submit special action requests to the Federal Subsistence Board to reopen the season in cases where the quota was not met during the initial opening. To modify the regulatory structure for a longer term, the Council may wish to submit a proposal during the biennial call for wildlife proposals. While the Council may propose any solution it deems appropriate, one option would be to propose an expansion of the Refuge manager's authority to manage the hunt. For instance, the authority to open and reopen the season within a designated time frame would allow the manager to be responsive to changing weather and travel conditions as well local needs and desires. This added flexibility would likely benefit Federally qualified subsistence users and would allow for more nimble management of the moose population during a time when it is experiencing rapid growth. However, as the deadline for submitting wildlife proposals has passed, the only remaining option for this year would be to submit a special action. The next call for wildlife proposals will be in winter 2019.

Federally qualified subsistence users who hunt moose in the Kuskokwim area under Federal regulations are required to have a State registration permit, which requires reporting successful harvest within three days. If the Council feels that local hunters would be better served by hunting under a Federal permit, which might have different reporting requirements, they can submit a regulatory proposal during the next call for proposals. However, it is worth bearing in mind that requiring a different permit for State and Federal hunts is likely to increase confusion among users and is contrary to the recent action by Alaska Board of Game to align State regulations with Federal regulations for this hunt.

4. Opportunity to harvest spring sheefish in advance of the Chinook Salmon closure.

The Council discussed that sheefish has always been an important subsistence food for many communities on the Kuskokwim, and even more so now with fishing restrictions in place for the conservation of Chinook Salmon. The spring run of sheefish provides an opportunity for some of the first harvest of fresh fish after a long winter and, as Council members noted, it makes good dryfish, too. Currently, conservation management for Chinook Salmon has started with all subsistence fishing closed in the spring until Chinook Salmon passage is determined to be sufficient to meet escapement goals. The Council is supportive of Chinook Salmon conservation measures; however, there could be a subsistence opportunity for a sheefish harvest opening right after river ice breakup timed ahead of the first pulse of Chinook Salmon on the Kuskokwim. This would provide for an important early subsistence fishing opportunity for sheefish in advance of the fishing closures for conservation of Chinook Salmon.

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Response:

The Board recognizes that Sheefish is an important subsistence resource for Kuskokwim River residents, especially before the start of the Chinook Salmon run.

Since 2010, Chinook Salmon runs in the Kuskokwim River have been low, with 2013 being the smallest run on record. However since 2014, the Chinook Salmon runs have increased in a steady fashion, but the runs are still below the historical average. Given the small Chinook Salmon run sizes, the Board of Fisheries passed a regulation in January of 2016 that closed the Kuskokwim River Chinook Salmon subsistence fishery annually through June 11 (5 AAC 0.7365 - Kuskokwim River Salmon Management Plan). The intent of the regulation was to reduce harvest on early migrating Chinook Salmon that are believed to be bound for upriver spawning tributaries. The outcome anticipated by the regulation change was decreased exploitation on headwater sub-stocks by lower river subsistence users, increased harvest opportunity for upper river subsistence users, and increased Chinook Salmon escapement to headwater tributaries.

Prior to 2015, State subsistence regulations provided for the use of 4 inch or smaller mesh gillnets to harvest non-salmon species during times of Chinook Salmon conservation; however, in 2016, due to the regulatory change described above, the Alaska Department of Fish and Game (ADF&G) did not allow the use of 4 inch or less mesh gillnets to harvest non-salmon species during the early Chinook Salmon subsistence fishery closure. ADF&G did not allow for an early-season non-salmon harvest opportunity with this gear type because the department had expectations of directed Chinook Salmon using this gear type.

The lack of opportunity to harvest non-salmon species with 4 inch or smaller mesh gillnets in 2016 caused growing concerns from local subsistence users, which led them to recommend that the ADF&G provide harvest opportunities for non-salmon species before the early season Chinook Salmon closure. To address this issue, the Alaska Board of Fisheries adopted regulations in February 2017 that clarified the use of 4-inch or less mesh gillnets during the early season Chinook Salmon subsistence fishery closure (RC 279 with amended language found in RC 218). These new regulations will be enacted for the 2017 fishing season. The new regulations are summarized below:

- 1.) If the projected escapement of Chinook Salmon is within the drainage-wide escapement goal range, the new regulation states that:

“the commissioner shall, by emergency order, open at least one fishing period per week with four inch or small mesh gillnets; the gillnets may only be operated as a set gillnet and no part of the set gillnet may be more than 100 feet from the ordinary high water mark.”

- 2.) If the projected Chinook Salmon escapement exceeds the drainage-wide escapement goal range, then the new regulations state:

“the commissioner shall, by emergency order, open fishing with four inch or smaller gillnets seven days a week; the gillnet may only be operated as a set gillnet and no part of the set gillnet may be more than 100 feet from the ordinary high water mark.”

The Board of Fisheries felt that the regulation change gave local subsistence users dedicated harvest opportunities for non-salmon species during times of Chinook Salmon conservation, while also allowing for flexibility in fisheries management.

Given the new State regulation changes, Federal subsistence regulations for salmon in the Kuskokwim area will match any State-issued emergency orders related to early season fishing schedules, openings, and fishing methods, unless superseded by Federal Special Actions.

5. Tribal Consultation and reporting to the Regional Advisory Council.

The Council appreciates the Federal Subsistence Board commitment to Tribal consultation on regulatory proposals and other matters affecting subsistence. We look forward to the opportunity to hear feedback and recommendations from the many Tribes in our region. The Council would like for the Tribal consultation process to occur within the Federal subsistence regulatory cycle timing such that there can be a report back at the Regional Advisory Council meetings. This would assist the Council in hearing from Tribes and communities throughout the Yukon-Kuskokwim Delta region and opportunity to consider their feedback in the Councils deliberation and recommendations to the Federal Subsistence Board.

Response:

The Board appreciates the Council’s concerns for the consultation process to happen within the Federal subsistence regulatory cycle timing in a manner that provides tribes have the opportunity for feedback and recommendations to the Regional Advisory Council before their scheduled meetings. This would assist the Council in hearing from tribes in their region for the opportunity to consider their feedback during deliberation and while making recommendations to the Board. This is how the process is described in the *Implementation Guidelines for the Federal Subsistence Board Government-to-Government Tribal Consultation Policy*, in the section “Regulatory Cycle Timeline and Roles and Responsibilities.”

In some cases, however, the timing related to when proposals or special actions are received presents challenges in successfully contacting affected tribes or corporations and finding dates that will work for consultations. This can result in a shorter time period within which to work. Additionally, there are times when the consultation can only be held after the Regional Advisory Council meeting, when contact is made and an alternate date is agreed upon. The Native Liaison, along with other Office of Subsistence Management (OSM) staff, put considerable effort into reaching people in the affected regions. Despite the effort, sometimes only a few contacts are confirmed.

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As the OSM Native Liaison continues working with tribes, corporations, Council Coordinators, and Refuge Information Technicians (RITs) in each region, with their local knowledge and involvement, we can expect to have greater success with our outreach efforts. Together we can strengthen the process and move forward to conduct more effective and meaningful consultations.

6. Increased shipping traffic in the Bering Sea and potential impacts to subsistence communities in the Yukon-Kuskokwim Delta.

In recent years, the Council has seen increased shipping barges and large oil tankers in the vicinity of coastal and island communities of the Yukon-Kuskokwim Delta. This past summer a large oil tanker ran aground on the reef near Nunivak Island and Etolin Strait. The village of Mekoryuk was fortunate that this grounding did not cause a major oil spill but were very distressed to learn from the Coast Guard that the nearest oil response equipment is located in the Bristol Bay region. The communities of Hooper Bay, Scammon Bay, and Chevak have expressed concerns with large oil tankers offloading to smaller fuel barges right offshore of these villages. Any spills near the Yukon-Kuskokwim Delta coastline would be very detrimental to many subsistence resources that our communities rely upon including seals, walrus, birds, and numerous species of marine and anadromous fish. Lack of any emergency support options in the region to respond quickly the event of marine shipping accident is very concerning. Many of our subsistence resources and way of life are in increasing jeopardy as shipping traffic continues to expand.

The Council would like to help our coastal communities find a solution for prevention of oil spills and mitigation plans if another accident were to occur. The Council recognizes that marine waters and shipping activities are beyond the authority of the Federal Subsistence Board; however, due to the potential for an oil spill having direct impacts to Federal subsistence fisheries such as the critically important Yukon and Kuskokwim salmon runs, as well as other subsistence resources, we feel it is important the Board is aware of this this lack of any emergency response options in the region. The marine waters are not isolated, there is ongoing interaction between the marine environment and the Federal lands and waters of the Yukon Delta National Wildlife Refuge, as well as interrelated subsistence activities. Whatever happens in the Bering Sea not only affects the coast, it affects the Yukon and Kuskokwim Rivers and the food chain including juvenile salmon feeding at sea which would have impacts all the way to the headwaters. A shipping accident resulting in a spill in this region would be catastrophic to our subsistence way of life. The Council would appreciate any support from the Board or the Federal Subsistence Management Program in forwarding these concerns to the relevant agencies and assist us in seeking potential solutions in order to prevent marine shipping accidents near our communities or at least be prepared for with emergency response systems in place in the event of a spill.

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Response:

Shipping is expected to increase in the future due to shrinking sea ice extent during the summer months. Transpolar or Trans-Arctic shipping routes have been increasing as more predictable navigation is possible each year. Because this new navigation route reduces the mileage of shipments, shippers are looking to take advantage of this new route. As the Trans-Arctic routes begin to see more activity, it is expected that new alternatives to dealing with accidents will be needed to avert any possible environmental disasters, such as oil spills. Possible catastrophes could be further exacerbated by the remoteness of this route. Response times to accidents could be slowed, which prompts the need for a plan of action when these types of events occur.

As the Yukon-Kuskokwim Delta Subsistence Regional Advisory Council has suggested, the Federal Subsistence Board is not responsible for the shipping activities and spill response plan that is needed. However, the Federal Subsistence Board recognizes that the impact of a large scale contamination disaster could indeed harm or change the immediate environment, which in turn could have lasting impacts to the subsistence resources. Increased shipping traffic also could have the effect of changing the behavior of marine mammals, such as seals or walrus, which could inadvertently impact the subsistence user with the animals not acting naturally due to nearby disturbances. This is a valid concern and needs to be assessed critically to better understand how to minimize the possibilities for accidents and also be prepared for an accident with response teams that are well equipped and nearby. The Board will forward the Council's concerns to the appropriate agencies.

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,

Anthony Christianson
Chair

cc. Federal Subsistence Board
Yukon-Kuskokwim Delta Subsistence Regional Advisory Council
Eugene R. Peltola, Jr., Assistant Regional Director, Office of Subsistence Management
Thomas Doolittle, Deputy Assistant Regional Director, Office of Subsistence Management
Carl Johnson, Council Coordination Supervisor, Office of Subsistence Management
Eva Patton, Subsistence Council Coordinator, Office of Subsistence Management
Jill Klein, Special Assistant to the Commissioner, Alaska Department of Fish and Game
Interagency Staff Committee
Administrative Record



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

Federal Subsistence Board

1011 East Tudor Road, MS 121
 Anchorage, Alaska 99503 - 6199



FOREST SERVICE

OSM 17050. ZS

Jack Reakoff, Chair
 Western Interior Alaska Subsistence
 Regional Advisory Council
 c/o Office of Subsistence Management
 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 2016 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. Opposition to modification of PLO 5150 to allow State selection of Federal public lands in the existing Utility Corridor under the BLM Central Yukon Resource Management Plan

Federally qualified subsistence users have raised concerns at public meetings held in the Western Interior Region by the Bureau of Land Management (BLM) regarding the potential effects of Public Order 5150 pertaining to the Dalton Utility Corridor in the BLM Central Yukon Resource Management Plan. The Council notes the Dalton Utility Corridor (PLO 5150) is the jewel of the Central Yukon BLM management area and a national treasure. The BLM lands in this corridor provide some of the best road-accessed scenery in Alaska, sport and subsistence use opportunity, mining and other commercial uses. There are statutory as well as other compulsory reasons to recommend in the Preferred Alternative not to lift any portion of the PLO 5150, and to not convey any Top Filed lands to the State of Alaska. Providing relevant context to these concerns, as noted in the BLM Central Yukon Resource Management Plan and Environmental Impact Statement FAQs:

In 1971, Public Order 5150 (a.k.a. PLO 5150) established a utility and transportation corridor along the general route of the Trans-Alaskan Pipeline and made the lands in that corridor unavailable for selection by the State of Alaska. In 1980, the Alaska National Interest Lands Claim Act (ANILCA) granted the State an additional 10 years (until 1993) to complete its land selections. It also gave the State the right to file “future selection applications” on lands that were not available for selection at that time in case they became available in the future. These future selection applications are called “top filings.” The State of Alaska has top-filed a large portion of the lands in the utility corridor that was reserved by PLO 5150. It is possible that PLO 5150 would be modified through the Central Yukon Resource Management Plan. If PLO 5150 is modified or eliminated, then the top-filed lands would become valid State selections, and eventually become State-owned lands. Source: United States Department of the Interior Bureau of Land Management. 2017. Central Yukon Resource Management Plan and Environmental Impact Statement FAQs. <https://goo.gl/8sWIJY>. Retrieved: March 22, 2017.

Addressing this potential scenario as stated by the BLM, the Council received oral testimony delivered by Pollack (P.J.) Simon, Jr., First Chief of Allakaket Village, a Federally-recognized tribe of 330 members located in the southern Foothills of the Brooks Range. Mr. Simon addressed the importance of preserving caribou and Dall sheep populations utilized by Federally qualified subsistence users in the region. Mr. Simon noted that Tribal members oppose the conveyance of the 5150 Utility Corridor lands along the Haul Road, from the Yukon River ridge to Coldfoot.

Mr. Simon noted the Utility Corridor is rich in wildlife utilized by Federally qualified and non-Federally qualified users alike. Mr. Simon explained these wildlife resources cover a matrix of Federal, State, and ANCSA ownership including Doyon lands. Mr. Simon described the significance of these lands as “world class” noting the abundance of Dall sheep in the vicinity of Coldfoot; and three caribou herds (Teshekpuk, the Central Arctic, and the Western Arctic) which provide an important food source. Mr. Simon noted the Tribe has gotten along very well with the existing guides and air transporters operating out of Evansville and Wiseman. Mr. Simon explained this good working relationship would be jeopardized by PLO 5150. Mr. Simon explained that conveying these Federal public lands to the State could result in cumulative effects adversely impacting the flora and fauna along the Dalton Highway due to increased motorized vehicle traffic, intensified hunting pressure, habitat fragmentation, and changes in water quality due to mining activity.

Responding to these concerns, the Council noted the State is over-selected by 18 million acres on vacant, unappropriated, or unreserved lands at this time. The PLO 5150 lands were withdrawn, and continue to have “reserved interest” to the United States. The current PLO 5150 lands do not legally qualify to be “Top Filed” as they do not qualify under the Statehood Act Selections found in Alaska Statehood Act sec. 6 (a) and (b), “vacant, un-appropriated, or unreserved lands.” The Council understands ANILCA, and the Federal Lands Policy Act of 1976 to preclude transfer of the 5150 lands to the State, as found explicitly in ANILCA Title VIII §906 (j). The Council emphasizes the Board should recognize that exclusion of subsistence uses by the State of

Alaska would have a significant and adverse impact on Federally qualified subsistence users in the communities of the upper portion of the Western Interior region. The Council emphasizes the BLM Central Yukon Resource Management Plan alternatives that would open Federal public lands to selection by the State of Alaska and conveyance to the State of Alaska would have extreme detriment to Federally qualified subsistence users. Reiterating these concerns, the Council opposes any further modification of the current PLO 5010 lands to allow State selection of Federal public lands in the existing Utility Corridor citing the legality, detriment to communities, and best interest of the American people.

Responding to these concerns, the Council unanimously moved to endorse a letter (see attached) prepared by Jack Reakoff of Wisemen to the Bureau of Land Management. The Council asks the Board to recognize the following specific points from the letter as specified below.

- *On December 27, 1971 the Secretary of Interior withdrew the transportation and utility corridor "from all forms of appropriation under the public land laws except for location for metalliferous minerals under the mining laws" with Public Land Order 5150." The Trans-Alaska Pipeline Act" of 1973 adopted and affirmed that action. The State of Alaska had not selected the Central Brooks Range by 1971. The State of Alaska has over selected other lands that were open to selection. The "Utility Corridor" BLM property was closed not only to the State of Alaska selection, it excluded Native Corporations selection as well.*
- *Opening PLO 5150 and conveying more lands to the State of Alaska would be in violation of the "Federal Land Policy and Management Act" of 1976. Sec. 102. [43 U.S.C. 1701] (a) The Congress declares that it is the policy of the United States that– (1) the public lands be retained in Federal ownership, unless as a result of the land use planning procedure provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest. It is not in the National interest to allow the State of Alaska selection of any lands in the utility corridor. The lands the State proposed for selection are choice oil and gas lands, or gold mineral worth eventually billions of dollars to the Nation.*
- *The State's request for additional lands, especially reserved and appropriated lands after 1993, is neither proper nor valid, citing the 1980 ANILCA Sec. 906 (a)(2) Extension Of Selection Period. In furtherance and confirmation of the State of Alaska's entitlement to certain public lands in Alaska, §6(b) of the Alaska Statehood Act is amended by substituting "thirty-five years" for "twenty-five years."*
- *Finding the State's request for modification of PLO 5150 to be invalid, an ANILCA Title VIII Section 810 analysis would need to be adhered to, except for sec. 810(3)(C) (c), with diligence paid to the extreme detriment to the communities of Wiseman and Coldfoot.*
- *The Middle Fork/Dietrich Valleys provided the primary subsistence for these communities for 120 years. As the author Robert Marshall wrote in 1932, "If it were not for living off of the country, civilization on the Koyukuk could not*

survive today...were it not for the additional subsistence provided by the animal and plant life of the region.” These biological resources are made available through hunting, trapping, fishing, berrying, logging and gardening.

- *Wiseman is one of 10 Resident Zone Communities that have Customary and Traditional use eligibility inside of the Gates of the Arctic National Park. The only winter access to traditional areas to the west, is with snowmobile through the Wiseman Valley or up the Hammond River drainage. In dry season highway vehicles are used to get as close as possible on the Nolan and Hammond River roads. If these areas were State land, it would preclude access to traditional hunting and trapping areas inside the Gates of the Arctic National Park, under State regulations.*
- *State regulations in the Dalton Highway Corridor Management Area, five miles from each side of the road, currently do not allow the use of motorized vehicles except licensed highway vehicles within ¼ mile of the Dalton Highway, boats, and aircraft. Large and small game hunting is closed except for the use of bow and arrow. State regulations would preclude use of snowmobile for any subsistence use, and would preclude transporting any hunter, game or gear with a highway vehicle no further than ¼ mile from the Dalton Highway. Wiseman Village is three miles from the Dalton. Wiseman would effectively be isolated from Park or other Federal land access by Title VIII sec. 811 customary use of snowmobile, or even licensed highway vehicles to homes with game resources.*

Further elaborating on these points, the Council emphasizes the importance of the area to providing subsistence resources to meet the food security needs of the region. The closest store is 275 miles away and takes 13 hours to complete a round trip. If the State receives these lands as a gift, it would put local people in grave hardship. State regulations provide only sport-hunting opportunities with archery. The loss of the ability to harvest subsistence resources with customary and traditional methods adjacent to these communities on Federal public lands would place a great hardship on the local residents.

The Council asks the Board to communicate these concerns to the BLM with a request to include an alternative not to open the utility corridor to State selection. The Council further asks the Board to request the BLM to evaluate the impacts to subsistence use in each alternative. And since this is rulemaking outside of the Board’s scope and authority, the Council also requests that these concerns be elevated to the attention of the Secretary of the Interior, per the directives in the Secretarial Review. The Council requests the evaluation of subsistence use (where people hunt, fish, and gather by season) and important ecological areas (where fish and wildlife feed, breed, raise young, and migrate by season) in the vicinity of each affected community in each alternative incorporating scientifically defensible methods and local traditional knowledge. The information gathered through the evaluation should be peer-reviewed both by scientists and residents alike, to clarify knowledge gaps and ensure the accuracy of results using a transparent public and participatory process.

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Response:

The activities of the Bureau of Land Management with regard to its modifications to the Central Yukon Resource Management Plan are outside the scope of the Board's authority. However, by bringing it to the attention of the Board, you are bringing it to the attention of the Regional Director for the BLM, who will ensure that your concerns are addressed by that agency. Additionally, the BLM will be conducting an analysis under ANILCA Section 810 in connection with action on this matter.

2. Timeline requested for improving Tribal Consultation

The Council believes there is a need to improve tribal consultation. Addressing Fisheries Proposal 17-02, the Council noted tribal consultation did not effectively engaged tribal members in the region. The Council recommends that the Office of Subsistence Management (OSM) Native Liaison utilize the subsistence staff of the Refuges, the Bureau of Land Management, and the National Park Service to disseminate information to the tribes, and receive input from the tribes to better answer questions and promote the sharing of information. Tribal consultation should be occurring on all proposals that affect subsistence use of tribal members prior to the meeting of the Council. This approach is needed to ensure that communities understand how the proposals could affect them. The subsistence staff at the Refuges should explain how the proposals could affect the communities, travel to the affected communities to answer questions, receive input from tribal councils, and help convey information to Board. Greater coordination on tribal consultation between OSM, Refuge staff, and tribes is needed, rather than the current approach. The Council requests a process be defined that will relay the Tribes input back to the Regional Advisory Councils so that the Councils effectively advocate for the interests of Federally qualified subsistence users in their communications with the Board.

During our fall 2016 meeting, the Chair noted the significance of this issue, adding that the Native Liaison is not at fault and emphasizing the task is too big a job for one person. The Chair recommended the coordinated use of all subsistence staff in all conservation units, to effectively disseminate information to tribes, to bring feedback to the Councils, and to share this information with the Board. The Council requests that a timeline be submitted to detail how OSM will provide strategies to implement a workable tribal consultation in coordination with tribes on proposals and related issues affecting their communities.

Response:

The Board acknowledges that the Council would like to see improvement in the tribal consultation process. The input from the tribes, Native corporations, and Council members has helped strengthen analyses on proposals, special actions, and discussions during Board and Council meetings. The Board fully supports the consultation process and believes that it will continue to improve and strengthen communications between the Federal Subsistence Management Program and subsistence users.

The formal process reflected in the Federal Subsistence Board's *Government-to-Government Tribal Consultation Policy* is relatively new,¹ and the consultation process is increasingly becoming more meaningful and appreciated by those involved in the consultations. The Board's *Implementation Guidelines for the Federal Subsistence Board Government-to-Government Tribal Consultation Policy* provides that consultation shall occur at least two weeks in advance of the Subsistence Regional Advisory Council meeting cycle. In addition, there are opportunities at both Board and Council meetings for tribal and corporation input on proposals and action items. Soliciting tribal and ANCSA comments is part of normal proceedings of these meetings and is stated on the proposal procedures for those meetings. Additionally, according to the Board's policy, a tribe can request consultation from the Board at any time related to any subject.

The OSM Native Liaison has expanded the program considerably since the process was formally implemented. An ever-increasing number of special actions and consultation requests, with sometimes limited staff, occasionally can result in a breakdown in outreach communication. A lack of a tribal consultation on FP17-02 was due in part to short turnaround time and the Native Liaison not being available for non-work related reasons.

The policy and guidelines are in place, and there is no specific timeline for further modifying tribal consultation. The *Implementation Guidelines* is meant to be a living document, and the Policy provides for an annual review to assess its effectiveness. Thus, improving tribal consultation is meant to be an ongoing process. The Board encourages the Councils and tribes to provide suggestions for improvement of these documents.

3. Timeline requested for establishing a Wildlife Resource Monitoring Program

The Council reiterates the unmet need for establishing a Wildlife Resource Monitoring Program, as previously requested in last year's annual report and as detailed in the Secretarial Review. The program is needed to obtain information such as harvest data, required by land managers to effectively manage subsistence resources. For example, in instances where harvest data is wanted, necessitating door-to-door harvest surveys in communities, and where the State is unable to meet this need, the Wildlife Resource Monitoring Program would be prepared to fill the data gap. This is the eighth time the Council has requested the establishment of Wildlife Resource Monitoring Program. Previously, the Council was told by the Board that the budget limits prohibit development of such a program. The Council requests an explanation as to what efforts are being made to bridge that budget gap and for a timeline of how the Board plans to implement the program.

Response:

The Board agrees with the Council about the need to establish a Wildlife Resource Monitoring Program (WRMP). However, as stated in previous replies, budgetary constraints make this unlikely in the near future. The budget for the Department of Interior for Fiscal Year 2018 is

¹ The guidelines to implement that policy were adopted January 2015.

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expected to be substantially less than in previous years and there is no clear funding mechanism for a WRMP at this time. The Assistant Regional Director for OSM has been exploring avenues of funding for a WRMP, but no sources are currently available. The Federal Subsistence Management Program is funded from two sources within the U.S. Fish and Wildlife Service. The only way to fund a WRMP would be to take funding away from other critical programs within OSM such the Fisheries Resource Monitoring Program or the Partners Program, both of which provide critical services for the management of subsistence resources. Additionally, the current proposal for a FY2018 budget suggests up to 13% cuts to the Department of the Interior budget. The Board cannot give this Council a timeline for establishment of a WRMP in the current environment of budgetary uncertainty.

4. Obtain digital photography of caribou to enhance management of this important subsistence resource

The Federal Subsistence Management Program should make efforts to obtain access to high resolution digital photography images of caribou to enhance management of this important subsistence resource. Such information could be made available to land managers for instantaneous viewing by computer and could assist them in obtaining more timely and cost-effective estimates of caribou herd population than is presently available through radio collaring and aerial film photography.

Response:

The Alaska Department of Fish and Game (ADF&G) uses two planes to conduct photocensuses of caribou herds. ADF&G has purchased digital cameras for both planes. One camera is already installed and will be used for the first time in 2017. Flights to test this camera are scheduled in the upcoming months. The second camera is pending installment and may also be used by summer 2017.

The Council mentions the cost-effectiveness and timeliness of caribou population estimates. Each camera is very expensive, although the price has come down in recent years. Cost is the reason that ADF&G has not transitioned to digital cameras sooner. Digital cameras are able to photograph in broader light conditions than film cameras, which will enhance ADF&G's ability to complete successful and timely photocensuses. Digital photographs are also easier to stitch together (necessary to prevent double counting) than film photographs. This should speed up processing time. Currently, there is no computer program that can accurately recognize and count caribou from photos. However, ADF&G is keeping tabs on the technology and would consider using computer programs if accuracy improved. Additionally, the timeliness of caribou population estimates is related to prioritization by ADF&G. For example, Western Arctic caribou herd (WACH) population estimates have historically not been available until December of the year that photos were taken. In 2016, however, these estimates were available by late August because ADF&G prioritized determining the WACH population estimate in order to inform a special action request to the Board.

The Council also mentions providing digital photographs to the Federal Subsistence Management Program (FSMP) and to land managers. Providing such information would likely require a data sharing agreement between State and Federal agencies. Furthermore, the Board sees limited utility in providing these digital photographs to the FSMP and Federal land managers as the photographs' value is in estimating caribou populations, which is a very labor and time intensive process already accomplished by ADF&G. Additionally, ADF&G shares the relevant management information (population estimates) with the FSMP and other land managers when the data becomes available and has demonstrated their sensitivity and response to imminent data needs such as the 2016 WACH population estimate.

5. Request for an analysis of in-season tools to enhance the assessment of salmon run strength along the Yukon River

The Council requests an analysis of in-season tools, including, though not limited to, sonar, to enhance the assessment of salmon run strength along the Yukon River. Such an assessment could examine the need for additional run strength estimates and the most effective distribution of assessment tools as the run progresses upriver. The assessment should also include an analysis of current locations of monitoring stations to determine if they are effective and meeting desired data objectives.

Response:

The Board believes that the current set of in-season tools utilized by fisheries managers to estimate the run sizes and timing of Yukon River salmon is appropriate and functioning well.

The ADF&G, along with the U.S. Fish and Wildlife Service (USFWS), the Yukon Delta Fisherman's Development Association (YDFDA) and the Tanana Chiefs Conference (TCC) utilize test net fisheries, sonars, weirs, and counting towers to assess in-season abundance of Chinook, Chum, and Coho Salmon. The test net fisheries are operated on the Lower Yukon River by the ADF&G and YDFDA, downstream of the Pilot Station sonar near the mouth of the river. These test net fisheries provide run timing and relative abundance information as fish enter the Yukon River. This information is used to identify pulses and help time subsistence and commercial fishing openings downstream of Pilot Station; however, they do not provide enough data to estimate escapement.

The ADF&G uses sonars at Pilot Station and Eagle on the Yukon River for Chinook, Chum, and Coho Salmon to provide run timing and in-season abundance estimates for the Yukon River, while other sonars are used to monitor escapement into tributaries located on the Anvik River (ADF&G; Chinook and summer Chum Salmon) and Chandalar River (USFWS; fall Chum Salmon). Sonars are utilized in large and turbid waters to enumerate fish where weirs would be impractical. The main drawbacks to sonars are the initial cost and species identification when multiple species of similar size are present. In addition to enumerating salmon at the Pilot Station sonar, the Alaska Department of Fish and Game and the U.S. Fish and Wildlife service conduct genetic mixed stock analysis on Chinook and Chum Salmon captured at the sonar

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location. The samples are collected, shipped to the genetics labs in Anchorage, analyzed, and the data is returned to fisheries managers giving them stock composition estimates within 24-48 hours. This allows managers to differentiate between fish stocks, giving them the ability to time fishing opportunities to potentially minimize harvest on weak stocks as they travel up the river. Netting programs are used to apportion species in this situation. In smaller, clear water streams, weirs and counting towers are utilized to estimate escapement. Weirs are utilized in the Alaska portion of the Yukon River Drainage by the USFWS, and TCC on the Andreafsky, and Gisasa Rivers, along with Henshaw Creek. Advantages of weirs include more accurate 1) counts of fish, 2) run timing at the tributaries, and 3) sex and age information. The disadvantages are that weirs cannot be utilized on a large river like the Yukon River, as high water can interrupt operations. The advantages and disadvantages of counting towers are similar to weirs, although they can be less accurate and are more susceptible to poor water conditions. The ADF&G operates the counting towers located on the Chena and Salcha Rivers.

6. Request to minimize the effects of salmon bycatch in the Bering Sea on Federally qualified subsistence users of the Koyukuk and Yukon River

The Council reiterates its concern that the Bering Sea and Aleutian Island (BSAI) trawl fleet is still fishing 10 months a year. The Council repeats its request, noted in its previous annual report, calling for the Board to directly address the Secretary of Commerce and the Secretary of the Interior and state that this is a violation of the national standards. The BSAI trawl fleet is fully executing a commercial fishery. The salmon bycatch associated with this fishery adversely impacts the Federally qualified subsistence users of the Koyukuk and Yukon River, who are restricted in their harvest. The Council believes that this practice violates the Magnuson-Stevens Act.

Response:

The Board understands the continued concern coming from Federally qualified subsistence users regarding the bycatch of Chinook Salmon in the Bering Sea/Aleutian Islands commercial Pollock fishery. Federally qualified subsistence users have had to abide to restrictions and closures of fisheries while each year the commercial Pollock fisheries incidentally catch salmon species that are an important resource for subsistence. Currently, the commercial Pollock fishery is allowed to fish for up to 9 months of the year. The upper cap on the Chinook Salmon bycatch quota is 60,000 Chinook. The fishery is currently managed at a lower cap level (47,000) under incentive programs (vessel level closures). Some additional provisions have made the Chinook Management Program more robust, which includes 100% observer coverage, 100% census of all salmon species by observers, increased genetic sampling for stock of origin, and increased reporting on the results of the genetics and effectiveness of the incentive programs.

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

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bycatch hard cap from 60,000 to 45,000 fish and the performance standard bycatch from 47,591 to 33,318 fish in years of low Chinook Salmon abundance. Low abundance is defined as less than 250,000 Chinook Salmon in the 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 Board believes that the Council's concerns have been properly and adequately addressed by the North Pacific Fisheries Marine Council and the National Marine Fisheries Service, which manages U.S. Federal fisheries off Alaska 3 to 200 miles under the Magnuson Stevens Act. Together, these two agencies make recommendations directly to the Secretary of Commerce.

7. Request for studies to better understand the effect of warming waters on subsistence fisheries

The Council is concerned about the effect of warming waters on subsistence fisheries. Studies are needed to understand how warming waters impact spawning, fish behavior, and harvest timing. Council members are experiencing the impacts of global warming and the tracking of these benefits is needed as gradual changes can magnify over time.

Response:

The Board recognizes the unique challenges climate change presents to subsistence users and understands that these changes could have significant impact to users. It should be noted that it is not the role of OSM to develop studies. However, OSM staff does work closely with the ten Federal Subsistence Regional Advisory Councils to identify subsistence fisheries priority information needs specific to each region. These priority information needs are the guidelines used by investigators to develop studies within their region of focus when applying for Fisheries Resource Monitoring Program (FRMP) funding.

The Office of Subsistence Management also encourages investigators to consider examining or discussing climate change effects as a component of their project when applying for funding through the FRMP. In addition, a stream water monitoring project has been ongoing since 2008 at FRMP funded fisheries projects throughout Alaska. This monitoring project provides standardized methods for collection and reporting of water and air temperatures. Thus far, most sites have remained within optimal temperature ranges for rearing juvenile salmon.

The Alaska National Wildlife Refuge (NWR) Water Resource Division is also engaged with monitoring water temperatures in rivers and lakes on several NWRs. This data is being compiled and used by refuges and shared with others upon request.

8. Emphasis on the importance of rural seats on the Federal Subsistence Board and request for an additional Board member

Rural seats on the Board are incredibly important and the Council requests the Board to take

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action necessary to initiate Secretarial rulemaking to provide for an additional Board member. This would create a nine-member Board with four seats occupied by rural users. It would enhance the rural voice on the Board and eliminate the potential for tie votes on controversial matters.

Response:

As the Council is aware, membership on the Board used to consist solely of the Alaska regional directors of the five federal agencies involved in the Federal Subsistence Management Program, plus a chair selected among rural subsistence users. In response to the directive of then-Secretary Ken Salazar in a letter dated December 17, 2010 as part of the Secretarial Review, the Board developed a proposed regulation that would add two additional public members to the Board representing subsistence users. The final regulation adopting that change was published, and two public members were added in 2012. The addition of the two public members has certainly changed the dynamic of the Board's deliberative process. And, it is generally beneficial for decision-making bodies to have odd numbers, as this helps to prevent tie votes, and thus, inaction. However, the regulations fall within the portion of the Federal subsistence regulations that are solely under Secretarial authority. In order to add a new public member, and increase the Board's numbers to nine, the Secretaries would have to approve of such rulemaking. As such, the Board will forward your request to the Secretaries for action.

9. Recognition of and appreciation for Mr. Robert Walker's service on the Council

At its fall meeting, the Council recognized Mr. Robert Walker for his 15 years of service on the Western Interior Alaska Subsistence Regional Advisory Council. His current term expired in December 2016, and he decided to retire from the Council. The Council requests that the Board transmit a letter of appreciation to Mr. Walker recognizing his service.

Response:

The Board thanks you for this information and joins you in celebrating Mr. Walker's contributions to the Council. Mr. Walker was among those recognized with a certificate recognizing his 15 years of service at the All Council meeting in March 2016. At the Council's request, the chairman of the Board has transmitted a letter thanking Mr. Walker for his service upon his retirement from the Council.

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.

Chairman Reakoff

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Sincerely,

Anthony Christianson
Chair

cc: Federal Subsistence Board
Western Interior Alaska Subsistence Regional Advisory Council
Eugene R. Peltola, Jr., Assistant Regional Director, Office of Subsistence Management
Thomas Doolittle, Deputy Assistant Regional Director, Office of Subsistence
Management
Carl Johnson, Council Coordination Supervisor, Office of Subsistence Management
Zachary Stevenson, Subsistence Council Coordinator, Office of Subsistence Management
Jill Klein, Special Assistant to the Commissioner, Alaska Department of Fish and Game
Interagency Staff Committee
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Federal Subsistence Board

1011 East Tudor Road, MS 121
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FOREST SERVICE

OSM 17051. KD

Louis Green, Chair
Seward Peninsula Subsistence
Regional Advisory Council
c/o 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 2016 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. Chinook Salmon and Climate Change

Several members of the Council expressed concern over the impacts of climate change on Chinook Salmon, an important subsistence resource for the region. In recent years, subsistence users are experiencing poor Chinook Salmon returns as well as ice on the shorelines, including on the Pilgrim River.

Recommendation: The Council has submitted a Priority Information Need (PIN) under the Fisheries Resource Monitoring Program to monitor Chinook Salmon and other species impacted by climate change. In particular, the Council would like to see studies on salmon migrations patterns in Norton Sound, as well as fish species surveys in the Bering Land Bridge National Preserve using traditional and ecological knowledge from the communities of Shishmaref, Deering and Wales. We appreciate your consideration of proposals that will meet the requirements of these PINs.

Chairman Green

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Response:

The Board understands the Council's concerns regarding climate change impacts to fisheries of the Seward Peninsula. The implications of future climate change impacts on subsistence fisheries are largely unknown. The Board particularly notes concerns raised by the Council during its 2016 meetings regarding climate change impacting the productivity of Chinook Salmon and the fish species assemblages in the Bering Land Bridge National Preserve. For the 2017 notice of funding opportunity (call for proposals), the Office of Subsistence Management (OSM) received one proposal that specifically addresses the climate change priority information need identified by the Council. This proposal is currently under review. If this proposal is awarded funding, the project is anticipated to begin work researching the traditional and ecological knowledge, species composition, and harvest use of the communities of Wales, Deering, and Shishmaref in the summer of 2018. The Board encourages the members of the Council to continue monitoring changes that they observe during their subsistence harvesting activities to better understand changes in the timing and abundance of the various fish, wildlife, and marine mammal populations.

2. Memorandum of Understanding (MOU) Between the Federal Subsistence Board and State of Alaska

The Council would like the Board to know it strongly supports the MOU between the Board and the State of Alaska. Subsistence users rely heavily on State lands for food as there are few Federal lands in the Seward Peninsula Region. Increased cooperation between Federal and State agencies will improve subsistence resource management in the region, and benefit rural users who rely on fish and wildlife resources for nutritional and cultural purposes.

Recommendation: It is the Council's hope that the Board and ADF&G will execute the MOU and work together on critical subsistence issues for rural users.

Response:

Members of the Interagency Staff Committee, OSM, and the State have met several times to work out the differences between parties. Generally, it is the position of the Federal members to draft a general document where both sides agree to work together while understanding the differences in management directions. Once this framework is agreed upon, later protocols can be developed to address specific issues as they arise. Currently, this process is on a temporary hold based on issues that have arisen due to the transition in leadership at the Department of the Interior and the USDA Forest Service and the group is trying to get the process moving forward again.

3. Alaska Department of Fish and Game Fisheries Staff at Council Meetings

The Council was disappointed there were no State fisheries staff in attendance at the November meeting in Nome, particularly given there were several Federal fisheries proposals on the table

Chairman Green

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for Council adoption. As stated above, subsistence users hunt and fish largely on State lands in the region and it is essential to get feedback on local fish populations and status at our meetings. The Council believes this is particularly important because fish travel across both State and Federal waters throughout Seward Peninsula region.

Recommendation: The Council is asking the Board to inform the State of the importance of ADF&G fisheries staff presence at its meetings, particularly during Federal subsistence fishery proposal cycles.

Response:

The Board appreciates the Council's concern that meetings have not been sufficiently attended by fisheries staff from the Alaska Department of Fish and Game (ADF&G), and that lack of such staff can impair the Council's ability to make informed decisions. The Board understands that Jennifer Bell, a local fisheries biologist from ADF&G, attended the Council's winter 2017 meeting in Nome, and presented updates on local fisheries as well as the ongoing Fisheries Resource Monitoring Program (FRMP) Unalakleet River weir project. Dr. Carol Ann Woody from the National Park Service was also present and provided information on a proposed FRMP project for subsistence fisheries use and baseline fish population data in the northern Seward Peninsula. This participation is promising, and OSM staff are committed to working with ADF&G and NPS fisheries biologists to assist the Council with continuing these relationships.

It is important to note that ADF&G in many cases determines whether to send particular staff to a meeting based on what is on the agenda. If there is nothing explicitly on the agenda that addresses fisheries issues, it is unlikely the Department will send fisheries staff. If there is a particular desire for dialogue with ADF&G fisheries staff, the Council is encouraged to utilize its Council Coordinator to make a specific request to the State through Jill Klein, Special Assistant to the Commissioner.

With a clear lack of funding available for the foreseeable future, however, all parties should expect the levels of in-person attendance to potentially decrease, creating a greater reliance on telephonic participation in future meetings. Again, OSM staff will continue to work with ADF&G and others to ensure the appropriate experts are aware of how and when they can provide beneficial contributions to the Council process telephonically or in-person.

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.

Chairman Green

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Sincerely,

Anthony Christianson
Chair

cc: Federal Subsistence Board
Seward Peninsula Subsistence Regional Advisory Council
Eugene R. Peltola, Jr., Assistant Regional Director, Office of Subsistence Management
Thomas Doolittle, Deputy Assistant Regional Director, Office of Subsistence Management
Carl Johnson, Council Coordination Supervisor, Office of Subsistence Management
Karen Deatherage, Subsistence Council Coordinator, Office of Subsistence Management
Jill Klein, Special Assistant to the Commissioner, Alaska Department of Fish and Game
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FOREST SERVICE

OSM 17052. ZS

Enoch Shiedt, Chair
Northwest Arctic Subsistence
Regional Advisory Council
c/o Office of Subsistence Management
1101 East Tudor Road, MS 121
Anchorage, Alaska 99503

Dear Chairman Shiedt:

This letter responds to the Northwest Arctic Subsistence Regional Advisory Council's (Council) fiscal year 2016 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. Perceived benefits to Federally qualified subsistence users resulting from the closure of Federal public lands in Unit 23 to caribou hunting by non-Federally qualified users

The Council is noticing possible benefits to Federally qualified subsistence users resulting from the closure of federal public lands in Unit 23 to caribou hunting by non-Federally qualified users following the adoption of Wildlife Special Action 16-01 (WSA 16-01) by the Board in April 2016. These benefits include reduced user conflicts and improved caribou harvest by Federally qualified subsistence users in the vicinity of Noatak, in particular that people were getting enough caribou for the first time in a long while. Council members also noted that there is hope that the closure will aid in restoring traditional migration routes. Additional endorsements for WSA 16-01 were recognized by the Council, including four letters of support for the closure, submitted by Herbert Walton, Sr., Tribal Administrator, Native Village of Noatak; Eva Onalik, Treasurer, Native Village of Noatak; Hannah Onalik, Tribal Secretary, Native Village of Noatak; and N. Carol Wesley, Noatak Resident (see enclosed).

Because of the complexity of this issue, the continued decline of the herd, the likelihood of future

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regulatory changes and the fact that the WACH is a critical subsistence resource for at least four Council regions, ongoing coordination among Councils will be beneficial in providing a framework for addressing regulations for the WACH into the future in a cohesive way. We encourage the Board to support these efforts and to do whatever is necessary to ensure the continued viability of this vital subsistence resource.

Response:

The Board is pleased that its actions helped Federally qualified subsistence users continue subsistence use of their caribou resource. The Board supports efforts of the Council to coordinate with other affected Regional Advisory Councils about WACH regulations and is aware that other Councils share your concerns. At its winter 2017 meeting, the Western Interior Alaska Subsistence Regional Council expressed a need to have a conference call with the Northwest Arctic, North Slope, and Seward Peninsula Subsistence Regional Advisory Councils to discuss caribou issues. Similarly, the North Slope Council supported the proposal by this Council to form a wildlife working group in order to discuss caribou issues. The Board recommends contacting the Council Coordination Division Chief at the Office of Subsistence Management (OSM) in order to organize a conference call and facilitate coordination between Councils.

Additionally, at its meeting in January 2017, the Board directed OSM to create an interagency user conflict group to discuss solutions to user conflict issues in Unit 23, specifically targeted closures. The group, which includes members from all of the Federal land management agencies and the Alaska Department of Fish and Game, met for the first time in April 2017. The meeting provided a forum for State and Federal agency personnel to come to the table to discuss their observations and concerns, and to offer suggestions for moving forward on these issues. The Board acknowledges that both herd declines and user conflicts are central to this issue and that both must be addressed in our efforts to effectively manage caribou populations. We recognize a long-history of concerns about user conflict and herd deflection in the vicinity of the Noatak, Squirrel, Agashashok, and Eli Rivers in Unit 23, as well as along the Dalton Highway corridor in Unit 26B. We furthermore recognize that subsistence activities provide more to rural residents than food alone. Title XIII of ANILCA affirms the sociocultural aspect of subsistence activities by stating explicitly states that subsistence opportunity "...is essential to Native physical, economic, traditional, and cultural existence and to non-Native physical, economic, traditional, and social existence."

The Board will continue to encourage our member agencies, the State of Alaska, academic institutions, and private organizations to undertake collaborative caribou research in the Arctic that would enhance our understanding of populations, migration patterns, and disturbance behavior.

2. Need for Federal agencies to exercise precaution when managing the rapidly changing subsistence resources and uses in the Northwest Arctic

There is increasing need for Federal agencies to exercise caution when managing the rapidly changing subsistence resources and uses in the Northwest Arctic. These changes include:

- a. Proliferation of beaver – Increase in beaver populations shown by the decline of willows and the damming of creeks extending as far north as Point Hope. These impacts may*
- b. adversely affect subsistence fisheries, increasingly important to Federally qualified subsistence users given the decline of the region's caribou.*
- c. Changes in fish size and fish health – Increase in large, though seemingly healthy, fish containing worms (some a quarter inch in length).*
- d. Preserving customary and traditional uses – Concern that further limits on caribou harvest may result in the unintended consequence of criminalizing customary and traditional subsistence uses. The Council wishes to highlight and emphasize customary use of subsistence resources, differing by location and season, including sheefish and whitefish in Selawik, caribou and trout (Dolly Varden) in Noatak, and sheep.*
- e. Changes in water quality and quantity – Concerns regarding impacts to Federally qualified subsistence users from changes in water temperature associated with global warming. Council members have noted a drop in river levels near remote communities.*
- f. Impacts from potential road development and mineral extraction – Concern regarding the potential for adverse impacts to water quality and increased pressure to harvest subsistence resources associated with the potential development of the Ambler Road.*

The Council requests that the Board remain engaged with these issues and take whatever actions are necessary and possible to continue conservation of vital subsistence resources.

Response:

The Board shares the concerns of this Council with regard to changing resources in its region as a result of a rapidly changing climate. The Federal Subsistence Management Program will remain actively engaged with all of the Regional Advisory Councils and with rural Alaskans to ensure that the Program is responsive to the needs of Federally qualified subsistence users. For instance, the Board has adopted several proposals and special action requests in recent years for changes to harvest seasons and limits in response to changes in climatic conditions that have made it difficult for Federally qualified subsistence users to harvest, access, or care for game in the field. The Board will continue to address these issues through the regulatory and special action processes as needed.

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3. Need to reduce caribou harvest limits and maintain the closure of Federal public lands in Unit 23 to caribou hunting by non-Federally qualified users

The Council is concerned with the continued decline of the region's caribou population, from approximately 231,000 down to just shy of 201,000 animals. The Council recommends a reduction in caribou harvest bag limits from 5 caribou per day to 3 caribou per day. The Council also emphasizes the need to maintain the closure of Federal public lands in Unit 23 for more than one regulatory year to caribou hunting by non-Federally qualified users. The continuation of the closure is needed to see if the closure is having a positive effect on conservation of the herd and continuation of subsistence opportunity, thus allowing Federally qualified subsistence users to meet their food security needs. The Council underscores the significance of subsistence resources to feeding families in the Northwest Arctic, noting the high cost of store-bought food throughout the region.

Response:

The Council voted to submit a proposal to decrease the Federal caribou harvest limit in Unit 23 from 5 to 3 caribou per day for the 2018-2020 regulatory cycle. The Board will act on this proposal at its meeting in April 2018. However, even if this proposal is adopted, hunters will still be able to harvest 5 caribou per day in Unit 23 under State regulations unless closed by the Board. If the Council would like this harvest limit reduction to apply to all users, it will need to submit proposals to the Federal Subsistence Board and the Alaska Board of Game. If the Council would like this reduction to apply across the range of the WACH, it will need to submit both Federal and State proposals for Units 21D, 22, 24, 26A, and 26B.

The closure of Federal public lands in Unit 23 as a result of WSA16-01 has reduced the caribou harvest in the unit by non-rural hunters. State permit returns will help quantify the harvest. However, the reduction generated by the closure is not anticipated to have a measurable effect on the herd's productivity as on-rural users account for a small percentage of the harvest. In addition, some of the non-rural effort to harvest caribou from the WACH potentially shifted to other available areas as a result of the closure.

The Board is also aware of Temporary Special Action request WSA17-03, which was submitted by the Council and requests that caribou hunting in Unit 23 be closed to non-Federally qualified users for the 2017/18 regulatory year. This proposal is currently being analyzed by OSM, and the Board will act upon this request as soon as 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 Northwest Arctic Region are well represented through your work.

Chairman Shiedt

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Sincerely,

Anthony Christianson
Chair

cc: Federal Subsistence Board
Northwest Arctic Subsistence Regional Advisory Council
Eugene R. Peltola, Jr., Assistant Regional Director, Office of Subsistence Management
Thomas Doolittle, Deputy Assistant Regional Director
Office of Subsistence Management
Carl Johnson, Council Coordination Supervisor, Office of Subsistence Management
Zachary Stevenson, Subsistence Council Coordinator, Office of Subsistence Management
Jill Klein, Special Assistant to the Commissioner, Alaska Department of Fish and Game
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DRAFT



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FOREST SERVICE

OSM 17053. KW

Sue Entsminger, Chair
Eastern Interior Alaska Subsistence Regional Advisory Council
c/o Office of Subsistence Management
1101 East Tudor Road, MS 121
Anchorage, Alaska 99503-6119

Dear Chairwoman Entsminger:

This letter responds to the Eastern Interior Alaska Subsistence Regional Advisory Council's (Council) fiscal year 2016 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. Understanding and tolerance for different cultural hunting values as means to reduce waste and work towards better hunter ethics in the field

The Eastern Interior Region has several areas where ongoing user conflicts among various groups of resource users create stress and misunderstanding, resulting in waste of valuable resources. This issue is one of the major concerns for many other Councils' areas, for example Western Interior. The Council brought the user conflict issue before the Board in its 2014 and 2015 annual reports but had not seen much progress made on developing solutions it. Some discussion regarding hunters' education occurred during an Outreach Challenges break-out session held at the All Council's Meeting in March of 2016; however, none of the suggestions made during this session were implemented and no Office of Subsistence Management (OSM) outreach strategy to reduce user conflict and educate hunters has yet been developed.

The Council would like to advocate for the acceptance and teaching different sets of values that the hunters of different backgrounds – both rural subsistence and urban sport – have. Very often ignorance and misunderstanding of these values result in animal waste. Some of the urban hunters would like to share with subsistence users animal body parts that they do not consume but they need to be educated on how to process and store them correctly.

Chairwoman Entsminger

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The Council encourages the Board to set up a timeline for developing the strategy and testing it out. The Council suggests that OSM creates a small working group in partnership with other agencies and the State of Alaska to address the issues of user conflict and waste of subsistence resources. The goal of this group should be to develop strategies for hunter education and outreach programs both statewide and regionally. The developed strategies should be tested out through a pilot program focused on the Eastern Interior Region. Additionally, the Council suggests that one specific group of users – the military – should be targeted for delivery of hunter ethics and meat care education programs. The military has been very receptive to public concerns and requires their personal to go through a hunter orientation course before going hunting.

The Council also suggests that the Board directs OSM to develop an educational publication on different cultural values of various user groups and opportunities and procedures for sharing animal body parts to reduce waste and achieve better hunting ethics in the field.

Response:

The Board acknowledges the Council's continuing concern regarding ongoing user conflict in the Eastern Interior Region, potentially stemming from misunderstanding each user groups' traditions, way of life, and ethical standards. The Board appreciates the Council's emphasis on moving forward in a positive way to improve understanding of and tolerance for different cultural hunting values between local Federal subsistence users, non-local subsistence users, and sport/commercial user groups and the desire to create a collaborative network that will include State and Federal agencies, tribes and Native organizations, rural community representatives, and hunting organizations. For this effort to be successful, it is very important to take into account various perspectives and consider agency mandates and authorities.

The Board is pleased to report to the Council that, in accordance with the Board's recommendation outlined in the reply to the fiscal year 2015 annual report, the Office of Subsistence Management (OSM) developed a draft plan of action that will guide the development of an outreach strategy and potential pilot project to improve understanding between users. A draft timeline was also created to help guide achievement of realistic goals for the pilot project. The plan of action was presented to the Interagency Staff Committee in May of 2017 and subsequently to the Board during its work session in July of 2017. OSM plans to continue working with State and Federal agencies and Council representatives, with the intent to form a working group of collaborators that will identify target audiences and goals for the project and develop key messages by the Council's fall 2017 meeting. The Board is aware that two Council members, Susan Entsminger and Andy Bassich, have already agreed to be Council representatives on such a group.

OSM will present the plan of action and timeline to the Council during its fall 2017 meeting to solicit further comments and ideas. After the working group is formed during the Council's fall meeting, it will work with other valuable stakeholders to solicit input and collaboration in

Chairwoman Entsminger

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developing a pilot project that will be presented to the Council during its winter 2018 meeting. Your Council Coordinator will lead this initiative, and OSM will commit other staff time on a as-needed basis. The Board will also request that representatives from the U.S. Fish and Wildlife Service, National Park Service and Bureau of Land Management are assigned to participate in the initial working group.

The Board would like to note that due to the current Federal budget uncertainties OSM cannot commit specific funding for this initiative but will leverage OSM staff time dedicated to the pilot project to network on a collaborative path forward and actively seek alternative funding from other sources.

2. Use of traditional Gwich'in river names for three rivers in the Eastern Interior Region on the Federal Subsistence Management Program maps, publications, and correspondence

In April 2014, the U.S. Board on Geographic Names ruled to adopt the Gwich'in name Draanjik River, meaning "Caches Along the River," as the official name for the geographic feature formerly known as Black River. In September 2015 this decision was followed by the U.S. Board on Geographic Names rule to adopt the Gwich'in names Ch'idriinjik River and Teedriinjik River as replacements for the North and Middle Fork of the Chandalar River, one of the major Alaskan river systems. In Gwich'in, Teedriinjik means "Shimmering River" or "Light Amid the Waters River" and is the name of the main river stream and its northern tributary. Ch'idriinjik, another tributary of the same river system, is a Gwich'in name for "Heart River."

The Athabaskan people have used these three names for over a thousand years. The application for the name change was submitted by the Gwichyaa Zhee Gwich'in Tribal Government on the bases that the adoption of these names would "help revitalize Gwich'in culture and language." The Council requests that these officially adopted names be incorporated on all of the maps produced by the Federal Subsistence Management Program and used in its publications, analyses, presentations, and official correspondence.

Response:

The Board thanks the Council for bringing these changes to its attention. The Board is aware that many names on U.S. Geological Survey maps of Alaska are not the names used by residents of the areas. Additionally, when traditional names do appear on these maps, they were written down before widely recognized orthographic writing systems were developed for Alaska Native languages and most have not been updated. The Board appreciates being informed when these changes occur. The Federal Subsistence Management Program has made note of the changes you describe and will make every effort to include them in all of its newly created maps, publications, presentations, and correspondence.

3. Predator management is a subsistence practice and means of achieving food security

Alaska subsistence users have a unique connection to the land fostered by traditions and lifelong experience. Alaskan subsistence users have an inherit right to food security, which includes managing and protecting food sources, having access to food, and being an integral part of the ecosystem. The understanding that all species should be managed in a balance has been passed from one generation to another. Rural Alaskans who reside in remote areas put special care in managing and securing their food sources because they provide the bases of their existence and well-being. Utilization of predator management as a part of their subsistence practices has been one of their well-established traditions. At the same time, subsistence is currently defined by law as an exclusively consumptive activity. Section 803 of Title VII of ANILCA defines subsistence as “the customary and traditional uses by rural Alaska residents of wild renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal and or family consumption; for barter, or sharing for personal or family consumption; and for customary trade.” The Council suggests that the definition of subsistence should include predator management as one of the subsistence practices means of achieving food security for Federally qualified subsistence users and would like the Board to look into this matter.

Response:

This issue raises the distinction between cultural practices and institutional practices governed by ANILCA. As for the cultural practices, the Board has acknowledged customary and traditional harvest practices through the adoption of certain regulations related to method and means of hunting bears and wolves. In the Eastern Interior Region, you may use bait to hunt black bears and wolves, and you may use bait to hunt brown bears in Units 12 and 25D. These methods are otherwise illegal under Federal Subsistence Management Regulations, as they are not authorized in other regions. Adoption of these regulations was based in no small part on the record before the Board indicating that they were customary and traditional practices.

But for institutional action carried out by agencies, the limits of that action are based on the language in ANILCA. For the purpose of Federal subsistence management “subsistence uses” is defined by Congress, as the Council correctly notes in citing Section 803 of ANILCA. While Congress included a substantially expansive definition of “subsistence uses” to include a variety of things in addition to “direct personal or family consumption as food” such as fuel, handicrafts, barter, customary trade, it chose not to include other activities in its definition. There is a legal principle guiding statutory interpretation that says the inclusion of one thing means the exclusion of others. Agencies and courts rely on this principle when determining legislative intent. Put simply, in including various practices and products in the definition of “subsistence uses” and excluding predator control, Congress chose to not include that activity in its definition. The Board or the Secretaries can only act on the language determined by Congress in passing ANILCA, and Congress’s intent is clear. The Board cannot expand this very explicit definition of “subsistence uses” found in Section 803 to include predator management for the purpose of boosting game populations. Only Congress can change this definition of “subsistence use.”

4. Limited subsistence salmon fishing opportunities for remote rural residents of the Porcupine River

The issue of inadequate fishing opportunities for the rural residents remotely residing on the Porcupine River was already raised in the Council's 2015 annual report. The Council feels that the reply provided was not sufficient and did not address the issue. The Council believes that this issue cannot be addressed through the normal regulatory process, such as submitting a regulatory proposal or a special action request, and suggests that the Board looks into taking a completely different approach to the management strategy of subsistence salmon in the Porcupine River.

The core issue is that the number of residents who reside remotely on the Porcupine River and live a traditional lifestyle is very small; anecdotal evidence suggests that there might be only 5 households there. These rural residents rely heavily, if not completely, on subsistence salmon to feed their families and dog teams and use salmon as bait on trap lines. This year subsistence fishing for fall Chum Salmon on the Porcupine River was again closed completely and only was relaxed in late September (Sept. 29, 2016). The information on fishing closures and openings is not relayed in a timely manner to these residents, who do not have access to telephone or internet. When, for example, a 12-hour subsistence fishing period is announced, this information is not related to the subsistence users on the Porcupine River in time to take an advantage of it.

The Council would like the Board to look into a variety of new management solutions to this issue, and suggests the following:

- *Consider instituting a system of specialized family/household quota allocations for Chinook and Fall Chum salmon (for example, 10 fish per family/household) to be used during the periods of low abundance and management conservation closures. This would allow Federally qualified subsistence user families that reside along the Porcupine River to continue their cultural practices and fish during the closures without enduring hardship due to very limited resources, considering that their harvest of a few hundred fish would not have a significant impact on the conservation of salmon species and meeting Canadian treaty obligations;*
- *Consider closing only a section of the Porcupine River at its confluence with the Yukon River, and allowing subsistence fishing in the upper Porcupine River, instead of closing the whole 200 miles of the river from Fort Yukon to the Canadian border;*
- *Devise new methods of communicating the information on fishing openings and closures to remote residents in a timely manner for subsistence users to take advantage of them.*

Response:

The Federal Subsistence Board recognizes the need to help protect subsistence users through Title VIII of ANILCA. 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

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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 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 to the Board. 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. 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 also recognizes that during restrictive times, closures are necessary for the preservation of certain stocks of fish. We understand this limits the opportunity for subsistence users to harvest critical resources for themselves and their community. The Board recommends that the Council develop and submit one or more regulatory proposals to OSM (and the Board) during the next fisheries regulatory cycle to further expand opportunity for the residents in the Eastern Interior to harvest more Fall Chum Salmon on the Porcupine River.

5. Importance of youth engagement in resource management

The Council would like to stress the importance of youth engagement in resource management at the time of decreased economic opportunities and dwindling populations in rural Alaskan communities. The Council wants to officially thank the Council of Athabaskan Tribal Governments (CATG) for bringing youth from several Eastern Interior communities to listen and participate in the Council’s fall 2016 meeting. The Council also would like to thank Yukon Flats National Wildlife Refuge (NWR) for funding this effort. It was a great cooperative effort between CATG and Yukon Flats NWR. We believe that this kind of exposure was very educational to the young people, and for us it was very energizing to hear youth testimonies at the meeting. This also is a testimony to the fact that when meetings are conducted in the villages it is easier to get better input and participation from the youth and other local people that the Council represents.

The Council encourages the Board to provide youth with opportunities to learn about resource management and to participate in various meetings and workshops. The Council proposes that the Board develops a concrete plan on rural youth participation in the Federal Subsistence Management Program activities and dedicates some funding to its implementation.

Response:

The Board agrees with the value of youth participation in the Federal Subsistence Management Program. Several Regional Advisory Councils have recently involved local high school students in their meetings, and the Board encourages all Councils to continue to do so in the future. At this time, there is no intention to develop a specific plan for youth participation, as that is something the Board has encouraged to occur on a regional basis. The Board supports youth

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engagement through various printed and online publications and the student art contest, which invites children in elementary, middle, and high school to participate and enter to have their art used in the Federal subsistence regulations books. Additionally, the *Federal Subsistence Management Program Coloring Book*, targeted towards younger children, is available to all who request copies. This book has been used in educational outreach programs throughout the state. OSM's Subsistence Outreach Coordinator is available to assist the Councils with any specific outreach efforts for increasing youth involvement, and can provide outreach materials upon request.

6. Notices to subsistence users on proposed changes to the Code of Federal Regulations

The Council requests that the Board sets a system in place for improved notification of the subsistence users on any proposed or pending major changes to the Code of Federal Regulations (CFR) that might affect their livelihood and ability to use wild renewable resources for direct personal or family consumption. The Council would like to be notified at the first opportunity when the changes are proposed and be provided with detailed information on the public comment period and procedures of submitting the comments. Over the years the Council has observed that the information about changes in the CFR and public involvement in this process were not available on consistent basis. The methods of distributing this information were not adjusted for the rural Alaska realities and efforts of engaging subsistence users to solicit their input were minimal.

Response:

When it comes to proposed Federal regulations outside of the Program, agencies frequently involve the Regional Advisory Councils and communities in conducting outreach. Some examples in this region include BLM efforts to modify its Eastern Interior Resource Management Plan, on which the Council provided written comments related to the Black River portion of that Plan, and the National Park Service's rulemaking related to the subsistence collection of shed or discarded animal parts. Additionally, your Council Coordinator makes a concerted effort to keep an eye out for other agency rulemaking that may affect subsistence uses and resources in the region and puts those issues on your agenda for Council information and discussion. Finally, Section 810 of ANILCA also requires special analysis of other agency activities that may adversely impact subsistence and, in certain cases, requires notice and hearing.

As for proposed changes to Federal subsistence regulations, the process is addressed in Section .18 of the Federal Subsistence Management Program's regulations (enclosed). The schedule for proposed rulemaking has remained unchanged for many years. The only two recent exceptions to the established schedule has been the last two changes in administrations, which resulted in delays in the publication of Federal Register notices announcing the call for proposals. These exceptions were and are well beyond the scope of the Federal Subsistence Board. Additionally, any other Federal agencies that engage in rulemaking which may affect subsistence is outside of

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the scope of the Federal Subsistence Board. But, on some occasions, the Regional Advisory Councils are notified and such rulemaking is placed on the Council agenda for comment.

Currently, the day of publication for each Federal Register document is the same day that news releases and emails are sent out to all staff, participants in the Federal Subsistence Management Program, and members of the public. The listserv for the news releases from the Federal Subsistence Management Program includes some 1,200 individuals and organizations. There is also a list of approximately 1,400 individuals and organizations who receive mailings from the Federal Subsistence Management Program, which would include the book of submitted regulatory proposals. Notice of Regional Advisory Council meetings, including information on how to access meeting materials, is distributed through the news release listserv and published in regional papers throughout the State in advance of each meeting. There is also a statewide public radio campaign announcing each meeting cycle and individual meetings.

7. Opposition to the National Park Service (NPS) final rule re Subsistence Collections (36 CFR Part 13) and the U.S. Fish and Wildlife Service (US FWS) final rule re Non-Subsistence Take of Wildlife, and Public Participation and Closure Procedures on National Wildlife Refuges in Alaska

The Council remains in partial opposition to the NPS final rule regarding Subsistence Collections, specifically to the permitting part for Subsistence Use of Plants and Nonedible Animal Parts. The Council feels that requiring a permit or any written authorization from a superintendent is overly strict and unnecessary because collection is limited and is mostly opportunistic. The Council also opposes limiting types of bait in the Use of Bait for Taking Bears Under Federal Subsistence Regulations part of the rule because the defined types of bait are not generally available during bear hunting season, would require special storage and transportation, and do not correspond to bear's feeding habits. The Council believes that the NPS's definition of bear baiting indicates a failure on the part of the NPS to learn and understand traditional practices and ways of baiting bears in Alaska and would encourage waste of other animals.

The Council strongly opposes to the USFWS final rule regarding Non-Subsistence Take of Wildlife, and Public Participation and Closure Procedures on National Wildlife Refuges in Alaska (Rule) in its entirety. The Council feels that the USFWS Rule ultimately eliminates State-authorized seasons and bag limit regulations for the harvest of predators, which the USFWS has incorrectly deemed predator control regulations. The Council asserts that emphasizing the protection of bears, wolves, and coyotes over that of prey species does not go along with the principles of sound wildlife management and will upset the predator-prey balance. The Council believes that a statewide Rule is not appropriate because regulations need to be specific to the biological concerns in each region of a state as large as Alaska. Moreover, the Rule interferes with traditional management systems, and is only the first step in further limiting subsistence activities. The scientific data does not support limiting predator harvest and the Environmental Assessment does not adequately integrate information and feedback provided by the public.

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The Council would like the Board to seek avenues to overturn both the NPS rule re Subsistence Collections (36 CFR Part 13) and the USFWS final rule re Non-Subsistence Take of Wildlife, and Public Participation and Closure Procedures on National Wildlife Refuges in Alaska.

Response: The Refuges Final Rule was nullified when the President of the United States signed House Joint Resolution 69 into law on April 3, 2017. The Resolution invoked the Congressional Review Act, a law that permits Congress to overturn regulations passed during the last six months of a previous administration, to reverse the Final Rule.

The Board also forwarded this issue to the USFWS Refuges program and the National Park Service, which provide these responses:

USFWS Refuges

Hunting is deeply rooted in American tradition and is a way of life for Alaskans who depend on the land and resources. We all share the same goal of conservation of wildlife and habitat for future generations, and we look forward to working closely with the Regional Advisory Councils and the State of Alaska to ensure that mission is met.

The USFWS is required by law to manage Refuges to ensure that biological integrity, biological diversity, and environmental health are maintained (National Wildlife Refuge System Administration Act of 1966, as amended). The Alaska National Interest Lands Conservation Act (ANILCA) states that among the purposes of all Refuges in Alaska is the conservation of fish and wildlife populations and habitats in their natural diversity.

The refuges in Alaska must primarily comply with the following three laws passed by Congress:

- The Wilderness Act of 1964 directs agencies “not to manipulate ecosystem processes, including predator/prey fluctuations, in wilderness areas. . .”
- Refuge System Administration Act of 1966, as amended with the Refuge System Improvement Act of 1997 directs that “the Secretary *shall* ensure that the biological integrity, biological diversity, and environmental health of the System are maintained through management that restores or mimics natural ecosystem processes or functions and population management that considers natural densities, social structures, and population dynamics.”
- Alaska National Interest Lands Conservation Act (ANILCA) of 1980 directed Alaska refuges as one of its purposes to “conserve fish and wildlife populations and habitats in their natural diversity.” The purpose

of providing the opportunity for continued subsistence uses by local residents, must be managed consistent with the purpose above and the purpose of fulfilling international treaty obligations with respect to fish and wildlife and their habitats. ANILCA's legislative history further shows that Congress created or expanded Alaska's national wildlife refuges to maintain natural, undisturbed ecosystems providing direction for refuges "not to emphasize management activities favoring one species to the detriment of another," but to emphasize conservation of natural interactions, dynamics, cycles, and processes between species and their habitats.

On August 5, 2016, the U.S. Fish and Wildlife Service published a final rule in the Federal Register (81 FR 52248) to amend our regulations for refuges in Alaska to clarify how our existing mandates for the conservation of natural and biological diversity, biological integrity, and environmental health on national wildlife refuges in Alaska relate to predator control; to prohibit several particularly effective methods and means for take of predators; and to update our public participation and closure procedures. The regulations were effective September 6, 2016.

On February 16, 2017, the House of Representatives passed a resolution to nullify these regulations under chapter 8, title 5 of the United States Code. On March 21, 2017, the Senate also passed a resolution to nullify the regulations, and on April 3, 2017, President Trump signed the resolution, thereby rendering the regulations without force and effect. The nullification of the regulation will not change the FWS approach to wildlife management on Refuges, as mandated by ANILCA, the National Wildlife Refuge System Improvement Act, and the Wilderness Act.

National Park Service

In responding to this issue, we first note that agency-specific regulations are not within the purview of the Board, and the Board lacks the authority to direct agencies to take action. Having said that, the National Park Service (NPS) is very surprised to hear of the Council's request to overturn the NPS 2017 Subsistence Collections regulation. A 2007 letter from the Council Chair Sue Entsminger to NPS Alaska Regional Director Marcia Blaszak (attached) specifically requested that the NPS change its regulations to allow federally qualified subsistence users to collect horns and antlers for handicrafts, and the National Park Service undertook considerable effort to make this change. Additionally, the Council expressed general support for the subsistence collections provisions of that regulation in its 2016 comments on the draft rule (attached).

The final rule on Subsistence Collections (attached) was modified to respond to a number of the comments received on the draft rule, including removal of the

requirement for written permission to collect plant materials and the addition of provisions to allow for designated collectors. The written authorization that is required for the collection of animal parts could take the form of a blanket authorization for all local rural residents that meet the eligibility requirements of the regulation. That is the approach that has been taken, for example, by Wrangell-St. Elias National Park and Preserve (attached). The final rule was also modified in response to comments from the RAC and others regarding another provision on the rule, regarding types of bait that can be used for harvesting bears under Federal Subsistence Regulations. Specifically, that modification allows the Superintendent of Wrangell-St. Elias National Park and Preserve to issue a permit to use human-produced food as bait upon a finding that such use is compatible with the park purposes and values and that the permit applicant has no reasonable access to natural bait. This allowance is specific to Wrangell-St. Elias National Park and Preserve because it is the only NPS unit where taking bears over bait has traditionally occurred. We believe that these modifications help to address the concerns about the 2017 Subsistence Collections regulation that were raised in your annual report.

Perhaps the regulation that the Council is interested in overturning is the NPS's 2015 regulation concerning certain sport hunting practices in National Preserves (attached), which is very similar to the U.S. Fish and Wildlife Service regulation referenced in this section of your report. The Council was clearly on record as opposing that regulation, and provided a 2014 comment letter (attached), and NPS staff who attended your February 2017 meeting understood that to be the regulation that you were intended to comment upon in your annual report. For example, Council member Umphenour, in speaking against the regulations, mentions shortening the wolf and coyote seasons and not allowing bear baiting. Those are provisions of the NPS's 2015 regulation that addresses sport hunting in National Preserves, and not the 2017 Subsistence Collections regulation.

The National Park Service staff will attend your November 2017 meeting and can address questions that you might have about these regulations at that time. For additional information, please contact Mary McBurney, Subsistence Program Manager, NPS Alaska Region, at (907) 644-3596 or Mary_McBurney@nps.gov.

8. *Listeria monocytogenes* in fishery products and processing plants and its potential impact on subsistence fishing and customary trade

*The Council expressed concern over the potential impact on subsistence fishing and customary trade resulting from the research findings presented in the article titled "Incidence and Sources of *Listeria monocytogenes* in Cold-Smoked Fishery Products and Processing Plants" (*Journal of Food Protection*, 1995, Vol. 58, No. 5, pages 502-508) (see Enclosure). The U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) commissioned this research, which states that "the primary source of contamination proved to be the surface areas*

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of frozen or fresh raw fish coming-into the plant” and that although Listeria monocytogenes is ubiquitous in the environment, it “causes listeriosis, a disease that can be serious and is often fatal to susceptible individuals.” Federal regulatory agencies “have adopted a zero-tolerance policy toward the incidence of the organism in ready-to-eat food products.” However, the European Union regulations on presence of Listeria monocytogenes in ready-to-eat food are different from the U.S. regulations: the EU safety food limit is 100 bacteria per gram (see Enclosure).

The Council would like to ask the Board to request the following information from the Food and Drug Administration:

- 1. Comparison of genetic baselines between Listeria monocytogenes found in fish and in dairy products, meat, and vegetables;*
- 2. Research findings on whether Listeria monocytogenes found in fish is less or not contagious or harmful to humans. The Council believes that no genetic baseline research has been done for Listeria monocytogenes;*
- 3. Justification of why the standards of Listeria monocytogenes presence in fish are different in the U.S. and the European Union.*

The Council believes that the lack of appropriate research and existence of stringent food safety standards for Listeria monocytogenes contamination have an adverse impact on subsistence fisheries. The State of Alaska Department of Environmental Conservation requirements and regulations regarding the sanitation standards for the subsistence fish camp facilities where fish roe is harvested had resulted in lost economic opportunities.

Response:

The regulatory standards that the Council has identified govern fish that is processed at a commercial plant and distributed and sold commercially, and the Board has no jurisdiction over commercial activities. Subsistence, as defined in ANILCA, does not involve any commercial activity as described in the Food and Drug Administration (FDA) and Alaska Department of Environmental Conservation (ADEC) regulations. Customary trade is included in the Section 803 definition of subsistence use, and is further defined as “exchange for cash of fish and wildlife resources regulated in this part, not otherwise prohibited by Federal law or regulation, to support personal and family needs; and *does not include trade which constitutes a significant commercial enterprise.*” 50 CFR 100.4 (emphasis added). Additionally, the Board does not have the authority to direct other agencies to conduct particular research or question the basis for their regulations.

By its very title, the study cited by the Council only applies to activities involving “products” at “processing plants.” It refers to recontamination from “processing line and equipment” related to an investigation of raw and smoked fish “products.” The FDA’s jurisdiction only extends to commercially-produced food that is part of interstate commerce. The FDA’s activities regarding *Listeria monocytogenes* are focused solely on the food industry, particularly those parts of the

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industry that prepare mass-quantity products at commercial food processing plants. The applicable ADEC regulations (18 AAC 34), are limited to seafood processing activities and products that are “to be sold as part of commerce and intended for human consumption.” (18 AAC 34.005(b)). And while it is potential that these *Listeria* regulations may affect the ability of someone to earn a living, the Board does not have authority over any regulation which may affect the ability of someone earning an income to pay for subsistence activities. This could run the full gamut of everything from occupational health and safety regulations to wage and insurance regulations.

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,

Anthony Christianson
Chair

Enclosures

cc: Federal Subsistence Board
Eastern Interior Alaska Subsistence Regional Advisory Council
Eugene R. Peltola, Jr., Assistant Regional Director, Office of Subsistence Management
Thomas Doolittle, Deputy Assistant Regional Director, Office of Subsistence Management
Carl Johnson, Council Coordination Supervisor, Office of Subsistence Management
Katerina Wessels, Subsistence Council Coordinator, Office of Subsistence Management
Jill Klein, Special Assistant to the Commissioner, Alaska Department of Fish & Game
Interagency Staff Committee
Administrative Record

§100.18 Regulation adoption process.

(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.

[67 FR 30563, May 7, 2002, as amended at 75 FR 63092, Oct. 14, 2010]

**Eastern Interior Alaska Subsistence
Regional Advisory Council
c/o Office of Subsistence Management
101 12th Avenue, Room 110
Fairbanks, Alaska 99701
Phone: 1-(907)-456-0277 or 1-800-267-3997
Fax: 1-(907)-456-0208
E-mail: Vince_Mathews@fws.gov**

May 14, 2007

Marcia Blaszak, Regional Director
National Park Service – Alaska
240 West 5th Avenue
Anchorage, Alaska 99501

Subject: Gathering of Shed Antlers on National Park Service Lands

Dear Regional Director Blaszak:

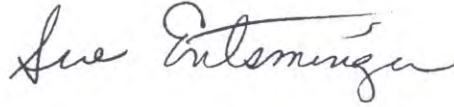
The Eastern Interior Alaska Subsistence Regional Advisory Council (Council) requests the prohibition of collecting antlers or horns, naturally shed or discarded by hunters, on National Park Service (NPS) lands be removed (36 CFR 2.1 (a) (1) (i)). We believe the NPS should allow this collection by Federally qualified subsistence users, as there is a long history of utilizing antlers and horns to make handicrafts, and other items, as an important part of the subsistence way of life in Alaska. We also believe that allowing this collection to occur would not result in any conservation concern (i.e. overharvest), because the making of handicrafts is labor intensive, time consuming and, thus, inherently limits the amount of resource that is sought and utilized at any given time.

Our Council became aware of this prohibition on NPS lands when we were developing our recommendation on Federal subsistence wildlife proposal, WP07-04, a combination of two proposals submitted by our Council and the Upper Tanana/40-Mile Fish and Game Advisory Committee. The proposal requested the Federal Subsistence Board to allow the sale of horns and antlers from goat, sheep, deer, elk, caribou, muskox, and moose that have been naturally shed or removed from the skull of an animal harvested on Federal public lands by Federally qualified subsistence users. It was noted in our Council meeting materials, as well as during the Federal Subsistence Board's deliberation, that shed antlers are not regulated under the Federal Subsistence Management Program. This factored into the Board's decision to adopt the proposal with the modification to address only animals "legally harvested", with clarifying language regarding removal of horns or antlers from the skull.

Thank you for your consideration of our request. The Council looks forward to your response outlining the steps that the National Park Service will be taking to correct this oversight of a

traditional subsistence activity on its lands. For your information, our next public meeting is scheduled for October 16-17, 2007 in Fort Yukon. If you have questions, please contact me directly (1-907-883-2833) or our Regional Coordinator, Vince Mathews. His contact information can be found in our letterhead.

Sincerely,

A handwritten signature in cursive script that reads "Sue Entsminger". The signature is written in black ink and is centered on the page.

Sue Entsminger, Chair

cc: Eastern Interior Council members
Jack Reakoff, Chair, Western Interior Alaska Subsistence Regional Advisory Council
Don Rivard, Office of Subsistence Management

Eastern Interior Alaska Subsistence Regional Advisory Council

U.S. Fish and Wildlife Service
c/o Office of Subsistence Management
1011 East Tudor Road M/S 121
Anchorage, Alaska 99503

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APR 1 1 2016

Herbert C. Frost, Ph.D.
Regional Director, Alaska Region
National Park Service
240 W 5th Avenue
Anchorage, Alaska 99501

Subject: RIN 1024-AE28

Dear Mr. Frost:

I am writing on behalf of the Eastern Interior Alaska Subsistence Regional Advisory Council (Council) to provide the Council's comments to the proposed changes to 36 CFR Part 13, which the National Park Service (NPS) published in the Federal Register on January 13, 2016 (RIN 1024-AE28).

The Council is one of ten regional advisory councils formed under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) and chartered under the Federal Advisory Committee Act. Section 805 of ANILCA and the Council's charter establish its authority to initiate, review and evaluate regulations, policies, management plans, and other matters related to subsistence within the Eastern Interior Region. The Council provides a public forum for discussion and recommendations for subsistence fish and wildlife management in the region. The Council also reviews resource management actions that may impact subsistence resources critical to federally qualified subsistence users whom the Council represents.

The Council held a public meeting on March 10, 2016, in Anchorage, during which the Council discussed the proposed regulatory changes to amend the NPS subsistence regulations. The Council also received a briefing by NPS staff on background information and an update on the changes being considered. We greatly appreciated your being available in person to provide us a further update on the proposed regulatory changes and to listen and respond to our concerns and questions.

The Council would like to comment on two aspects of the proposed changes: (1) subsistence uses of plants and nonedible animal parts and (2) use of bait for taking bears under Federal subsistence regulations. The Council appreciates the NPS's scoping process and outreach on the proposed changes; however, it wants to mention that these efforts sometimes fell short,

Herbert C. Frost

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especially in regards to the bear bait portion of the Proposed Rule. Overall, the Council has concerns about some aspects of the proposed regulations, as noted below. The Council agrees with the proposed rule authorizing the subsistence uses of plants and nonedible animal parts, but not the permitting part. Requiring a permit or any written authorization from the superintendent is unnecessary because collection is limited and is mostly opportunistic. Horn and antlers only last a few years on the tundra since they are eaten by rodents. The Council feels that this regulation is overly strict.

After the discussion on the NPS proposed regulatory changes, the Council reviewed and unanimously endorsed the letter from the Wrangell St. Elias National Park Subsistence Resource Commission (SRC) to the NPS that contains commentary of the NPS Proposed Rule. The Council stated on the record that the Council's position on the NPS Proposed Rule completely aligns with the Wrangell St. Elias SRC's position expressed in the attached letter (enclosure).

The Council also discussed and agreed to submit to the NPS the following points regarding the definition of bait:

- In the Council's opinion, limiting the types of bait to "(1) parts of legally taken native fish or wildlife that are not required to be salvaged; or (2) remains of native fish or wildlife that died of natural causes," would de facto almost completely preclude rural subsistence users from baiting bears because these types of bait are not generally available during bear hunting season and would require special storage and transportation methods (e.g., large freezers, often not available). If the special storage and transportation methods are not implemented the bait would rapidly spoil.
- In the Council's experience, the types of bait for baiting bears in the proposed definition do not correspond to bear's feeding habits. Typically bears do not eat parts "that are not required to be salvaged," e.g. bones, skin, scales, and the guts. The bears eat the flesh of the animals and leave the same parts that humans do.
- The Council believes that the NPS's definition of bear baiting reflects a failure on the part of the NPS in learning and understanding the traditional practices and ways of baiting bears in Alaska. The proposed types of allowed bait would not work in traditional bear baiting.
- The Council thinks that the NPS proposed rule on bear bait would encourage waste of other animals because it potentially would encourage hunters to kill another animal to obtain fresh, allowed bait.

The Council also questions the impact that the use of trained raptors have in the national parks in Alaska, and therefore, it questions the necessity of yet another regulation related to this activity.

The Council appreciates the opportunity to submit comments and recommendations on the proposed statewide regulatory changes on the National Park Service lands. We look forward to hearing from you and continuing to work together in the future.

Herbert C. Frost

3

If you have any questions regarding this correspondence, please contact Katerina Wessels, Subsistence Council Coordinator, Office of Subsistence Management, at 1-800-478-1456 or (907) 786-3885 or at katerina_wessels@fws.gov.

Thank you for your consideration.

Sincerely,



Sue Entsminger, Chair

Enclosure

cc: Eastern Interior Alaska Subsistence Regional Advisory Council
Eugene R. Peltola, Jr. Assistant Regional Director, Office of Subsistence Management
Mary McBurney, Interagency Staff Committee
Amee Howard, Policy Coordinator, Office of Subsistence Management
Stewart Cogswell, Acting Deputy Assistant Regional Director,
Office of Subsistence Management
Chris McKee, Wildlife Division Chief, Office of Subsistence Management
Jennifer Hardin, Anthropology Division Chief, Office of Subsistence Management
Theo Matuskowitz, Regulations Division Chief, Office of Subsistence Management
Carl Johnson, Council Coordination Division Chief, Office of Subsistence Management
Katerina Wessels, Subsistence Council Coordinator, Office of Subsistence Management
Federal Subsistence Board
Administrative Record

Enclosure

Wrangell-St. Elias National Park Subsistence Resource Commission

P.O. Box 439
Mile 106.8 Richardson Hwy.
Copper Center, AK 99573

March 4, 2016

Herbert C. Frost, Ph.D.
Regional Director, Alaska
National Park Service
240 West 5th Avenue
Anchorage, Alaska 99501

Subject: RIN 1024-AE28

Dear Mr. Frost:

We are writing regarding the proposed changes to 36 CFR Part 13 that the National Park Service (NPS) published in the Federal Register on January 13, 2016 (RIN 1024-AE28). The comments that follow were developed at the February 24-25, 2016, meeting of the Wrangell-St. Elias National Park Subsistence Resource Commission (SRC) meeting, which took place in Gulkana, Alaska.

Subsistence Uses of Plants and Nonedible Animal Parts:

The SRC is pleased that the proposed rule authorizing the subsistence uses of plants and nonedible animal parts has finally been published and generally supports the provisions authorizing these uses. As described in the sections that follow, however, we are very concerned about and opposed to the insertion of provisions regarding other topics into this proposed rule. In addition, we have a few comments on the specific language regarding subsistence collections.

- Handicraft production and sales can be an important source of livelihood for rural residents. It is important for regulations on these uses to not be overly restrictive.
- Requiring a permit or other written authorization from the superintendent is not needed. The level of collection that is likely to occur does not justify overly strict regulations, including a requirement for permits or written authorization.
- Shed and discarded horns and antlers are not permanent fixtures on the landscape. If they are not collected by subsistence users they will disappear in a year or two as they are eaten by small animals.
- Sometimes unworked horns and antlers are exchanged before they are made into handicrafts. It is too restrictive to say that the materials must be modified before they can be exchanged.

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- Regarding the definition of significant commercial enterprise, handicrafts are a labor of love. Because of the skill and time involved in their creation, they could end up selling for a significant amount of money. Significant commercial enterprise should not be based on a dollar value. Instead, significant commercial enterprise is more related to quantity, for example mass production or selling to a warehouse for resale.

Use of Bait for Taking Bears Under Federal Subsistence Regulations:

The SRC is opposed to the limitations in the proposed rule on the types of bait that may be used to take bears for subsistence. We are also very concerned about the process used in developing this proposed change. It was published in a proposed rule without any discussion ahead of time, **bypassing the state and federal processes for changing wildlife harvest regulations in Alaska** (i.e., the Alaska Board of Game and the Federal Subsistence Board). These Boards each have a team of biologists to assist them in making sound wildlife management decisions. The SRC worked for 8 to 10 years to authorize the subsistence collection provisions, and then all of a sudden the proposed rule came out including limitations on bait. The lack of a public comment opportunity or public process before this addition shows ill intent by the National Park Service and increases local residents' distrust of the NPS. A process similar to that used for the subsistence collections provisions should have been used for this proposal regarding bait, not this proposed rule. **Additionally, the proposed change regarding bait for bears oversteps the Alaska National Interest Lands Conservation Act (ANILCA) and especially ANILCA Section 810**, which requires an evaluation of the impact of a federal action on subsistence. Such an analysis should have been completed prior to the publication of the proposed rule. We are also concerned that including these provisions in the proposed rule could delay action on the subsistence collections provisions.

In addition to our comments about the process, we offer the following specific comments about the proposal to limit the materials that can be used for bait for taking bears to native fish and wildlife parts that are not required to be salvaged and the remains of native fish or wildlife that died of natural causes:

- Using animals parts for bait is simply not the way that baiting is done.
- The proposal could eliminate the opportunity for many people to work bait stations. It would essentially put them out of the business of baiting bears, thereby restricting subsistence use. Baiting typically occurs in the spring when bear hides are prime and local residents are interested in getting some fresh meat. At that time of year, most subsistence users don't have access to the kinds of materials that the proposal would allow, such as moose scraps from the previous fall or fish carcasses. (Salmon fishing won't yet have started for the year.)
- Bear meat tastes very good in spring when the bears come out of hibernation. Using the types of bait allowed under the proposed rule could change the flavor of the meat, making it inedible. The meat from a bear that has been feeding on rotten meat would be no good.
- Using native fish and wildlife parts as bait will attract more brown bears than black bears. As a result, hunters could end up baiting brown bears even if that was not their intent.
- Using native fish and wildlife parts as bait will make bait stations difficult to clean up, as required under existing regulations. For example, a gut pile would saturate the dirt. Materials that are currently used for bait, such as dog food or popcorn, are much easier to clean up. Popcorn, for example, is easy to handle, easy to clean up and also doesn't attract birds or other animals.

Chair: Karen Linnell; Members: Dan Stevens, Suzanne McCarthy, Don Horrell, Don Welty, Gloria Stickwan, Robert Fithian, Sue Entsminger

- If bears get used to fish and wildlife parts at bait stations, they could also be drawn into fishing and hunting camps. Consequently, this change could increase problems with bears, rather than reduce them.
- Baiting bears could actually help address problem bears around communities. Those bears are the most likely ones to be drawn into bait stations.
- There is no biological data or other evidence that baiting under current regulations habituates bears to human food or leads to nuisance bear behavior or more problems between bears and humans. People in the Tok area, for example, have been baiting bears for 40 plus years without any problems between bears and people. Once the bait stations are cleaned up, the bears disburse.
- The State of Alaska already has a number of rules regarding bear baiting, such as a requirement to register bait stations, signage, and set-backs from roads and houses. Additionally, there are already federal subsistence regulations regarding materials that can be used to bait bears, which differ from what is being proposed by the NPS. This proposal increases the differences between state, federal and NPS rules and could result in confusion. Having consistent regulations makes them easier to follow and helps to avoid confusion.
- Other exceptions to the restriction on feeding wildlife already exist, specifically for trapping. So baiting bears is not the only exception to the restriction on feeding wildlife.

Collection of Live Wildlife:

As with the provisions limiting bait, we are concerned about the inclusion of provisions regarding the collection of live wildlife in the proposed rule on subsistence collections. **Here, too, an environmental assessment should have been done, and proposals should have been submitted to the Alaska Board of Game and the Federal Subsistence Board.** That is the appropriate process for addressing this topic, not including it in this proposed rule.

Thank you for the opportunity to comment.

Sincerely,


Karen Linnell
Chair

CC: Sally Jewell, Secretary of the Interior
Bill Walker, Governor of Alaska
Superintendent, Wrangell-St. Elias National Park and Preserve
Southcentral, Southeast and Eastern Interior Regional Advisory Councils
NPS Subsistence Resource Commissions
Federal Subsistence Board
Alaska Board of Game
Alaska Migratory Bird Co-management Council

Chair: Karen Linnell; Members: Dan Stevens, Suzanne McCarthy, Don Horrell, Don Welty, Gloria Stickwan, Robert Fithian, Sue Entsminger

regulations to have adequate time to review new or pending regulations, and neither the notice and comment process nor delayed effective date could be implemented in time to allow for this review.

List of Subjects in 23 CFR Part 490

Bridges, Highway safety, Highways and roads, Incorporation by reference, Reporting and recordkeeping requirements.

Issued on: February 7, 2017.

Walter C. Waidelich, Jr.,

Acting Deputy Administrator, Federal Highway Administration.

[FR Doc. 2017-02860 Filed 2-10-17; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

[NPS-AKRO-22869; PPAKAKROZ5, PPMRLE1Y.L00000]

RIN 1024-AE28

Alaska; Subsistence Collections

AGENCY: National Park Service, Interior.

ACTION: Final rule; delay of effective date.

SUMMARY: In accordance with a January 20, 2017, memorandum of the Chief of Staff for the White House, we, the National Park Service, are delaying the effective date of a rule we published on January 12, 2017.

DATES: The effective date of the rule that published on January 12, 2017, at 82 FR 3626, is delayed from February 13, 2017, to March 21, 2017.

FOR FURTHER INFORMATION CONTACT:

Andee Sears, Regional Law Enforcement Specialist, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501. Phone (907) 644-3410. Email: AKR_Regulations@nps.gov.

SUPPLEMENTARY INFORMATION: On January 12, 2017, we published a rule to amend regulations for National Park System units in Alaska to allow qualified subsistence users to collect nonedible fish and wildlife parts and plants for creating handicrafts for barter and customary trade. The rule also clarifies that capturing, collecting or possessing living wildlife is generally prohibited and adopts restrictions on using human-produced foods to bait bears for subsistence uses. The rule was to be effective on February 13, 2017.

On January 20, 2017, the Chief of Staff for the White House issued a

memorandum instructing Federal agencies to temporarily postpone the effective date for 60 days after January 20, 2017, of any regulations that have published in the **Federal Register** but not yet taken effect, for the purpose of “reviewing questions of fact, law, and policy they raise.” We are, therefore, delaying the effective date of our rule published on January 12, 2017, at 82 FR 3626 (see **DATES**, above) to allow sufficient time for review of the rule relative to national wildlife management policy.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, our implementation of this action without opportunity for public comment, effective immediately upon publication in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3). Pursuant to 5 U.S.C. 553(b)(B), we have determined that good cause exists to forego the requirement to provide prior notice and an opportunity for public comment thereon for this rule as such procedures would be impracticable, unnecessary and contrary to the public interest. We are temporarily postponing for 60 days the effective date of this regulation pursuant to the previously-noted memorandum of the Chief of Staff. As a result, seeking public comment on this delay is unnecessary and contrary to the public interest. For these same reasons we find good cause to waive the 30-day delay in effective date provided for in 5 U.S.C. 553(d).

Authority: 16 U.S.C. 3124; 54 U.S.C. 100101, 100751, 320102; Sec. 13.1204 also issued under Sec. 1035, Public Law 104-333, 110 Stat. 4240.

Maureen D. Foster,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2017-02890 Filed 2-10-17; 8:45 am]

BILLING CODE 4312-52-P

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Income Level for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Legal Services Corporation (LSC or the Corporation) is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the

annual amendments to the Federal Poverty Guidelines issued by the Department of Health and Human Services (HHS).

DATES: Effective February 13, 2017.

FOR FURTHER INFORMATION CONTACT:

Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K St. NW., Washington, DC 20007; (202) 295-1563; *sdavis@lsc.gov*.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act (Act), 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance. Section 1611.3(c) of the Corporation’s regulations establishes a maximum income level equivalent to 125% of the Federal Poverty Guidelines (Guidelines), which HHS is responsible for updating and issuing. 45 CFR 1611.3(c).

Each year, LSC publishes an update to Appendix A of 45 CFR part 1611 to provide client income eligibility standards based on the most recent Guidelines. The figures for 2017, set out below, are equivalent to 125% of the Guidelines published by HHS on January 31, 2017, 82 FR 8832.

In addition, LSC is publishing a chart listing income levels that are 200% of the Guidelines. This chart is for reference purposes only as an aid to recipients in assessing the financial eligibility of an applicant whose income is greater than 125% of the applicable Guidelines amount, but less than 200% of the applicable Guidelines amount (and who may be found to be financially eligible under duly adopted exceptions to the annual income ceiling in accordance with 45 CFR 1611.3, 1611.4, and 1611.5).

Except where there are minor variances due to rounding, the amount by which the guideline increases for each additional member of the household is a consistent amount.

List of Subjects in 45 CFR Part 1611

Grant Programs—Law, Legal services.

For reasons set forth in the preamble, the Legal Services Corporation amends 45 CFR part 1611 as follows:

PART 1611—ELIGIBILITY

■ 1. The authority citation for part 1611 is revised to read as follows:

Authority: 42 U.S.C. 2996g(e).

■ 2. Revise appendix A to part 1611 to read as follows:



United States Department of the Interior

NATIONAL PARK SERVICE
Wrangell-St. Elias National Park & Preserve
Mile 106.8 Richardson Hwy., P.O. Box 439
Copper Center, AK 99573-0439
907 822 5234 Fax 907 822 3281
<http://www.nps.gov/wrst>



Authorization for the Subsistence Collection and Use of Animal Parts

Local rural residents are authorized to collect animal parts (excluding parts of threatened or endangered species) for subsistence uses in Wrangell-St. Elias National Park and Preserve provided that:

- (1) The local rural residents make their primary permanent residence in an area or community with a federally recognized customary and traditional use determination for the species in the game management unit where the collecting occurs (50 CFR part 100); and
- (2) For collections within the National Park, the rural resident must additionally live in the Wrangell-St. Elias Resident Zone (see 36 CFR 13.1902(a)), live within the external boundaries of Wrangell-St. Elias National Park, or hold a §13.440 permit from the park.

The use of paid employees to collect animal parts is prohibited. The sale of raw, unworked animal parts collected under this authorization is prohibited.

Collection and use of bird feathers continues to be subject to any applicable federal and state laws. Feathers may only be collected if such collection is not prohibited by the Bald and Golden Eagle Protection Act, the Migratory Bird Treaty Act, or other applicable law.

Areas open to collection: All NPS-managed lands within Wrangell-St. Elias National Park and Preserve.

Conditions, limits or other restrictions on collection activities: None.

Authorizing legislation or other authority: 36 CFR 13.482.

Expiration date: Until rescinded.

Authorizing official: Ben Bobowski 24 March 2017
 Superintendent Ben Bobowski Date

their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridges must return to their regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 19, 2015.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2015-26922 Filed 10-22-15; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

[NPS-AKRO-18755; PPAKAKROZ5, PPMRLE1Y.L00000]

RIN 1024-AE21

Alaska; Hunting and Trapping in National Preserves

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service is amending its regulations for sport hunting and trapping in national preserves in Alaska. This rule provides that the National Park Service does not adopt State of Alaska management actions or laws or regulations that authorize taking of wildlife, which are related to predator reduction efforts (as defined in this rule). This rule affirms current State prohibitions on harvest practices by adopting them as federal regulation. The rule also prohibits the following activities that are allowed under State law: Taking any black bear, including cubs and sows with cubs, with artificial light at den sites; taking brown bears and black bears over bait; taking wolves and coyotes during the denning season; harvest of swimming caribou or taking caribou from a motorboat while under power; and using dogs to hunt black bears. The rule also simplifies and updates procedures for closing an area or restricting an activity in National Park Service areas in Alaska; updates obsolete subsistence regulations; prohibits obstructing persons engaged in lawful hunting or trapping; and authorizes the use of native species as bait for fishing.

DATES: This rule is effective November 23, 2015.

FOR FURTHER INFORMATION CONTACT:

Andee Sears, Regional Law Enforcement

Specialist, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501. Phone (907) 644-3417. Email: AKR_Regulations@nps.gov

SUPPLEMENTARY INFORMATION:

Background

Proposed Rule and Public Comment Period

On September 4, 2014, the National Park Service (NPS) published the proposed rule in the **Federal Register** (79 FR 52595). The rule was open for public comment for 90 days, until December 3, 2014. The NPS reopened the comment period from January 15, 2015 through February 15, 2015 (80 FR 2065). The NPS invited comments through the mail, hand delivery, and through the Federal eRulemaking Portal at <http://www.regulations.gov>.

During the first comment period in 2014, the NPS held 17 public hearings in various locations in Alaska. Approximately 168 individuals attended these hearings and approximately 120 participants provided testimony during the formal public comment sessions. During the second comment period, nine public meetings were held in the State. A total of 29 individuals attended the public meetings, and a total of nine attendees spoke during the formal public comment sessions. The NPS also held two statewide government-to-government consultation teleconferences, and offered to consult in person, with tribes. Four comments were received during the statewide government-to-government consultation conference calls and the NPS met with three tribes that requested consultation in person (Allakaket, Tazlina, and Chesh'na (Chistochina)).

The NPS received approximately 70,000 comments on the proposed rule during the public comment period. These included unique comment letters, form letters, and signed petitions. Approximately 65,000 comments were form letters. The NPS also received three petitions with a combined total of approximately 75,000 signatures. Some commenters sent comments by multiple methods. NPS attempted to match such duplicates and count them as one comment. Additionally, many comments were signed by more than one person. NPS counted a letter or petition as a single comment, regardless of the number of signatories.

A summary of comments and NPS responses is provided below in the section entitled "Summary of and Responses to Public Comments." After considering the public comments and additional review, the NPS made some

changes in the final rule from that proposed. These changes are summarized below in the section entitled "Changes from the Proposed Rule."

Federal and State Mandates for Managing Wildlife.

In enacting the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 410hh-5; 3101-3233) in 1980, Congress's stated purpose was to establish in Alaska various conservation system units that contain nationally significant values, including units of the National Park System, in order to preserve them "for the benefit, use, education, and inspiration of present and future generations[.]" 16 U.S.C. 3101(a). Included among the express purposes in ANILCA are preservation of wildlife, wilderness values, and natural undisturbed, unaltered ecosystems while allowing for recreational opportunities, including sport hunting. 16 U.S.C. 3101(a)-(b).

The legislative history of ANILCA reinforces the purpose of the National Park System units to maintain natural, undisturbed ecosystems. "Certain units have been selected because they provide undisturbed natural laboratories—among them the Noatak, Charley, and Bremner River watersheds." Alaska National Interest Lands, Report of the Senate Committee on Energy and Natural Resources, Report No. 96-413 at page 137 [hereafter Senate Report]. Legislative history identifies Gates of the Arctic, Denali, Katmai, and Glacier Bay National Parks as "large sanctuaries where fish and wildlife may roam freely, developing their social structures and evolving over long periods of time as nearly as possible without the changes that extensive human activities would cause." Senate Report, at page 137.

The congressional designation of "national preserves" in Alaska was for the specific and sole purpose of allowing sport hunting and commercial trapping, unlike areas designated as national parks. 126 Cong. Rec. H10549 (Nov. 12, 1980) (Statement of Rep. Udall). 16 U.S.C. 3201 directs that national preserves shall be managed "in the same manner as a national park . . . except that the taking of fish and wildlife for sport purposes and subsistence uses, and trapping shall be allowed in a national preserve[.]" Under ANILCA and as used in this document, the term "subsistence" refers to subsistence activities by rural Alaska residents authorized by Title VIII of ANILCA, which ANILCA identifies as the priority consumptive use of fish and

wildlife on public lands. 16 U.S.C. 3144. Subsistence taking of fish and wildlife in NPS areas is generally regulated by the Department of the Interior. Taking wildlife for sport purposes in national preserves is generally regulated by the State of Alaska.

In addressing wildlife harvest, the legislative history provided “the Secretary shall manage National Park System units in Alaska to assure the optimum functioning of entire ecological systems in undisturbed natural habitats. The standard to be met in regulating the taking of fish and wildlife and trapping, is that the preeminent natural values of the Park System shall be protected in perpetuity, and shall not be jeopardized by human uses.” 126 Cong. Rec. H10549 (Nov. 12, 1980) (Statement of Rep. Udall). This is reflected in the statutory purposes of various national preserves that were established by ANILCA, which include the protection of populations of fish and wildlife, including specific references to predators such as brown/grizzly bears and wolves.

Activities related to taking wildlife remain subject to other federal laws, including the mandate of the NPS Organic Act (54 U.S.C. 100101) “to conserve the scenery, natural and historic objects, and wild life” in units of the National Park System and to provide for visitor enjoyment of the same for this and future generations. Policies implementing the NPS Organic Act require the NPS to protect natural ecosystems and processes, including the natural abundances, diversities, distributions, densities, age-class distributions, populations, habitats, genetics, and behaviors of wildlife. NPS Management Policies 2006 §§ 4.1, 4.4.1, 4.4.1.2, 4.4.2. The legislative history of ANILCA reflects that Congress did not intend to modify the NPS Organic Act or its implementing policies in this respect: “the Committee recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population’s dynamics, and manipulations of the components of the ecosystem.” Senate Report, at pages 232–331. NPS policy states that “activities to reduce . . . native species for the purpose of increasing numbers of harvested species (*i.e.* predator control)” are not allowed on lands managed by the NPS. NPS Management Policies 2006 § 4.4.3.

The State’s legal framework for managing wildlife in Alaska is based on sustained yield, which is defined by State statute to mean “the achievement and maintenance in perpetuity of the

ability to support a high level of human harvest of game[.]” AS § 16.05.255(k)(5). To that end, the Alaska Board of Game (BOG) is directed to “adopt regulations to provide for intensive management programs to restore the abundance or productivity of identified big game prey populations as necessary to achieve human consumptive use goals[.]” AS § 16.05.255(e). Allowances that manipulate natural systems and processes to achieve these goals, including actions to reduce or increase wildlife populations for harvest, conflict with laws and policies applicable to NPS areas that require preserving natural wildlife populations. See, *e.g.*, NPS Management Policies 2006 §§ 4.1, 4.4.3.

This potential for conflict was recognized by the Senate Committee on Energy and Natural Resources prior to the passage of ANILCA, when the Committee stated that “[i]t is contrary to the National Park Service concept to manipulate habitat or populations to achieve maximum utilization of natural resources. Rather, the National Park System concept requires implementation of management policies which strive to maintain natural abundance, behavior, diversity and ecological integrity of native animals as part of their ecosystem, and that concept should be maintained.” Senate Report, at page 171.

In the last several years, the State of Alaska has allowed an increasing number of liberalized methods of hunting and trapping wildlife and extended seasons to increase opportunities to harvest predator species. Predator harvest practices recently authorized on lands in the State, including lands in several national preserves, include:

- Taking any black bear, including cubs and sows with cubs, with artificial light at den sites;
- harvesting brown bears over bait (which often includes dog food, bacon/meat grease, donuts, and other human food sources); and
- taking wolves and coyotes (including pups) during the denning season when their pelts have little trophy, economic, or subsistence value.

These practices are not consistent with the NPS’s implementation of ANILCA’s authorization of sport hunting and trapping in national preserves. To the extent such practices are intended or reasonably likely to manipulate wildlife populations for harvest purposes or alter natural wildlife behaviors, they are not consistent with NPS management policies implementing the NPS Organic Act or the sections of ANILCA that

established the national preserves in Alaska. Additional liberalizations by the State that are inconsistent with NPS management directives, policies, and federal law are anticipated in the future.

16 U.S.C. 3201 of ANILCA provides “within national preserves the Secretary may designate zones where and periods when no hunting, fishing, trapping, or entry may be permitted for reasons of public safety, administration, floral and faunal protection, or public use and enjoyment.” In order to comply with federal law and NPS policy, the NPS has adopted temporary restrictions under 36 CFR 13.40(e) to prevent the application of the above listed predator harvest practices to national preserves in Alaska (see, *e.g.*, 2013 Superintendent’s Compendium for Denali National Park and Preserve). These restrictions protect fauna and provide for public use and enjoyment consistent with ANILCA. While the NPS prefers a State solution to these conflicts, the State has been mostly unwilling to accommodate the different management directives for NPS areas. In the last ten years, the NPS has objected to more than fifty proposals to liberalize predator harvest in areas that included national preserves, and each time the BOG has been unwilling to exclude national preserves from State regulations designed to manipulate predator/prey dynamics for human consumptive use goals.

In deciding not to treat NPS lands differently from State and other lands, the BOG suggested the NPS was responsible for ensuring that taking wildlife complies with federal laws and policies applicable to NPS areas, and that the NPS could use its own authority to ensure national preserves are managed in a manner consistent with federal law and NPS policy. See, *e.g.*, Statement of BOG Chairman Judkins to Superintendent Dudgeon, BOG Public Meeting in Fairbanks, Alaska (February 27, 2010) (NPS was testifying in opposition to allowing the take of black bear cubs and sows with cubs with artificial light in national preserves). In the absence of State action excluding national preserves, this rulemaking is required to make the temporary restrictions permanent. 36 CFR 13.50(d). This rule responds to the BOG’s suggestion by promulgating NPS regulations to ensure national preserves are managed consistent with federal law and policy and prevent historically prohibited sport hunting practices from being authorized in national preserves.

The scope of this rule is limited—sport hunting and trapping are still allowed throughout national preserves and the vast majority of State hunting regulations are consistent with federal

law and policy and continue to apply in national preserves. This rule only restricts sport hunting and trapping in national preserves, which constitute less than six percent of the lands in Alaska open to hunting. This rule does not limit the taking of wildlife for Title VIII subsistence uses under the federal subsistence regulations.

Final Rule

Summary of Final Rule

The rule separates regulations that govern the taking of fish and the taking of wildlife into two sections: 13.40 and 13.42, respectively. The rule makes the following substantive changes to existing NPS regulations:

(1) In accordance with NPS policies, taking wildlife, hunting or trapping activities, or management actions involving predator reduction efforts with the intent or potential to alter or manipulate natural predator-prey dynamics and associated natural ecological processes to increase harvest of ungulates by humans are not allowed on NPS-managed lands. It also explains how the NPS will notify the public of specific activities that are not consistent with this section.

(2) Affirms current State prohibitions on harvest practices by adopting them as federal regulation, and also maintains historical prohibitions on certain practices that the State has recently authorized for sport hunting of predators: (i) Taking any black bear, including cubs and sows with cubs, with artificial light at den sites; (ii) taking brown bears over bait; and (iii) taking wolves and coyotes during the denning season. The rule also eliminates exceptions to practices generally prohibited under State of Alaska law, thereby prohibiting: Taking caribou that are swimming, or from a motorboat that is under power, in two game management units (GMU); baiting black bears; and using dogs to hunt black bears.

(3) Prohibits intentionally obstructing or hindering persons actively engaged in lawful hunting or trapping.

(4) Updates and simplifies procedures for implementing closures or restrictions in park areas, including taking fish and wildlife for sport purposes.

(5) Updates NPS regulations to reflect federal assumption of the management of subsistence hunting and fishing under Title VIII of ANILCA from the State in the 1990s.

(6) Allows the use of native species as bait, commonly salmon eggs, for fishing in accordance with applicable federal and non-conflicting State law. This

supersedes for park areas in Alaska the National Park System-wide prohibition on using certain types of bait in 36 CFR 2.3(d)(2).

Prohibiting Predator Reduction

Activities or management actions involving predator reduction efforts with the intent or potential to alter or manipulate natural ecosystems or processes (including natural predator/prey dynamics, distributions, densities, age-class distributions, populations, genetics, or behavior of a species) are inconsistent with the laws and policies applicable to NPS areas. The rule clarifies in regulation that these activities are not allowed on NPS lands in Alaska. Under this rule, the Regional Director will compile a list updated at least annually of activities prohibited by this section of the rule. Notice will be provided in accordance with 36 CFR 13.50(f) of this rule.

Prohibiting Methods and Means of Taking Wildlife in National Preserves

The rule codifies for national preserves current State prohibitions on harvest practices, and also maintains historical prohibitions on certain sport hunting practices that have been recently authorized by the State for taking predators. It also eliminates exceptions (as applied to national preserves) under State laws that authorize sport hunters to take swimming caribou, to take caribou from motorboats under power, to take black bears over bait, and to use dogs to hunt black bears. The elements of the rule that are described in this paragraph will not be implemented until January 1, 2016, to avoid any potential confusion that may arise from issuing this rule during the 2015 hunting seasons. Delaying the implementation of these provisions will give the general public and other stakeholders sufficient time to understand the new rules before the 2016 hunting seasons begin.

Prohibiting the Obstruction of Persons Engaged in Lawful Hunting or Trapping

The rule prohibits the intentional obstruction or hindrance of another person's lawful hunting or trapping activities. This includes (i) placing oneself in a location in which human presence may alter the behavior of the game that another person is attempting to take or alter the imminent feasibility of taking game by another person; or (ii) creating a visual, aural, olfactory, or physical stimulus in order to alter the behavior of the game that another person is attempting to take. These actions are prohibited by State law, but this law is not adopted under the

regulations for national preserves, because it does not directly regulate hunting and trapping. This rule directly codifies these prohibitions into the NPS regulations, to prevent the frustration of lawful hunting and trapping in national preserves.

Updating Closure and Restriction Procedures

The rule updates and simplifies the procedures for implementing closures and restrictions on certain activities in NPS areas in Alaska. These changes will make the procedures in Alaska more consistent with other NPS units outside of Alaska and with Alaska State Parks. The rule clarifies that Superintendents must use the procedures in § 13.50 to implement any closure or restriction in NPS areas in Alaska. This eliminates potential confusion about whether the procedures in § 13.50 apply only when they are referenced in a separate regulation in part 13 (currently found in the regulations for weapons, camping, and taking fish and wildlife), or whether they apply to all closures and restrictions in Alaska.

The rule requires rulemaking for nonemergency closures or restrictions if the closures or restrictions (or the termination or relaxation of them) are of a nature, magnitude and duration that will result in a significant alteration in the public use pattern of the area, adversely affect the area's natural, aesthetic, scenic or cultural values, or require a long-term or significant modification in the resource management objectives of the area. These rulemaking criteria are modeled after the the criteria that apply to closures and restrictions in Alaska State Parks (11 AAC 12.335), which are also similar to the criteria in 36 CFR 1.5(b) that apply to NPS areas outside of Alaska. Emergency closures and restrictions are limited to the duration of the emergency.

Before a nonemergency closure or restriction can be implemented, the NPS must issue a written determination explaining the basis of the closure or restriction. The NPS will also compile in writing a list, updated annually, of all closures and restrictions (*i.e.*, the compendium). The compendium and the written determinations of need will be posted on the NPS Web site and made available at park headquarters.

With respect to nonemergency restrictions on taking of fish and wildlife in national preserves, the final rule requires an opportunity for public comment, including a public meeting near the affected NPS unit, before the action is taken. This rule recognizes that, although the internet has become

an effective method of communicating with the public, in-person public meetings may still be the most effective way to engage Alaskans, particularly those in rural areas. The rule also requires the NPS to consult with the

State prior to adopting such closures and restrictions. Emergency closures or restrictions on the taking of fish or wildlife are limited to 60 days and may only be extended after consultation with the State and an opportunity for public

comment, including a public meeting, near the affected NPS unit. The following table summarizes the changes from the proposed rule regarding procedures to implement closures or restrictions in § 13.50:

| Proposed rule procedures | Final rule procedures |
|--|---|
| Applicability | |
| Applies only to closures pertaining to weapons, camping, and taking of fish or wildlife. | Applies to all closures or restrictions except when more specific procedures apply in 36 CFR part 13. |
| Factors used to determine whether to close an area or restrict an activity | |
| Includes protecting the integrity of naturally-functioning ecosystems as an appropriate reason for a closure or restriction. | Retains factors in existing regulations at 13.50. |
| Written determinations | |
| Not required | Requires a written determination explaining the reason for the proposed closure/restriction in nonemergency situations. This determination will be posted on <i>www.nps.gov</i> . |
| Emergency Closures or Restrictions | |
| May not exceed 60 days | Duration of the emergency, except for emergency closures or restrictions on taking fish or wildlife, which may not exceed 60 days. |
| Restrictions on Taking Fish or Wildlife (nonemergency) | |
| Consultation with the State and opportunity for public comment prior to adopting a closure or restriction. | Consultation with the State and opportunity for public comment, including one or more public meetings near the affected NPS unit, prior to implementing a closure or restriction. |
| Notice | |
| Closures or restrictions will be effective upon publication on park website. | Some closures or restrictions will be effective upon publication on park websites, but other closures or restrictions may be posted on a park website prior to taking effect, to give the public adequate time to understand and comply with them. A list of closures and restrictions will be compiled in writing and updated annually, and will be posted on the park websites. |

Update Subsistence Regulations to Reflect Federal Management

The rule updates the subsistence provisions in NPS regulations (36 CFR 13.470, 13.480, and 13.490) to reflect the federal government’s assumption of the management and regulation of subsistence take of fish and wildlife under ANILCA and the transfer of subsistence management under Title VIII from the State to the Federal Subsistence Board. The rule makes other non-substantive, editorial changes to the language in 36 CFR 13.490 to streamline, clarify, and better organize this section.

Allowing the Use of Native Species as Bait for Fishing

NPS regulations generally prohibit the use of many forms of bait for fishing to help protect against the spread of nonnative species. Fish eggs from native species (usually salmon), are commonly used for fishing in Alaska. This rule

allows the use of local native species as bait for fishing.

Frequently Asked Questions

This section explains some of the principal elements of the rule in a question and answer format.

Why is this rule necessary?

The rule responds to State hunting regulations that authorize wildlife harvest practices that conflict with ANILCA’s authorization for sport hunting, the statutory purposes for which national preserves were established, and the NPS Organic Act as implemented by the NPS. These include liberalized predator harvest seasons, bear baiting, and the harvest of caribou while swimming. National park areas are managed for natural ecosystems and processes, including wildlife populations. The NPS legal and policy framework prohibits reducing native predators for the purpose of increasing numbers of harvested species.

As discussed above, the rule also responds to a number of other regulatory needs, by updating and streamlining closure procedures, updating subsistence provisions to reflect the program’s actual management, prohibiting interference with lawful hunting consistent with State law, and allowing use of native species as bait for fishing.

Does this rule restrict subsistence harvest of wildlife under Title VIII of ANILCA?

No.

Does this rule prohibit all hunting under State regulations on national preserves in Alaska?

No. This rule restricts certain methods of harvest currently allowed on national preserves by the State of Alaska under its general hunting regulations. These include the taking of any black bear, including cubs and sows with cubs, with artificial light at den sites, taking

brown and black bears over bait, taking wolves and coyotes between May 1 and August 9, harvest of swimming caribou or taking caribou from a motorboat while under power, and using dogs to hunt black bears. Additionally, State laws or regulations involving predator reduction efforts with the intent or potential to alter or manipulate natural predator-prey dynamics and associated natural ecological processes to increase harvest of ungulates by humans will not apply in national preserves, pursuant to this rule. These restrictions will affect a very small percentage of hunting practices authorized by State regulation and less than six percent of the lands in Alaska that are open to hunting.

What regulations apply to hunting and trapping in national preserves?

Title 36 of the Code of Federal Regulations (CFR) applies to sport hunting and trapping in national preserves. State harvest laws and regulations (Alaska Statute Title 16 and Alaska Administrative Code Title 5 AAC) that are consistent with 36 CFR also apply on national preserves. ANILCA Title VIII subsistence harvest of fish and wildlife by Federally-qualified rural residents is authorized in national preserves in Alaska under 36 CFR part 13 and 50 CFR part 100. Please contact the park chief ranger for additional information or assistance.

Do I still have to use the State regulations book when hunting on national preserves?

Yes. State hunting regulations apply to national preserves except when in conflict with federal regulation. Please contact the park chief ranger for additional information or assistance.

Does this rule restrict intensive management of predators on NPS lands?

Yes. Consistent with NPS Management Policies 2006, the NPS Organic Act, and the statutory purposes for which national preserves were established, this rule prohibits predator reduction activities on national preserves that have the intent or potential to alter or manipulate natural predator-prey dynamics and associated natural ecological processes to increase harvest of ungulates by humans.

What is the authority for the NPS to restrict hunting and trapping in this rule?

The NPS Organic Act authorizes the NPS to promulgate regulations that are necessary and proper for the use and management of National Park System units, including national preserves in

Alaska, for the purpose of conserving the wild life and providing for the enjoyment of the wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. 54 U.S.C. 100101(a) and 100751. ANILCA authorizes the Secretary of the Interior, acting through the NPS, to promulgate regulations prescribing restrictions relating to hunting, fishing, or trapping for reasons of public safety, administration, floral and faunal protection, or public use and enjoyment. 16 U.S.C. 3201 and 3202.

The rule says that State laws or management actions involving predator reduction are not adopted in national preserves. How will I know if a State law involves predator reduction?

The Regional Director will compile a list updated at least annually of State laws and regulations that are not adopted in national preserves. This list will be posted at www.nps.gov and available upon request at NPS park headquarters.

I live in a nonrural area and hunt under State subsistence regulations. Does this rule restrict my subsistence harvest practices?

Title VIII of ANILCA limits subsistence activities to local rural residents. This rule does not restrict federally-qualified subsistence users who are hunting in accordance with federal subsistence regulations. But those persons living in nonrural areas (who therefore are not federally-qualified subsistence users) must comply with the restrictions in this rule. For example, only federally qualified subsistence users hunting under federal subsistence regulations will be able to take swimming caribou within national preserves, for all others this practice will now be prohibited in national preserves.

How is hunting on national preserves different than hunting on State land?

Hunting in national preserves is different than on State (or private) lands because NPS regulations also apply and govern in the event of a conflict with State law or regulation. However, harvest opportunities and practices in national preserves vary little from practices allowed under State law, except for some very specific circumstances for which where the NPS has issued regulations. For example, same-day airborne hunting of big game animals, arctic fox, red fox, and lynx has not been allowed on NPS lands since 1995. This rule adds several additional NPS regulations prohibiting the following harvest practices that are

allowed under State law: (1) Taking any black bear, including cubs and sows with cubs, with artificial light at den sites, (2) taking brown bears and black bears over bait, (3) taking wolves and coyotes from May 1 through August 9, (4) harvest of swimming caribou and harvest of caribou from a moving motorboat by those other than local rural residents in those portions of Noatak, Gates of the Arctic, and Bering Land Bridge Preserves that are within GMUs 23 and 26, and (5) using dogs to hunt black bears.

Black bear baiting has been allowed for more than three decades. Why is the NPS prohibiting it now?

The NPS proposed prohibiting the harvest of brown bears over bait to avoid public safety issues, to avoid food-conditioning bears and other species, and to maintain natural bear behavior as required by NPS law and policy. Other land and wildlife management agencies strive to eliminate the feeding of bears through individual and collective educational efforts due to the increased likelihood that food-conditioned bears will be killed by agency personnel or the public in defense of life or property. Food-conditioned bears are also believed more likely to cause human injury. Baiting tends to occur in accessible areas used by multiple user groups, which contributes to the public safety concerns associated with baiting. The concerns presented with taking brown bears over bait also apply to black bear baiting. After reviewing public comment, the final rule prohibits taking both black bears and brown bears over bait in national preserves.

Why is the NPS prohibiting the take of swimming caribou by individuals who are not federally qualified subsistence users?

Taking swimming big game is already generally prohibited by State law, but there are exceptions in State law for the take of swimming caribou in GMUs 23 and 26, which include portions of Noatak, Bering Land Bridge, and Gates of the Arctic National Preserves. This method of harvest remains available to federally qualified subsistence users in their pursuit of food. However, as is further explained below, this method is one of those that NPS has found is not consistent with ANILCA's authorization for sport hunting in national preserves.

Does this rule impact fishing in NPS units in Alaska?

Yes. This rule allows federally qualified subsistence users to use native species as bait for fishing in accordance with federal subsistence regulations.

Others will also be able to use native species for bait when such use is in accordance with non-conflicting State fishing regulations.

What procedures must the NPS follow to adopt closures and restrictions in NPS units in Alaska?

The procedures in 36 CFR 13.50 apply to all closures and restrictions in NPS units in Alaska, unless there are more specific procedures stated elsewhere in law or regulation. For example, the following regulations have specific procedures:

- Unattended or abandoned property, 36 CFR 13.45
- Use of snowmobiles, motorboats, dog teams, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses, 36 CFR 13.460
- Subsistence use of timber and plant material, 36 CFR 13.485
- Closure to subsistence uses of fish and wildlife, 36 CFR 13.490

What closures or restrictions will require notice and comment rulemaking that is published in the Federal Register?

Any nonemergency closure or restriction, or the termination or relaxation of such, which is of a nature, magnitude, and duration that will result in a significant alteration in the public use pattern of the area; adversely affect the area's natural, aesthetic, scenic, or cultural values; or require a long-term modification in the resource management objectives of the area.

Doesn't ANILCA require public hearings prior to adopting closures or restrictions?

Public hearings near the affected vicinity are required before restricting: (1) Subsistence harvest of fish or wildlife under Title VIII of ANILCA or (2) access authorized under 16 U.S.C. 3170 (a) of ANILCA. There is no statutory requirement for a public hearing for other types of closures or restrictions.

Did the NPS eliminate a requirement for public hearings in the affected areas before adopting closures or restrictions relating to the take of fish and wildlife?

The proposed rule included a requirement to provide an opportunity for public comment on potential restrictions to taking fish or wildlife. Public comment may include written comments, a public meeting, a public hearing, or a combination thereof. Based upon public comment and to be more consistent with the practices of the BOG and the Federal Subsistence Board, the NPS modified the proposed rule to

provide that the opportunity for comment must include at least one public meeting near the affected NPS unit in nonemergency situations. This is a change from the existing regulations, which require a public hearing. Requiring a "meeting" instead of a "hearing" provides more flexibility on how the event is structured. During the public hearings conducted in 2014, the NPS received feedback that some local communities prefer a less formal approach and more opportunities for dialog with NPS managers. The NPS believes the term "meeting" more appropriately describes this type of informational exchange. The NPS also believes the term public meeting is broad enough to include a public hearing if that is more appropriate for the area.

Where can I find information about closures and restrictions?

Information about closures and restrictions is posted on each park's Web site at www.nps.gov. This information is also available upon request at NPS park headquarters.

Why did the NPS delete the references to State law in the subsistence regulations?

The NPS deleted the provisions adopting non-conflicting State law because the State no longer manages subsistence harvest under Title VIII of ANILCA. Subsistence harvest of fish and wildlife on federal public lands is generally regulated by the Federal Subsistence Board.

Is the NPS required to consult with the State prior to adopting closures or restrictions to taking fish or wildlife?

Yes, except in the case of emergencies.

Is the NPS required to consult with tribes and ANCSA Native Corporations?

Yes, the NPS is required to consult with tribes if an NPS action would have a substantial direct effect on federally recognized Indian tribes. Consultation with ANCSA Native Corporations is required if an NPS action would have a substantial direct effect on ANCSA Native Corporation lands, waters, or interests.

Is the NPS required to consult with affected user groups, such as Regional Advisory Committees, Subsistence Resource Commissions, hunting organizations, or other nongovernmental organizations?

While this kind of consultation is not required by law, the NPS regards the input from these advisory and other

groups as invaluable. The NPS encourages these groups to engage with park managers on topics of interest. The NPS also invites and encourages these committees and groups to provide input on decisions affecting public use of NPS managed lands as outlined in this final rule.

Summary of and Responses to Public Comments

A summary of substantive comments and NPS responses is provided below followed by a table that sets out changes we have made to the proposed rule based on the analysis of the comments and other considerations.

Consultation

1. Comment: Some commenters stated the NPS did not adequately consult with the State of Alaska prior to publishing the proposed rule and in doing so, acted inconsistently with ANILCA, the Master Memorandum of Understanding between the NPS and the Alaska Department of Fish and Game (ADF&G), and Executive Order 12866.

NPS Response: The NPS respects its responsibility to consult with the State (and others) regarding NPS actions, especially given that wildlife management in NPS units is a responsibility that is shared between the NPS and the State. Publication of the proposed rule provided an opportunity for consultation between the NPS and the State. The NPS and the ADF&G met shortly after the publication of the proposed rule, which is consistent with ANILCA's consultation requirement. 16 U.S.C. 3201. The NPS has engaged in ongoing communications with the ADF&G, the BOG, the State of Alaska ANILCA Implementation Program, and the State of Alaska Citizen's Advisory Commission on Federal Areas for a number of years regarding the issues that this rule addresses.

Executive Order 12866 requires federal agencies to "seek views of appropriate State, local, and tribal governments before imposing regulatory requirements that might significantly or uniquely affect those governmental entities." Sec. 1(b)(9). As discussed below, the Office of Management and Budget determined this rule is not a significant regulatory action subject to this requirement. Regardless, the NPS invited the views of State, local, and tribal governments before publishing this final rule, and also complied with its responsibilities under section 4 of the Executive Order by including the proposed rule in the Unified Regulatory Agenda that was published by the Office of Management and Budget on reginfo.gov.

The NPS signed and implemented the Master Memorandum of Understanding (MMOU) with the ADF&G in 1982. The MMOU states that the ADF&G will manage wildlife on NPS managed lands for natural species diversity and natural process. The NPS agreed to recognize ADF&G as having the primary responsibility to manage wildlife on lands in the State and utilize the State's regulatory process to the maximum extent possible. Both agencies agreed to coordinate planning to minimize conflicts from differing legal mandates and consult with each other when developing regulations. The NPS continues to recognize the State as having primary responsibility to manage fish and wildlife on lands in the State. However, the State's responsibility is not exclusive and it does not preclude federal regulation of wildlife on federal public lands, as is well-established in the courts and specifically stated in ANILCA. The NPS also attempted to utilize the State regulatory process to notify the BOG when proposals created a conflict with NPS laws, regulations, and policies, years before the publication of the proposed rule. During this time NPS requested that the conflicts be resolved, as a first resort, through the State regulatory process. Only after conflicts could not be resolved through that process, and the BOG suggested the NPS could use its own authority to meet its mandates for managing wildlife, did the NPS consider modifications to federal regulations to resolve the conflicts.

2. *Comment:* Some commenters stated that the NPS did not adequately consult with tribes, various advisory committees, and rural residents prior to publishing the proposed rule.

NPS Response: NPS has an obligation to consult with tribes prior to making a decision that would have a substantial direct effect on federally-recognized tribes. Even though the NPS determined that the proposed rule would not have a substantial direct effect on tribes, the NPS initiated consultation shortly after publication of the proposed rule. The NPS emailed a letter to tribes inviting them to consult and notifying them of two statewide conference calls dedicated to tribal consultation in the fall of 2014. No one provided comments or asked questions during the first call. On the second call, four individuals who serve as members of tribal councils provided comments. Park managers also contacted tribes with ties to the park areas by phone, email, and letter to invite them to consult. NPS met in person with three tribes that requested additional consultation. The NPS also provided information to affected

Subsistence Resource Commissions and Regional Advisory Councils beginning when the first temporary wildlife harvest restrictions were considered in 2010, and provided periodic updates throughout the process. Since these harvest restrictions were first proposed, the NPS stated its intention to initiate rulemaking and solicited public comment on these provisions. After the proposed rule was published, the NPS provided 121 days for written comment, met with and provided information to multiple groups, and held an additional 26 public hearings across the State, in rural locations near affected units as well as Anchorage, Fairbanks, Palmer, and Soldotna.

3. *Comment:* Some commenters stated the NPS did not respond to comments and questions from the State of Alaska on the temporary wildlife harvest restrictions that were included in the proposed rule, which might have enabled the State to take action that would make the proposed harvest restrictions unnecessary. Commenters also suggested the NPS work with the State of Alaska collaboratively to address the wildlife harvest issues in this rule.

NPS Response: The NPS would have preferred a collaborative approach with a solution in State law or regulation rather than federal regulation. To that end, the NPS has testified before the Board of Game many times, requested the Board of Game take specific regulatory action to address NPS concerns, met with ADF&G, provided explanations for the restrictions in writing, and responded to comments in the annual park compendiums. The NPS acknowledges the State requested scientific data to support the temporary restrictions on taking black bears, including cubs and sows with cubs, with artificial light at den sites, taking brown bears over bait, and prohibiting the take of wolves and coyotes during the summer months. However, neither the temporary restrictions nor this rule are based on particular wildlife population levels, and do not require the preparation of such scientific data. The basis of the compendium provisions, as well as the rule, is the NPS legal and policy framework, which has been communicated verbally and in writing several times.

Process for Publishing the Proposed Rule

4. *Comment:* Several comments stated that the NPS should give more weight to comments on the proposed rule from Alaskans than other members of the public. Another comment urged the NPS to increase cooperation and

dialogue with rural Alaskans. Others expressed concern that the NPS is not considering public comments when developing the final rule, and did not adequately respond to public comments delivered at public meetings.

NPS Response: The NPS agrees that it will continue to strive to increase cooperation and dialogue with rural Alaskans, many of whom live near the national preserves and may be affected by this rule. After consideration of public comments on the proposed rule, the NPS has included a provision in the final rule requiring it hold one or more public meetings near the affected NPS unit before implementing any non-emergency closure or restriction on the sport take of fish or wildlife in national preserves.

During the comment periods for the proposed rule, the NPS held 26 public hearings in Alaska in an effort to solicit the opinions and comments of Alaskans. The NPS has considered all relevant comments it received on the proposed rule, including those from rural Alaskans and those delivered at public meetings. The NPS considers each comment based upon its substantive content, and does not give greater weight to any comment based upon the residence of the commenter. This is also consistent with the statutory purpose for establishing the national preserves in Alaska for the benefit, use, education, and inspiration of present and future generations of all Americans.

5. *Comment:* Some comments stated that the NPS did not provide the public with sufficient time to review and comment on the proposed rule. Other comments felt that the NPS should not be allowed to make changes to the proposed rule without allowing the public to review and comment on those changes.

NPS Response: The policy of the U.S. Department of the Interior is ordinarily to provide at least 60 days for public comment on any proposed rule that is published in the **Federal Register**. Due to the anticipated interest in this rule, the NPS provided an initial comment period of 90 days so that the public would have additional time to consider the proposal and submit timely comments. After the initial 90-day comment period expired, the NPS received several requests to reopen the comment period to give the public more time to review and prepare comments. Acknowledging the interest in this rule, the NPS agreed with these requests and reopened the comment period for an additional 31 days. In total, the NPS provided the public with 121 days to review and comment on the proposed rule, and appreciates the thoughtful

consideration and responses it received. The NPS believes that the length of the combined public comment period was adequate and does not intend to reopen, for a second time, the public comment period.

After considering public comments and after additional review, the NPS made certain changes to the proposed rule, which are described in the section below entitled “Changes from the Proposed Rule.” The changes are a logical outgrowth of the proposed rule, and were reasonably foreseeable by the public when the proposed rule was published. For example, the NPS specifically requested comment on taking black bears over bait in the proposed rule. This notified the public that the proposed rule could change with respect to this issue after consideration of public comment. Other changes to the proposed rule, such as requiring a public meeting before adopting a closure or restriction for taking wildlife, are consistent with the existing regulations at 36 CFR 13.50.

Comments on Guiding Laws and Regulations

6. *Comment:* Some commenters stated that NPS does not have the authority to supersede State wildlife regulations, while others requested the NPS clarify its authority to preempt conflicting State regulations under the Property and Supremacy Clauses of the Constitution.

NPS Response: Under the Property and Supremacy Clauses of the U.S. Constitution, State wildlife laws that conflict with NPS’s efforts to carry out its statutory mandate are preempted. *See, e.g. Kleppe v. New Mexico*, 426 U.S. 529 (1976); *Hunt v. United States*, 278 U.S. 96 (1928); *New Mexico State Game Comm’n v. Udall*, 410 F.2d 1197 (10th Cir.), *cert. denied*, *New Mexico State Game Comm’n v. Hickel*, 396 U.S. 961 (1969); *United States v. Brown*, 552 F.2d 817 (8th Cir. 1977). Certain State-authorized hunting and trapping practices are not consistent with the NPS implementation of the NPS Organic Act and ANILCA. Consequently, the final rule is an appropriate exercise of the authority affirmed by the cases cited above.

7. *Comment:* Several commenters questioned how any take of wildlife on national preserve lands is permissible when regulations that may “alter the natural predator/prey dynamics, distribution, densities, age-class distributions, populations, genetics or behavior of a species” are interpreted as being incompatible with the laws and policies of the National Park Service.

NPS Response: ANILCA provides for harvest of wildlife in national preserves.

Therefore some level of take is appropriate and compatible with the NPS legal and policy framework for Alaska national preserves. This rule does not prohibit all State-authorized hunting and trapping. The vast majority of State regulations are, and are expected to remain, compatible with the NPS management framework. Over the past several decades, only a handful of State regulations have been superseded by NPS regulations.

The NPS believes that the standard in the rule is a workable and limited standard that satisfies our legal and policy framework and does not include all actions that result in the harvest of wildlife. This rule provides that the NPS does not adopt State management actions or laws or regulations that authorize taking of wildlife, which are related to predator reduction efforts, meaning that they have the intent or potential to alter or manipulate natural predator-prey dynamics and associated natural ecological processes, in order to increase harvest of ungulates by humans. The NPS acknowledges that the public would benefit from greater clarity as to exactly which State laws and regulations are not adopted by the NPS. As a result, the rule requires the Regional Director to publish at least annually a list of all such laws and regulations not adopted in national preserves.

General Comments

8. *Comment:* Some commenters objected to the NPS description that some of the harvest practices, such as taking swimming caribou and hunting caribou from a motorboat while under power, are “longstanding prohibited.”

NPS Response: The harvest methods prohibited by this rule stem from general hunting and trapping restrictions in State law and regulation, some of which have been relaxed in recent years in response to proposals to the BOG. Some of these proposals to relax hunting and trapping restrictions were adopted in whole or in part to reduce predators. Three of these proposals removed longstanding prohibitions on harvest methods. In response, the NPS prohibited these methods on a temporary basis: (1) Taking any black bear, including cubs and sows with cubs, with artificial light at den sites; (2) taking brown bears over bait; and (3) taking wolves and coyotes during the summer months. This rule makes the temporary restrictions permanent. This rule also prohibits some additional practices that the NPS acknowledges were not historically prohibited. These practices, however, existed only as exceptions to general

prohibitions in State law: (1) Taking swimming caribou or taking caribou from a motorboat while under power, in GMUs 23 and 26; (2) black bear baiting; and (3) using dogs to hunt black bears. For the reasons explained herein, NPS believes these practices should also now be prohibited in national preserves.

9. *Comment:* Some comments stated that the hunting methods that would be prohibited by the proposed rule were not intended to reduce predators but were allowed by the BOG based on requests from the Alaskans for additional harvest opportunity or to authorize traditional practices. Other comments stated the NPS proposed rule would prefer predators over ungulates. Others supported the proposed rule because it would prohibit harvest practices designed to reduce predators, which is inconsistent with NPS laws.

NPS Response: The NPS acknowledges many of the harvest practices recently authorized by the State were based in whole or in part on proposals from Alaskan hunters, some of whom may also be federally-qualified subsistence users. However, the record shows some of these proposals and the decisions to act on them were based wholly or in part on a desire to reduce predator populations, and often far in excess of any previous authorizations. Before the BOG authorized taking cubs and sows with cubs at den sites, it had only allowed this activity as part of a predator control program. (Findings of the Alaska Board of Game 2012–194–BOG, Board of Game Bear Conservation, Harvest, and Management Policy, expiration June 30, 2016 (January 18, 2012)). The State’s decision to expand wolf and coyote seasons was based in part on a desire to elevate survival rates of moose and caribou calves.

As explained in the background section of this rule, NPS management policies prohibit the manipulation of wildlife populations, and require the NPS to protect natural abundances, distributions, densities, and populations of wildlife. This rule does not favor predators over ungulates, which would also violate NPS management policies. The rule is primarily focused on the take of predators because the allowances implemented by the State target predators, not ungulates. Even in these circumstances, the rule is consistent with NPS policy to allow for the fluctuation of natural populations of all species in national preserves, by prohibiting the purposeful decrease of predator populations to achieve (or attempt) an increase of ungulate populations to benefit hunters.

10. *Comment:* One commenter stated the NPS misinterpreted the State

sustained yield mandate in the proposed rule and requested the NPS clarify the State's statutory definition to make it clear the State has authority to manage for a variety of beneficial uses of wildlife rather than only to support a high level of human harvest of wildlife.

NPS Response: NPS acknowledges that the State may have broader authorities and goals, but in general, interpretation and clarification of State law is a matter for the State. This rule ensures that taking of wildlife in national preserves is consistent with federal laws and NPS policies that require the NPS to manage national preserves for natural processes.

11. Comment: Several commenters directly or indirectly commented on State-authorized subsistence harvest of fish and wildlife. Some commenters suggested ANILCA authorizes State subsistence separate from Title VIII subsistence. Some comments stated the proposed rule restricts subsistence uses by Alaska Natives. Some commenters stated that federally qualified subsistence users often prefer to harvest wildlife under State regulations because the State regulations are more liberal than federal subsistence regulations and the Federal Subsistence Board regulatory process is cumbersome and takes too long. Conversely, some subsistence hunters voiced support for the proposed regulations as they do not consider some of the methods prohibited by this rule to be traditional or consistent with natural processes and population dynamics.

NPS Response: ANILCA, 16 U.S.C. 3201, states that national preserves shall be managed "in the same manner as a national park . . . except that the taking of fish and wildlife for sport purposes and subsistence uses, and trapping shall be allowed in a national preserve[.]" Under ANILCA and in this rule, the term "subsistence" refers only to subsistence activities authorized by Title VIII of ANILCA, which must comply with the federal subsistence regulations (among other things, they are restricted to rural Alaska residents). ANILCA did not authorize any separate State subsistence activities. Take of wildlife is authorized in national preserves only to the extent it is consistent with either the federal subsistence regulations or with regulations applicable to taking of wildlife for "sport purposes."

The NPS acknowledges that some rural residents eligible to harvest wildlife under federal subsistence regulations in NPS units also harvest wildlife under State regulations in national preserves, particularly when

the State methods, seasons, and bag limits are more liberal. To the extent that this harvest does not conflict with NPS regulations applicable to sport hunting, these opportunities are preserved. Any changes to federal subsistence regulations should be proposed to the Federal Subsistence Board.

12. Comment: Some commenters objected to the use of the term "sport hunting" in the proposed rule as offensive and inaccurate in certain cases such as when a federal subsistence user moves out of the area and is no longer eligible to harvest under federal subsistence regulations.

NPS Response: The NPS understands that some hunters who harvest wildlife under State regulations are not hunting for recreation or "sport." Sometimes individuals who are harvesting under State regulations were once rural residents but are no longer federally qualified subsistence users. However, Congress used the term "sport purposes" in ANILCA and it would be inappropriate for the NPS to allow harvest that is neither for "subsistence purposes" nor for "sport purposes" under 16 U.S.C. 3201.

13. Comment: Some commenters supported the prohibition on the methods of take in the proposed rule because they are unsporting or unethical; others stated the NPS should not regulate ethics regarding wildlife harvest.

NPS Response: Although the term "sport" is not defined in ANILCA, each term in a statute is presumed to have meaning. Sportsmanship in hunting has more than a hundred years of tradition and meaning in the conservation movement in America. See John F. Reiger, *American Sportsmen and the Origin of Conservation* (Winchester Press 1975). When methods of harvest go beyond traditionally accepted norms of "sport" in hunting, they may fall outside of what Congress intended when it authorized hunting in statutes like ANILCA. In some such cases, NPS believes regulations may be needed to curtail these activities that were never intended to occur in units of the National Park System. Such situations historically have been rare. Except for the prohibition of same-day airborne hunting in 1995, the NPS has not restricted the practices authorized by the State through federal rulemaking published in the CFR. There has, however, been a departure in recent years by the BOG, which has sought to advance the goals of increasing harvested species by targeting predators. In order to comply with federal law and NPS policy, these recent allowances

have been prohibited by the NPS in national preserves on a temporary basis through compendium actions, and are now permanently prohibited by this rule.

The NPS also recognizes that some practices that are being prohibited for "sport" hunters may be appropriate for subsistence users. An example of this is taking swimming caribou. On NPS lands, the take of swimming caribou for subsistence is allowed in accordance with federal subsistence regulations, but it is not appropriate as a "sport" hunting practice on waters within national preserves.

14. Comment: Some commenters stated the proposed rule would prohibit Alaska residents from participating in State subsistence fisheries.

NPS Response: This rule makes no changes to fishing regulations other than allowing the use of native species as bait for fishing. Fishing in NPS units under federal subsistence regulations must be in accordance with 36 CFR 13.470 and 50 CFR part 100. Other noncommercial fishing is authorized under 36 CFR 13.40 and in accordance with the provisions of 36 CFR 2.3. To the extent it is consistent with those regulations, State-authorized subsistence fishing is allowed within NPS units.

15. Comment: Some commenters asserted that NPS does not have authority to enact the proposed regulations and that the NPS actions are inconsistent with 16 U.S.C. 3114 and 16 U.S.C. 3125(3) of ANILCA.

NPS Response: This final rule is not promulgated under 16 U.S.C. 3114, which provides that subsistence take of fish and wildlife has priority over other uses when it is necessary to restrict the harvest of fish or wildlife to protect the viability of the population or to continue subsistence uses. The restrictions in this rule are not necessary to protect the viability of a population or to continue Title VIII subsistence uses, nor do they affect subsistence uses or priority. The NPS is promulgating this rule under the NPS Organic Act and 16 U.S.C. 3201, which provide NPS with authority to restrict the taking of wildlife for sport purposes in national preserves for reasons of public safety, administration, floral and faunal protection, or public use and enjoyment.

Similarly, 16 U.S.C. 3125(3) does not apply to this rule. That provision provides that "[n]othing in this title shall be construed as . . . authorizing a restriction on the taking of fish and wildlife for nonsubsistence uses . . . unless necessary for the conservation of healthy populations of fish and wildlife . . . to continue subsistence uses of such populations [.]". The phrase "this

title” refers solely to Title VIII of ANILCA—this section does not apply to 16 U.S.C. 3201, which was enacted as part of Title XIII. This section thus does not preclude the NPS from authorizing restrictions under other titles in ANILCA (such as Title XIII) or other federal laws (such as the NPS Organic Act), as is the case here.

16. Comment: Some commenters stated the NPS should limit hunting to traditional harvest methods because current technology could result in overharvest. Commenters also stated that resources should be allocated to most local users when harvest must be reduced.

NPS Response: In consultation with the State and the Federal Subsistence Board, the NPS will consider restrictions on specific harvest practices on a case by case basis. In times of shortage ANILCA, 16 U.S.C. 3114, provides priority to local subsistence users over others.

17. Comment: Some commenters objected to the statement in the proposed rule that management of wildlife on national preserves must protect natural processes, because ANILCA calls for “healthy” populations, not “natural” populations.

NPS Response: Title VIII of ANILCA refers to conserving “healthy” populations of wildlife on federal public lands in Alaska. ANILCA also states that nothing in the statute modifies or repeals any federal law governing the conservation or protection of fish and wildlife. The statute explicitly identifies the NPS Organic Act as one of those federal laws. The NPS Organic Act requires the NPS to conserve the wild life in units of the National Park System (including national preserves) and to provide for visitor enjoyment of the wild life for this and future generations. 54 U.S.C. 100101. Policies implementing the NPS Organic Act require the NPS to protect natural ecosystems and processes, including the natural abundances, diversities, distributions, densities, age-class distributions, populations, habitats, genetics, and behaviors of wildlife. NPS Management Policies 2006 §§ 4.1, 4.4.1, 4.4.1.2, 4.4.2. The legislative history of ANILCA reflects that Congress did not intend to modify the NPS Organic Act in this respect: “the Committee recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population’s dynamics, and manipulations of the components of the ecosystem.” Senate Report 96–413, Committee on Energy and Natural Resources at pages 232–233

(hereafter Senate Report 96–413). This is reflected in the statutory purposes of various national preserves that were established by ANILCA, which include the protection of populations of fish and wildlife.

18. Comment: Some commenters stated the proposed rule includes ambiguous terms and gives too much discretion to park superintendents.

NPS Response: The NPS believes the actions the superintendents are authorized to take in the rule are consistent with federal law and are comparable to the actions superintendents have long been authorized to take in similar circumstances. It also recognizes that superintendents are the subject matter experts regarding management of the park unit and have been delegated responsibility to take action and respond to changing circumstances that may affect the values and resources of a park unit.

19. Comment: Some commenters questioned the basis of the proposed rule because the NPS did not cite or provide evidence or data related to wildlife population-level effects or any conservation concern.

NPS Response: As discussed above, the rule is based on the NPS legal and policy framework, which among other things “requires implementation of management policies which strive to maintain natural abundance, behavior, diversity and ecological integrity of native animals as part of their ecosystem . . .” Senate Report 96–413, at page 171. This rule is not based on particular wildlife population levels, and did not require the preparation of data on those levels. Rather the rule reflects the NPS responsibility to manage national preserves for natural processes, including predator-prey relationships, and responds to practices that are intended to alter those processes.

20. Comment: A couple of commenters asked for clarification about the harvest opportunities that would be prohibited by the proposed rule on a unit by unit basis.

NPS Response: The NPS believes the rule clearly describes the harvest practices that are prohibited. All but three of these practices are already prohibited by either NPS temporary actions or existing State law. The only currently allowed harvest practices that will be prohibited under this rule are taking caribou that are swimming or taking caribou from a motorboat while under power (currently allowed in portions of Noatak, Gates of the Arctic, and Bering Land Bridge National Preserves), black bear baiting, and using dogs to hunt black bears. The NPS will

assist the public to understand the impacts of the rule on sport harvest of wildlife in national preserves. The public and visitors are encouraged to contact or visit the local NPS offices for information or assistance.

21. Comment: One commenter opposed the prohibition on the take of muskrats at pushups, adding that this practice has been authorized by the State since 1967 and that the practice is not known to have caused conservation or user problems.

NPS Response: The proposed rule would have prohibited the take of muskrats at pushups, which is currently authorized under State regulations. This was not the NPS’s intent, and the final rule has been modified to allow for this practice.

22. Comment: One commenter stated the allowance in the proposed rule for using electronic calls to take big game (except moose) should be modified to allow electronic calls for all game (except moose).

NPS Response: The NPS agrees with the suggestion, which is consistent with State law. The NPS has modified the rule accordingly.

23. Comment: Some commenters objected to the practice of trapping and snaring generally due to the potential for user conflicts and safety concerns due to traps and snares on or near trails. Some commenters specifically objected to snaring bears. Some commenters said trapping should not be allowed near trails used by others in order to protect those visitors and their pets. Some commenters said trappers should be required to identify their traps with their name and contact information.

NPS Response: ANILCA generally allows for trapping (including snaring) in national preserves. Under this rule and adopted State law, there are restrictions on animals that may be trapped under a trapping license, types of traps, as well as restrictions on locations where traps may be set. Because pets are required to be leashed, traps—even those set near trails—have not been a concern historically. In the event that trapping presents safety concerns, the NPS will address those concerns on a case-by-case basis.

24. Comment: Commenters suggested there is an inconsistency between what is being proposed for NPS lands in Alaska and allowances in some Lower 48 parks, including taking coyotes year-round.

NPS Response: Units of the National Park System are “united through their interrelated purposes and resources into one National Park System,” and managed in a manner “consistent with and founded in the purpose established

by” the NPS Organic Act, “to the common benefit of all the people of the United States.” 54 U.S.C. 100101. But units also are managed consistent with their enabling statutes and other laws specifically applicable to those units, such as ANILCA. Hunting of any kind is generally prohibited in units of the National Park System, 36 CFR 2.2, except where specifically authorized by statute, as is the case for national preserves in Alaska (as well as subsistence activities in other Alaska units). In those units that do allow hunting, hunting seasons for particular species generally vary from unit to unit and are often set by State law. When NPS sets seasons or other restrictions by regulation, it does so case by case, based on the resource and management needs of the particular unit.

25. Comment: Some commenters suggested that the rule should prohibit the more subtle means of affecting the natural functioning ecosystem, such as hunters not being required to obtain tags or permits for predators, same-day airborne hunting and trapping, and sale of raw hides and skulls.

NPS Response: Many of the activities described by the commenter are already prohibited under federal regulations. For example, same-day airborne hunting of big game animals, arctic fox, red fox, or lynx is not allowed on NPS lands. Additionally, sale of raw hides and skulls is not allowed under existing NPS regulations. The NPS has not identified a need for NPS-issued tags and permits and consequently has not required harvest permits and tags beyond those required by State regulations and federal subsistence regulations.

26. Comment: One commenter said that while ungulates will probably remain the focus of the State’s intensive management program, it is conceivable that another species could become the focus in the future due to fads or economic interests. The commenter suggested that NPS needs the flexibility to include additional species when necessary to provide for naturally functioning ecosystems.

NPS Response: While naturally functioning ecosystems include natural diversity and abundances of native wildlife populations, the NPS does not believe it is necessary to modify the proposed rule to address this concern. Should the issue arise in the future, the NPS will work with the State and consider appropriate action at that time.

27. Comment: One commenter suggested adding “intercepting” wildlife to the list of prohibited actions that cannot be taken by an aircraft, snowmachine, or other motor vehicle. Also, the term “positioning” is used to

refer to the practice of using snowmachines for lining caribou up for a shot. It should be clarified whether this practice is considered “herding.”

NPS Response: Paragraph (g)(4) of this rule prohibits using an aircraft, snowmachine, off-road vehicle, motorboat, or other motor vehicle to harass wildlife, including chasing, driving, herding, molesting, or otherwise disturbing wildlife. Using an aircraft, snowmachine, or other motor vehicle to “intercept” or “position” wildlife is prohibited by this provision, because the wildlife would be (among other things) harassed, chased, driven, herded, molested, or otherwise disturbed by the use of the aircraft, snowmachine, or motor vehicle. As a result, the NPS does not believe it is necessary to revise the proposed rule to specifically prohibit “intercepting” or “positioning” wildlife as these activities are already covered by the rule.

28. Comment: Some commenters stated the NPS should also address bag limits for certain species, such as wolves.

NPS Response: The NPS generally believes bag limits are more appropriately addressed through the State regulatory process and Federal Subsistence Program in conjunction with harvest information and population data. Should bag limits become a concern in the future, the NPS will work with the State and the Federal Subsistence Board as appropriate.

29. Comment: Some commenters objected to prohibiting the harvest methods identified in the proposed rule as unnecessary since they duplicate State regulations already in effect or would eliminate harvest opportunities for Alaskans.

NPS Response: The NPS affirms current State prohibitions on harvest methods by codifying them as federal law. Should exceptions to these State prohibitions be made in the future, the NPS will consider whether to adopt the same exceptions for national preserves. The majority of existing harvest opportunities provided under State law will still be available for hunters in national preserves.

Annual List of Harvest Regulations Not Adopted

30. Comment: Some commenters objected to the provision in the proposed rule requiring the Regional Director to compile an annual list of State laws and regulations that are not adopted in national preserves because they are aimed at reducing predators. Some comments suggested that the NPS hold public hearings and a public comment period before the Regional

Director places laws and regulations on this list. Other commenters stated this provision is inconsistent with ANILCA and would give superintendents too much discretionary authority.

NPS Response: The provision requiring the Regional Director to identify State laws and regulations not adopted under paragraph (f) is designed to remove any ambiguity about which State-authorized activities are prohibited on national preserves. The NPS does not believe that a hearing or public comment period is appropriate for the annual list because these activities will be prohibited by paragraph (f)(2) without any further action by the NPS or the Regional Director. The purpose of the list is to inform the public about which laws and regulations are not adopted by the NPS so that there is no confusion about what is allowed in national preserves. The list is expected to change only to the extent the State authorizes new predator reduction activities that otherwise would affect national preserves. The overall goal of this provision is to maintain the traditional status quo and prevent the introduction of new predator reduction activities in national preserves.

ANILCA allows the Secretary of the Interior (acting through the NPS) to restrict sport hunting and trapping in national preserves after consultation with the State of Alaska, and does not diminish the authority of the Secretary of the Interior over the management of public lands. See the Background section of this final rule for more information about NPS authority to promulgate this rule. The NPS believes that compiling and annually updating a list of the activities prohibited by paragraph (f) is consistent with the statutory authority provided to the NPS for the management of national preserves.

Taking Bears Over Bait

31. Comment: Some commenters stated that the practice of baiting black bears and brown bears is appropriate because it will not have adverse ecological or public safety effects. Others commented that baiting black bears and brown bears should be prohibited because it may create public safety issues, food-conditioned bears, or impact natural populations or processes.

NPS Response: The NPS proposed prohibiting the harvest of brown bears over bait to avoid public safety issues, to avoid food conditioning bears and other species, and to maintain natural bear behavior as required by the NPS legal and policy framework. By design, baiting typically uses human or pet food

to alter the natural behavior of bears to predictably attract them to a specific location for harvest. Land and wildlife management agencies strive to eliminate the feeding of bears through individual and collective educational efforts, due to the increased likelihood that food-conditioned bears are killed by agency personnel or the public in defense of life or property. Food-conditioned bears are also believed more likely to cause human injury. To that end, NPS regulations prohibit feeding wildlife and the practice of baiting is at odds with this.

Because the concerns presented by taking brown bears over bait also apply to black bear baiting, the NPS requested public comment on whether taking black bears over bait should be allowed to continue on national preserves. After reviewing public comment, the NPS has decided to prohibit taking black bears over bait in national preserves. This decision is consistent with State regulations applicable to Denali State Park, where taking of wildlife is authorized but taking black bears over bait is prohibited (see 2014–2015 Alaska Hunting Regulations, p. 27 and 78 and 5 AAC 92.044 for game management units where the practice is authorized).

Bait stations tend to be located in accessible areas due to the infrastructure (typically a 55 gallon drum) and quantity (including weight) of bait used to engage in this activity and the frequency with which the stations must be replenished. Because of the accessibility of these areas, they are typically used by multiple user groups, which contributes to the public safety concerns associated with baiting. Although there are State regulations that prohibit bait stations within a certain distance of structures (cabins/residences), roads, and trails, these distances lack biological significance relative to bears, whose home ranges can include tens to hundreds of square miles.

32. Comment: Some commenters stated that bear baiting should be allowed in national preserves because it is a historical practice that predates the establishment of national preserves and it a customary practice by many Alaskans. Commenters also stated the practice should be allowed because the amount of take is or would be small.

NPS Response: According to information provided by the State of Alaska, harvest of black bears over bait was authorized by State regulations in 1982. The creation of all NPS areas in Alaska preceded this date. Harvest of bears over the remains of legally-harvested animals not required to be salvaged will continue to be lawful

provided the remains are not moved. To the extent the practice of baiting bears is a customary and traditional practice by rural residents, those uses may be authorized for Federally qualified rural residents pursuant to regulations adopted by the Federal Subsistence Board.

The NPS recognizes that the number of bears harvested over bait in national preserves may not be large. However, this provision is not based on how many bears are harvested or whether that harvest would impact bear population levels. It is based on the legal and policy framework that governs national preserves and calls for maintaining natural ecosystems and processes and minimizing safety concerns presented by food-conditioned bears.

33. Comment: One commenter recommended the definition of bait exclude legally taken fish and that bait should exclude legally taken wildlife that is not required to be salvaged under federal as well as State law. A comment was received that game that died of natural causes should not be considered bait.

NPS Response: The NPS has modified the definition of bait in a manner that excludes native fish, consistent with State law. Upon review, the NPS determined it is not necessary to reference State or federal law regarding salvage requirements in the definition of bait. The result is that parts of legally taken fish or wildlife that are not required to be salvaged are not considered bait if the parts are not moved from the kill site. The rule excludes from the definition of bait game that died of natural causes, if not moved from the location where it was found.

Taking Black Bears With Artificial Light at Den Sites

34. Comment: Some comments stated that the use of artificial light to aid the harvest of black bears in dens should be allowed to ensure proper species identification, prevent take of cubs or sows with cubs, and facilitate a human shot placement. Others commented that the use of artificial light to aid the harvest of black bears in dens should be prohibited due to effects on ecological processes and populations and the potential for dangerous orphaned cubs.

NPS Response: Although artificial light may, in some cases, aid the harvest of black bears in dens by assisting with species identification and shot placement, the NPS does not support authorizing this practice for sport hunting in national preserves. For rural subsistence users, the NPS believes this matter is more appropriately addressed

by the Federal Subsistence Board. The final rule maintains the proposed prohibition on using artificial light to take wildlife, subject to certain exceptions.

Using Dogs To Hunt Black Bears

35. Comment: In response to a question in the proposed rule, some commenters supported the use of unleashed dogs to hunt black bears pursuant to a State permit. Some commenters stated that the use of dogs to hunt black bears has been allowed since 1970 and is not historically illegal. Other commenters opposed the use of dogs to hunt black bears. These comments stated that this activity would increase stress and trauma for the dogs and bears, reduce bear populations in national preserves, disrupt the natural balance of predator-prey dynamics, alter bear feeding patterns, harass other wildlife, transmit diseases to wildlife, interfere with other sport and subsistence hunters, and be dangerous for the dogs and humans in the area (including by driving bears into roadways and onto private property). Several comments stated that dogs used for hunting roam over large portions of the land, often out of the sight and control of their handlers. Some comments stated that this activity is unethical, unsportsmanlike, and does not have a traditional or cultural basis in Alaska. Other comments stated that dogs are often used to “tree” bears, which makes it difficult to determine the sex of the bear and could result in the killing of females with cubs.

NPS Response: Commenters are correct that using dogs to hunt black bears is not “historically illegal.” While State of Alaska law generally prohibits taking big game with the aid or use of a dog, there is an exception for using a dog to take black bears pursuant to a non-transferable permit issued by the ADF&G. The NPS agrees that this practice could have some of the adverse impacts suggested by commenters who oppose the practice. The NPS also believes the use of unleashed dogs to hunt black bears is one of the practices that is inconsistent with the traditional “sport hunting” that is authorized by ANILCA, as discussed above. The rule generally prohibits taking big game with the aid of use of a dog. The proposed rule has been modified to eliminate an exception that would have allowed the use of dogs to harvest black bears under a State permit.

36. Comment: Some commenters supported the use of unleashed dogs to hunt “problem animals” and the use of leashed dogs to hunt wounded black bears.

NPS Response: There is no allowance in State law to use unleashed dogs to hunt “problem animals.” Current State law allows use of a single, leashed dog in conjunction with tracking and dispatching a wounded big game animal, including black bear. The intent of the leash requirement is to ensure that native wildlife are not pursued, harassed, or killed by unleashed dogs and to prevent any contact between native wildlife and domestic dogs. The State-authorized use of a single, leashed dog in conjunction with tracking and dispatching a wounded big game animal will remain authorized in national preserves. The NPS will take appropriate action to protect the safety of park visitors and other wildlife from problem animals, such as bears.

37. Comment: Some commenters supported using sled dogs to travel to and from hunting and trapping areas, in search of game, and to haul out taken game, but not to chase wildlife.

NPS Response: Sled dogs are allowed under 16 U.S.C. 3121(b) of ANILCA for subsistence uses and under 16 U.S.C. 3170(a) of ANILCA for other traditional activities, unless prohibited or restricted on a site specific basis. There are currently no prohibitions or restrictions on this activity in areas where hunting and trapping are authorized. Herding, harassing, hazing, or driving wildlife is prohibited under NPS regulations. This includes “chasing” wildlife.

Wolves and Coyotes

38. Comment: Several commenters supported the limitations on taking wolves and coyotes in the proposed rule, and suggested additional protections such as extending the duration of the no-take period and imposing bag limits. These comments were concerned about hunting pressure, declining populations, and protecting pregnant females to avoid orphaned pups and unsuccessful rearing. Other commenters opposed the limitations on taking wolves and coyotes in the proposed rule, and suggested additional allowances for taking these species, including adoption of the State hunting seasons. Several commenters stated that extended hunting seasons for wolves and coyotes allow for a traditional form of hunting specifically authorized under the State subsistence program, and are not meant to be predator control.

NPS Response: The rule prohibits taking wolves and coyotes from May 1 through August 9. These dates reflect previously longstanding State harvest seasons that provided harvest opportunities while maintaining viable wolf and coyote populations. The rule maintains the decades-old management

paradigm of State and federal managers, rather than adopting recently liberalized State regulations that lengthen the hunting seasons. Should wolf or coyote population levels become a concern in the future, the NPS will work with the State and consider appropriate action at that time.

39. Comment: Some commenters stated that coyotes are not native to Alaska.

NPS Response: Coyotes are native to North America, and while coyotes may not have historically occupied all of their current range, their expansion most likely occurred through natural processes. Consequently, the NPS manages coyotes in the same manner as other native species consistent with NPS Management Policies (§§ 4.1, 4.4.1, 4.4.1.2, 4.4.2).

40. Comment: A few commenters questioned whether wolf pelts taken during the denning season have limited value.

NPS Response: The NPS understands that some individuals may have uses for wolf pelts that are harvested outside the normal trapping season. This rule, however, protects wolves during the denning season when they are vulnerable. The rule preserves the opportunity to harvest wolves when the pelts are thicker for cold winter temperatures. A pelt that has begun to shed out for summer is thinner, may become patchy, and for these reasons is not generally considered as valuable.

Swimming Caribou

41. Comment: One commenter stated that the proposed prohibition on taking swimming caribou would be difficult to enforce because the harvest opportunities are along the river’s edge and animals often fall in the low spots or the water. Another commenter supported the prohibition, noting that there are sufficient opportunities for sport hunters to harvest caribou on land.

NPS Response: NPS agrees that there are adequate opportunities for sport hunters to harvest caribou on land. Although there may be a few situations where it is difficult to tell whether a caribou was taken while swimming, the NPS believes that the prohibition will be enforceable. Also, under existing State regulations, this practice is limited to waters in GMUs 23 and 26. Noatak, Gates of the Arctic, and Bering Land Bridge are the only national preserves within these GMUs. To the extent individuals who are not federally qualified subsistence users engage in this activity elsewhere (e.g., Onion Portage within Kobuk Valley National Park), such use is not authorized under existing NPS regulations, which allow

only federally qualified subsistence users to hunt within certain national parks and monuments in Alaska.

42. Comment: Several commenters opposed the prohibition on the take of swimming caribou, stating that it would prevent those who no longer live in rural Alaska from harvesting foods in a traditional manner. Commenters stated that former residents would not be allowed to return to hunt or to assist elders with hunting in traditional ways. Other commenters supported the proposed prohibition of taking caribou while swimming, noting that it is unsporting and not consistent with fair chase.

NPS Response: The NPS recognizes that taking caribou while swimming is a customary and traditional subsistence practice in some areas of the State. The NPS supports continuation of this practice under federal subsistence regulations in NPS units. The NPS also agrees with the comment that the practice of taking caribou while swimming is not consistent with fair chase and thus believes it is not appropriate to allow as a sport hunting practice. Although former local residents who no longer qualify to hunt under federal subsistence regulations will not be able to engage in such subsistence harvests, they may participate in other aspects of the traditional practice.

Obstruction of Hunting

43. Comment: Some commenters opposed the proposed prohibition on obstructing hunting activities as unnecessary or providing special treatment to hunters. Others questioned the need for the provision because it is already in State law.

NPS Response: In the past, the NPS has received reports of individuals actively attempting to obstruct others from hunting. While this conduct is prohibited under State law, it is not currently prohibited under NPS regulations. Consequently, in the event of a violation of this type in a national preserve, only the State could take enforcement action. This rule allows the NPS also to take enforcement action. This protects the lawful rights of hunters in national preserves, but does not afford them special treatment above what they are currently entitled to by State law.

Bait for Fishing

44. Comment: Commenters generally supported using native species as bait for fishing. Some commenters suggested the species used should be obtained from the waters being fished to avoid introducing a species that is native to

Alaska but not native to a particular watershed.

NPS Response: The NPS agrees that bait species should be limited to those native to Alaska, but does not believe that allowing the use of species not native to a particular watershed poses a risk that new species will be introduced into that watershed. Existing State and federal regulations already prohibit the use of live fish for bait in fresh water, and using dead fish or unfertilized eggs removed from a harvested fish will not result in the introduction of new species that are not native to a particular watershed. In marine waters, existing regulations already require that any fish used for bait come from the same waters being fished.

45. *Comment:* One commenter supported allowing bait for fishing but stated the rule is not necessary because State regulations that allow bait apply to NPS units.

NPS Response: Section 13.40(b) provides that fishing must be consistent with 36 CFR 2.3. Section 2.3 prohibits the use of live or dead minnows or other bait fish, amphibians, nonpreserved fish eggs or fish roe as bait for fishing in fresh waters, along with methods other than hook and line. Consequently this rule is necessary to allow the use of native species of fish or fish eggs as bait for fishing.

46. *Comment:* Some commenters supported the intent to allow bait for fishing since it is a common practice and commonly allowed in Alaska, but said it would create confusion on waters where the State has prohibited bait. These commenters also noted the State allows many forms of bait that would not be considered native species, such as natural or synthetic scents, and natural or processed vegetable matter.

NPS Response: NPS regulations adopt non-conflicting State regulations. Under existing NPS regulations, the use of bait is allowed in accordance with State law under 36 CFR 2.3 except for the use of fish, amphibians or their eggs. This rule allows the use of native fish, amphibians, and their eggs as bait if authorized by the State. If the State does not allow the use of these types of bait in waters within NPS areas, State law will govern and the use of native fish, amphibians, and their eggs as bait will not be allowed.

Updating Federal Subsistence Regulations

47. *Comment:* Some commenters opposed removal of regulatory language providing for consultation with the State regarding potential closures to subsistence harvest of fish and wildlife. A suggestion was made to retain the

provision adopting non-conflicting State laws for subsistence harvest of fish and wildlife. A comment also suggested adding several provisions to the subsistence closure procedures in 36 CFR 13.490, including consultation with various stakeholders, holding public hearings in the affected vicinity, and holding hearings in coordination with other meetings.

NPS Response: The existing provision that adopts non-conflicting State laws is not necessary due to the assumption by the Federal Subsistence Board of regulatory authority over Title VIII subsistence harvest of fish and wildlife. Federal subsistence regulations, which apply in NPS units where Title VIII subsistence is allowed, include regulatory language that adopts non-conflicting State laws. The provision in 36 CFR 13.490 is no longer necessary and will be removed by this rule.

Upon review of comments and considering the practices of the Federal Subsistence Board, the NPS agrees with the recommendation to retain the language providing for consultation with the State prior to the NPS implementing closures to subsistence take of fish and wildlife. Because harvest is regulated by the Federal Subsistence Board, the NPS has modified the proposed rule to also include consultation with the Federal Subsistence Board.

Finally, for consistency with 36 CFR 13.50, which was modified based upon comments (addressed below), the rule has been modified to specify that public hearings will be held near the affected park unit (rather than the “affected vicinity”) prior to implementing the management action in nonemergency situations.

Updating Closure and Restriction Procedures

48. *Comment:* Some commenters objected to the changes in 36 CFR 13.50 as inconsistent with ANILCA or not appropriate for Alaska.

NPS Response: The changes to 36 CFR 13.50 bring procedures for implementing closures and restrictions more in line with procedures that apply to the entire National Park System under 36 CFR 1.5, as well as procedures used by Alaska State Parks. 11 AAC 12.355. The public will benefit from aligning procedures with other NPS units as well as Alaska State Parks. This consistency will enable the public to more effectively engage managers regarding their uses of the public lands and the resources on them.

While commenters referred generally to the proposed changes as being inconsistent with ANILCA, the only

provision cited was 16 U.S.C. 3202. That section contains general savings provisions preserving the Secretary’s authority to manage public lands and preserving the State’s non-conflicting authority to manage fish and wildlife on those lands. Nothing in that section is specifically relevant to the closure and restriction provisions of 36 CFR 13.50; accordingly the NPS finds no conflict between ANILCA and these procedural updates.

49. *Comment:* Some commenters stated the proposed rule would give too much authority to the superintendents to adopt restrictions, specifically on taking of fish or wildlife for sport purposes. Some commenters stated that closures or restrictions must be based upon demonstrated biological considerations (e.g., wildlife population data).

NPS Response: Federal statutes, including ANILCA, provide the NPS with substantial discretion in managing units of the National Park System. Generally, National Park System regulations need only be “necessary or proper for the use and management of System units.” 54 U.S.C. 100751. With respect to sport hunting in national preserves in Alaska, Congress authorized the NPS to restrict these activities for reasons of “public safety, administration, floral and faunal protection, or public use and enjoyment.” 16 U.S.C. 3201. The NPS thus is not required to base its management decisions regarding these restrictions only on biological considerations. The rule maintains the superintendent’s long established authority to make management decisions for NPS units based upon a variety of criteria. The NPS plans to continue to require review of all proposed closures and restrictions at the regional level.

50. *Comment:* Some commenters were concerned that the proposed changes to 36 CFR 13.50 would limit Alaskans’ ability to comment on potential closures and restrictions on NPS-managed areas by shortening the comment period, soliciting comments from non-residents of Alaska, and reducing the number of public meetings.

NPS Response: While hearings are required in certain circumstances (e.g., restricting subsistence harvest of fish or wildlife under Title VIII of ANILCA or access authorized under 16 U.S.C. 3170(a)), there is no statutory requirement to take public comment on closures or restrictions that are not required to be published in the **Federal Register**. The NPS believes, however, that public involvement is an important component of managing NPS units.

Alaskans and all Americans have an important say in how these national interest lands are managed.

Accordingly, except in emergencies, the rule requires an opportunity for public comment, including holding at least one public meeting near the affected NPS unit, prior to adopting a closure or restriction related to taking fish or wildlife. The changes to § 13.50 will not limit any existing opportunities, including public meetings, for Alaskan residents to comment on proposed closures and restrictions for NPS units in Alaska. The NPS posts online proposed closures and restrictions for NPS units in Alaska and invites public comment on them. The NPS intends to continue this practice.

51. Comment: Some commenters objected to removing the requirement that the NPS hold a hearing before implementing closures or restrictions on taking of fish and wildlife for sport purposes. Some were concerned that the NPS would cease meeting with local communities or that the change would give superintendents too much discretion to decide whether to meet with local communities. Some commenters stated the NPS should not consider the time or expense to the government or anticipated number of attendees in determining whether to hold public hearings.

NPS Response: The proposed rule would have replaced the existing regulatory requirement to hold a hearing in the affected vicinity with a requirement to provide an opportunity for public comment, which could include a written comment period, public meeting, public hearing, or a combination thereof. After reviewing comments and considering the similar procedures used by the BOG and the Federal Subsistence Board, the NPS modified the proposed rule to add a requirement to hold one or more public meetings near the affected park unit prior to implementing a closure or restriction on taking fish and wildlife in national preserves, except in the case of emergencies. The NPS will attempt to hold public meetings in conjunction with other events, like Subsistence Resource Commission meetings, when possible. The NPS will consider holding more than one public meeting depending the nature of the action, local interest, and other opportunities for engagement. The rule will also require the NPS to continue the current practice of providing an opportunity for public comment prior to implementing proposed closures and restrictions related to taking fish and wildlife. The NPS intends to continue its current practice of accepting written comments

submitted electronically or by mail or hand delivery. This will give Alaskans and other Americans an opportunity to provide meaningful input on these management actions.

52. Comment: Some comments suggested the NPS provide public notice and hold a hearing prior to adopting emergency closures relating to fish and wildlife.

NPS Response: Although the NPS supports providing the public with a meaningful opportunity to comment, in certain circumstances action may be necessary to protect wildlife or public safety before there is an opportunity for public comment or a hearing. The NPS will provide appropriate notice of emergency closures and restrictions in accordance with the provisions of 36 CFR 13.50.

53. Comment: Some commenters stated the proposed rule would eliminate a requirement to do written determinations stating the basis for closures, restrictions, and other designations.

NPS Response: Although the procedures in 36 CFR 1.5(c) require a written determination of need explaining the reasons for closures or restrictions on public use, the current procedures in § 13.50 do not. The NPS however, has provided such determinations for all proposed closures and restrictions in NPS units in Alaska to better inform the public about the reasons for its decisions. This comment highlights the complexity regarding the various procedural regulations that currently apply to NPS units in Alaska. The NPS believes it is in the public's interest to streamline procedures as much as possible in order to make them more consistent. This will make it easier for the public to be involved in NPS decision-making in Alaska. Accordingly, the NPS has decided to apply the procedures of 36 CFR 13.50, as revised in this rule, to all closures and restrictions in NPS units in Alaska unless a more specific regulation in part 13 provides otherwise (*i.e.*, 36 CFR 13.490 pertaining to closures to subsistence harvest of fish and wildlife). These revised procedures that apply to all NPS units in Alaska require a written determination explaining the basis of the restriction.

54. Comment: Some commenters objected to utilizing web-based tools for information sharing and taking public comment since not all Alaskans have reliable internet. Other commenters objected to using the internet because it is easier for individuals outside Alaska to provide input. Some commenters interpreted the proposed rule to imply

that the NPS will engage the public using social media exclusively.

NPS Response: The NPS acknowledges that some individuals, especially in rural Alaska, may not have reliable internet access or may prefer other methods of communicating with the NPS. The methods of providing notice in the rule are consistent with NPS practices in place in Alaska for more than a decade. The primary method of notifying the public of closures or restrictions has been posting notice online and disseminating press releases by email. It has been the practice for the NPS to invite public comment through electronic means as well as by mail or hand delivery. The majority of public comments are received electronically. The NPS will continue to accept written comments through electronic and traditional means (mail or hand delivery). The NPS will also use other notification procedures such as posting in local post offices and other public places when practical. Individuals may also request copies of the park compendium and other NPS documents by mail or in person. Social media is a valuable tool to inform as well as engage a certain segment of the public, but it is not, and will not be, the only way the NPS engages and communicates with the public. The NPS believes that using the internet will make it easier for some segments of the American public, regardless of residency, to provide input on proposed management actions for NPS units in Alaska. This is appropriate because National Park System units are federal lands that are protected and preserved for all Americans.

55. Comment: Some commenters suggested that the proposed rule should provide opening procedures.

NPS Response: The procedures in the rule apply to the termination and relaxation of closures and restrictions, which includes actions that open areas and allow activities that had been closed or restricted.

56. Comment: Some commenters suggested retaining the distinction between permanent and temporary restrictions. These commenters recommend temporary restrictions be limited to 12 months and rulemaking be required for all permanent restrictions or those restrictions in place longer than 12 months. Other comments stated the existing 30-day limitation on emergency closures should be retained with no extensions.

NPS Response: The categories distinguishing permanent and temporary closures or restrictions have been problematic and difficult to implement, as noted by the State and

others during the annual compendium review process on several occasions. Under current regulations, closures or restrictions in place for more than 12 months must be implemented by rulemaking and cannot be extended, regardless of significance or public interest. The result of this structure is that the NPS must repropose and reissue temporary closures or restrictions each year, even in circumstances where there is little public interest in the action, or where the action is an insignificant management decision. The existing framework is overly rigid and complicated, and unnecessarily compromises the NPS's ability to protect resources and provide for public use and enjoyment. The NPS has determined that the criteria-based rulemaking structure that exists in the nationwide NPS regulations (and is mirrored by Alaska State Parks) provides a better framework. A criteria-based framework requires notice and comment rulemaking based on the impact the closure or restriction will have on the values, resources, and visitors of the park unit. This framework allows the superintendent to implement closures or restrictions that do not significantly impact values, resources, or visitor use without needing to publish a rule in the **Federal Register** or propose the same action again every year. For example, a prohibition on smoking near fuel storage tanks would not necessarily require a rulemaking, but closing an area to all sport harvest on a permanent basis would. The criteria-based framework allows managers to be more flexible and adapt to changing circumstances. The improved consistency with other NPS units and Alaska State Parks will also make it easier for the public to be involved in decision-making regarding the use of public lands in Alaska.

With regard to the duration of emergency closures, the NPS rule is more consistent with the practice of other agencies and NPS regulations that apply outside of Alaska. The existing regulations limit emergency closures to 30 days without extension. Federal subsistence regulations regarding subsistence harvest of fish and wildlife provide for emergency closures of up to 60 days and allow for extensions. National Park System-wide regulations and Alaska State Parks regulations do not provide a time limit on emergency closures. 36 CFR 1.5, 11 AAC 12.355. With respect to restrictions on taking fish and wildlife for sport purposes in national preserves, the NPS adopts the 60-day timeframe and allows for extensions—after consultation with the

State and public comment (including a public meeting)—if the emergency persists. The NPS believes the public will benefit from this consistency with respect to emergency closures or restrictions on taking of fish or wildlife. Other emergency actions will have no explicit expiration date and may exist until the emergency is resolved. This is consistent with regulations for NPS units located outside of Alaska and for Alaska State Parks.

57. Comment: Some commenters stated the NPS should retain the provision requiring consultation with the State and with “representatives of affected user groups” prior to adopting restrictions on the take of wildlife for sport purposes, including Subsistence Resource Commissions, federal subsistence regional advisory councils, local fish and game advisory committees, tribes, and others. Some commenters also stated the NPS must implement the recommendations of Subsistence Resources Commissions unless the criteria of 16 U.S.C. 3118(b) apply.

NPS Response: 16 U.S.C. 3201 requires the NPS to consult with the State prior to prescribing restrictions relating to hunting, fishing, or trapping in national preserves. The rule does not eliminate that statutory requirement; it has moved this requirement into § 13.50 because it relates to closures and restrictions. The rule also requires the NPS to provide an opportunity for public comment, including one or more public meetings near the affected national preserve prior to implementing a closure or restriction on taking fish or wildlife. This will provide representatives of affected user groups an opportunity to provide comments to the NPS prior to the action being implemented. User groups are invited and encouraged to provide input on all such proposed actions.

The NPS agrees that input from advisory groups, NPS Subsistence Resource Commissions, and others is important and valuable and the NPS encourages these groups to engage with the park superintendents on topics of interest. The NPS, however, does not agree that the provisions of 16 U.S.C. 3118(b) apply as broadly as suggested. Under 16 U.S.C. 3118, Subsistence Resource Commissions are established for areas designated as national parks and monuments (not national preserves) to provide subsistence hunting program recommendations. ANILCA further provides that a subsistence hunting program recommendation for national parks and monuments must be implemented unless it “violates recognized principles of wildlife

conservation, threatens the conservation of healthy population of wildlife . . . is contrary to the purposes for which the park or park monument is established, or would be detrimental to the satisfaction of subsistence needs of local residents.” While Subsistence Resource Commissions provide valuable input on multiple topics that affect national parks, monuments, and national preserves, the Subsistence Resource Commission’s statutory charge is specific to Title VIII subsistence hunting program recommendations in national parks and monuments. This rule does not restrict Title VIII subsistence and applies only to sport harvest on national preserves. Therefore 16 U.S.C. 3118(b) does not apply.

58. Comment: Some commenters stated that the factors in the rule that must be considered by superintendents prior to adopting a closure or restriction are ambiguous and give too much discretion to park superintendents. Other commenters suggested adding factors, including “natural,” “natural and healthy,” “healthy,” and “species of concern,” to those in the proposed rule. Other commenters suggested retaining the reference to emergencies.

NPS Response: The factors that must be considered by superintendents place appropriate guidelines around their authority to manage NPS units in Alaska. The discretionary authority granted to superintendents recognizes that they are subject matter experts regarding management of the park unit and allows them to take action and respond to changing circumstances in the unit.

Under the existing regulations, the superintendent must consider factors including public health and safety, resource protection, protection of cultural or scientific values, subsistence uses, conservation of endangered or threatened species, and other management considerations in determining whether to adopt closures or restrictions on an emergency basis. These factors appear elsewhere in 36 CFR part 13 (e.g., 36 CFR 13.460(b) and 13.485(c)). The NPS proposed to modify this section by requiring the superintendent to consider these factors for all closures and restrictions (not just emergencies), and adding the criteria of “naturally functioning ecosystems” based on *NPS Management Policies 2006*, which implement the NPS Organic Act.

In the final rule, the NPS has decided that adding a requirement that the superintendent consider protecting “naturally functioning ecosystems” is unnecessary because this consideration is encompassed by the existing

requirement that the superintendent consider “resource protection.” The NPS considered adding the terms “natural,” “natural and healthy,” “healthy,” and “species of concern,”

but determined such terms are not necessary because they are a part of “resource protection” or in some cases “conservation of endangered or threatened species.”

Changes From the Proposed Rule

After taking the public comments into consideration and after additional review, the NPS made the following substantive changes in the final rule:

| | |
|----------------------|--|
| § 13.1 | Added an exception to the definition of “bait” for legally taken fish not required to be salvaged if not moved from the kill site. This change is consistent with State law and would exclude this practice from the prohibition on using bait in the rule. The term “game” was changed to “wildlife” for consistency with NPS terminology. |
| § 13.42(g) | Delayed implementation of the prohibited methods of taking wildlife until January 1, 2016. |
| § 13.42(g)(8) | Added an allowance for using electronic calls to take all game animals (not limited to big game animals) except for moose. |
| § 13.42(g)(10) | Removed an exception that would have allowed the taking black bears over bait, which is now prohibited. |
| § 13.42(g)(11) | Removed an exception that would have allowed the use of dogs to take black bears under a State permit. |
| § 13.42(g)(14) | Added an exception to the prohibition on taking a fur animal by disturbing or destroying a den to allow taking muskrats at pushups or feeding houses. |
| § 13.42(e) | Modified an existing requirement that individuals transporting wildlife through park areas must identify themselves and the location where the wildlife was taken to any NPS personnel. This information must now only be given to NPS law enforcement personnel. This type of information is relevant for law enforcement purposes and accordingly, the identification requirement should be limited to law enforcement officers. |
| § 13.50(a) | Modified to reflect the applicability of § 13.50 to all NPS closures and restrictions in Alaska unless more specific procedures in part 13 apply. |
| § 13.50(b) | Changed the title from “criteria” to “factors” because the regulatory text refers to the considerations as “factors.” Removed “protecting the integrity of naturally functioning ecosystems” as factor that must be considered by the superintendent in determining whether to close an area or restrict an activity. |
| § 13.50(c) | Change the title from “duration” to “rulemaking requirements” to accurately reflect the content of the subsection. Removed the provision limiting all emergency closures and restrictions to 60 days. |
| § 13.50(d) | Added a provision requiring written explanation of the reasons for implementing, relaxing, or terminating a closure or restriction, except in emergencies. |
| § 13.50(e) | Prior to implementing nonemergency closures or restrictions on taking fish or wildlife, added a requirement to hold one or more public meetings near the affected NPS unit. Added a 60-day time limit for emergency closures or restrictions on taking fish or wildlife with extensions only upon consultation with the State and public comment, including a meeting near the affected NPS unit. |
| § 13.50(f) | Closures or restrictions will be “posted on the NPS website” rather than “effective upon publication on the NPS website.” This change reflects that the NPS may post closures or restrictions on the NPS website prior to them taking effect. Also added a requirement to compile a written list, updated annually, of closures and restrictions which is posted on the NPS website. |
| § 13.50 | Removed existing regulations on “Openings” and “Facility closures and restrictions” because they are redundant with the revisions to this section. |
| § 13.50(g) | Shortened for clarity and brevity. |
| § 13.490 | Added a requirement to consult with the State and the Federal Subsistence Board before temporary restrictions on taking fish or wildlife for subsistence uses under Title VIII of ANILCA. Updated the language regarding location of hearings to near the “affected NPS unit” for consistency with the changes in § 13.50. |

Compliance With Other Laws, Executive Orders, and Department Policy

Regulatory Planning and Review (Executive Order 12866)

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 Executive Order 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. Executive Order 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

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on the cost-benefit and regulatory flexibility analyses found in the report entitled “Cost-Benefit and Regulatory Flexibility Analyses: Proposed Revisions to Wildlife Harvest Regulations in National Park System Alaska Region” which can be viewed online at <http://parkplanning.nps.gov/akro>, by clicking the link entitled “Amend Hunting and Trapping Regulations in National Preserves In Alaska” and then clicking the link entitled “Document List.”

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

- a. Does not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions
- c. 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.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on state, local or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This rule does not effect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. The rule’s effect is limited to federal lands managed by the NPS in Alaska and it will not have a substantial direct effect on state and local government in Alaska. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation with Indian Tribes (E.O. 13175 and Department policy) and ANCSA Native Corporations

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the criteria in Executive Order 13175 and under the Department’s tribal consultation and Alaska Native Claims Settlement Act (ANCSA) Native Corporation policies and have determined that tribal consultation is not required because the rule will have no substantial direct effect on federally recognized Indian tribes. While the NPS has determined the rule will have no substantial direct effect on federally recognized Indian tribes or ANCSA Native Corporation lands, water areas, or resources, the NPS consulted with Alaska Native tribes and Alaska Native Corporations on the proposed rule, as discussed above.

Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

The NPS has analyzed this rule in accordance with the criteria of the National Environmental Policy Act (NEPA) and 516 DM. We prepared an environmental assessment entitled “Wildlife Harvest On National Park System Preserves In Alaska” (EA) to determine whether this rule will have a significant impact on the quality of the human environment. This rule does not constitute a major Federal action

significantly affecting the quality of the human environment, and an environmental impact statement is not required, because we reached a Finding of No Significant Impact (FONSI). The EA and FONSI are available online at <http://www.parkplanning.nps.gov/akro>, by clicking on the link entitled “Amend Hunting and Trapping Regulations in National Preserves In Alaska” and then clicking on the link entitled “Document List.”

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Drafting Information

The primary authors of this regulation are Jay Calhoun, Regulations Program Specialist, National Park Service, Division of Jurisdiction, Regulations, and Special Park Uses; Philip Hooge, Denali National Park and Preserve; Barbara Cellarius, Wrangell-St. Elias National Park and Preserve; and Guy Adema, Debora Cooper, Joel Hard, Grant Hilderbrand, Brooke Merrell, Bud Rice, and Andee Sears of the Alaska Regional Office, National Park Service.

List of Subjects in 36 CFR Part 13

Alaska, National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service amends 36 CFR part 13 as set forth below:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

- 1. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 3124; 54 U.S.C. 100101, 100751, 320102; Sec. 13.1204 also issued under Sec. 1035, Pub. L. 104–333, 110 Stat. 4240.

- 2. In § 13.1, add in alphabetical order the terms “Bait”, “Big game”, “Cub bear”, “Fur animal”, “Furbearer”, and “Trapping” to read as follows:

§ 13.1 Definitions.

* * * * *

Bait means, for purposes of taking wildlife other than fish, any material used to attract wildlife by sense of smell or taste except:

- (1) Parts of legally taken wildlife or fish that are not required to be salvaged if the parts are not moved from the kill site; or
- (2) Wildlife or fish that died of natural causes, if not moved from the location where it was found.

Big game means black bear, brown bear, bison, caribou, Sitka black-tailed deer, elk, mountain goat, moose, muskox, Dall's sheep, wolf, and wolverine.

* * * * *

Cub bear means a brown (grizzly) bear in its first or second year of life, or a black bear (including the cinnamon and blue phases) in its first year of life.

* * * * *

Fur animal means a classification of animals subject to taking with a hunting license, consisting of beaver, coyote, arctic fox, red fox, lynx, flying squirrel, ground squirrel, or red squirrel that have not been domestically raised.

Furbearer means a beaver, coyote, arctic fox, red fox, lynx, marten, mink, least weasel, short-tailed weasel, muskrat, land otter, red squirrel, flying squirrel, ground squirrel, Alaskan marmot, hoary marmot, woodchuck, wolf and wolverine.

* * * * *

Trapping means taking furbearers under a trapping license.

* * * * *

■ 3. In § 13.40, revise the section heading and paragraphs (d) and (e) to read as follows:

§ 13.40 Taking of fish.

* * * * *

(d) *Use of native species as bait.* Use of species native to Alaska as bait for

fishing is allowed in accordance with non-conflicting State law and regulations.

(e) *Closures and restrictions.* The Superintendent may prohibit or restrict the non-subsistence taking of fish in accordance with the provisions of § 13.50.

■ 4. Add § 13.42 to read as follows:

§ 13.42 Taking of wildlife in national preserves.

(a) Hunting and trapping are allowed in national preserves in accordance with applicable Federal and non-conflicting State law and regulation.

(b) Violating a provision of either Federal or non-conflicting State law or regulation is prohibited.

(c) Engaging in trapping activities as the employee of another person is prohibited.

(d) It shall be unlawful for a person having been airborne to use a firearm or any other weapon to take or assist in taking any species of bear, caribou, Sitka black-tailed deer, elk, coyote, arctic and red fox, mountain goat, moose, Dall sheep, lynx, bison, musk ox, wolf and wolverine until after 3 a.m. on the day following the day in which the flying occurred. This prohibition does not apply to flights on regularly scheduled commercial airlines between regularly maintained public airports.

(e) Persons transporting wildlife through park areas must identify themselves and the location where the wildlife was taken when requested by NPS law enforcement personnel.

(f) State of Alaska management actions or laws or regulations that authorize taking of wildlife are not adopted in park areas if they are related to predator reduction efforts. Predator reduction efforts are those with the intent or potential to alter or manipulate natural predator-prey dynamics and associated natural ecological processes, in order to increase harvest of ungulates by humans.

(1) The Regional Director will compile a list updated at least annually of State laws and regulations not adopted under this paragraph (f).

(2) Taking of wildlife, hunting or trapping activities, or management actions identified in this paragraph (f) are prohibited. Notice of activities prohibited under this paragraph (f)(2) will be provided in accordance with § 13.50(f).

(g) This paragraph applies to the taking of wildlife in park areas administered as national preserves except for subsistence uses by local rural residents pursuant to applicable Federal law and regulation. As of January 1, 2016, the following are prohibited:

| Prohibited acts | Any exceptions? |
|---|---|
| (1) Shooting from, on, or across a park road or highway | None. |
| (2) Using any poison or other substance that kills or temporarily incapacitates wildlife. | None. |
| (3) Taking wildlife from an aircraft, off-road vehicle, motorboat, motor vehicle, or snowmachine. | If the motor has been completely shut off and progress from the motor's power has ceased. |
| (4) Using an aircraft, snowmachine, off-road vehicle, motorboat, or other motor vehicle to harass wildlife, including chasing, driving, herding, molesting, or otherwise disturbing wildlife. | None. |
| (5) Taking big game while the animal is swimming | None. |
| (6) Using a machine gun, a set gun, or a shotgun larger than 10 gauge | None. |
| (7) Using the aid of a pit, fire, artificial salt lick, explosive, expanding gas arrow, bomb, smoke, chemical, or a conventional steel trap with an inside jaw spread over nine inches. | Killer style traps with an inside jaw spread less than 13 inches may be used for trapping, except to take any species of bear or ungulate. |
| (8) Using any electronic device to take, harass, chase, drive, herd, or molest wildlife, including but not limited to: artificial light; laser sights; electronically enhanced night vision scope; any device that has been airborne, controlled remotely, and used to spot or locate game with the use of a camera, video, or other sensing device; radio or satellite communication; cellular or satellite telephone; or motion detector. | (i) Rangefinders may be used. (ii) Electronic calls may be used for game animals except moose. (iii) Artificial light may be used for the purpose of taking furbearers under a trapping license during an open season from Nov. 1 through March 31 where authorized by the State. (iv) Artificial light may be used by a tracking dog handler with one leashed dog to aid in tracking and dispatching a wounded big game animal. (v) Electronic devices approved in writing by the Regional Director. |
| (9) Using snares, nets, or traps to take any species of bear or ungulate | None. |
| (10) Using bait | Using bait to trap furbearers. |
| (11) Taking big game with the aid or use of a dog | Leashed dog for tracking wounded big game. |
| (12) Taking wolves and coyotes from May 1 through August 9 | None. |
| (13) Taking cub bears or female bears with cubs | None. |
| (14) Taking a fur animal or furbearer by disturbing or destroying a den | Muskrat pushups or feeding houses. |

(h) The Superintendent may prohibit or restrict the non-subsistence taking of wildlife in accordance with the provisions of § 13.50.

(i) A person may not intentionally obstruct or hinder another person's lawful hunting or trapping by:

(1) Placing oneself in a location in which human presence may alter the behavior of the game that another person is attempting to take or the imminent feasibility of taking game by another person; or

(2) Creating a visual, aural, olfactory, or physical stimulus in order to alter the behavior of the game that another person is attempting to take.

■ 5. Revise § 13.50 to read as follows:

§ 13.50 Closure and restriction procedures.

(a) *Applicability and authority.* The Superintendent will follow the provisions of this section to close an area or restrict an activity, or terminate or relax a closure or restriction, in NPS areas in Alaska.

(b) *Factors.* In determining whether to close an area or restrict an activity, or whether to terminate or relax a closure or restriction, the Superintendent must ensure that the activity or area is managed in a manner compatible with the purposes for which the park area was established. The Superintendent's decision under this paragraph must therefore be guided by factors such as public health and safety, resource protection, protection of cultural or scientific values, subsistence uses, conservation of endangered or threatened species, and other management considerations.

(c) *Rulemaking requirements.* This paragraph applies only to a closure or restriction, or the termination or relaxation of such, which is of a nature, magnitude and duration that will result in a significant alteration in the public use pattern of the area; adversely affect the area's natural, aesthetic, scenic, or cultural values; or require a long-term modification in the resource management objectives of the area. Except in emergency situations, the closure or restriction, or the termination or relaxation of such, must be published as a rulemaking in the **Federal Register**.

(d) *Written determination.* Except in emergency situations, prior to implementing or terminating a closure or restriction, the superintendent shall prepare a written determination justifying the action. That determination shall set forth the reasons the closure or restriction authorized by paragraph (a) of this section has been established. This determination will be posted on the NPS Web site at www.nps.gov.

(e) *Restrictions on taking fish or wildlife.* (1) Except in emergencies, the NPS will consult with the State agency having responsibility over fishing, hunting, or trapping and provide an opportunity for public comment, including one or more public meetings near the affected NPS unit, prior to implementing a closure or restriction on taking fish or wildlife.

(2) Emergency closures or restrictions may not exceed a period of 60 days and may not be extended without following the nonemergency procedures of this section.

(f) *Notice.* A list of closures and restrictions will be compiled in writing and updated annually. The list will be posted on the NPS Web site at www.nps.gov and made available at park headquarters. Additional means of notice reasonably likely to inform residents in the affected vicinity will also be provided where available, such as:

(1) Publication in a newspaper of general circulation in the State or in local newspapers;

(2) Use of electronic media, such as the internet and email lists;

(3) Radio broadcast; or

(4) Posting of signs in the local vicinity.

(g) Violating a closure or restriction is prohibited.

§ 13.400 [Amended]

■ 6. In § 13.400, remove paragraph (e) and redesignate paragraph (f) as new paragraph (e).

■ 7. Revise § 13.470 to read as follows:

§ 13.470 Subsistence fishing.

Fish may be taken by local rural residents for subsistence uses in park areas where subsistence uses are allowed in compliance with applicable Federal law and regulation, including the provisions of §§ 2.3 and 13.40 of this chapter. Local rural residents in park areas where subsistence uses are allowed may fish with a net, seine, trap, or spear; or use native species as bait, where permitted by applicable Federal law and regulation.

■ 8. Revise § 13.480 to read as follows:

§ 13.480 Subsistence hunting and trapping.

Local rural residents may hunt and trap wildlife for subsistence uses in park areas where subsistence uses are allowed in compliance with this chapter and 50 CFR part 100.

■ 9. In § 13.490, revise paragraph (a) to read as follows:

§ 13.490 Closures and restrictions to subsistence uses of fish and wildlife.

(a) The Superintendent may temporarily restrict a subsistence activity or close all or part of a park area to subsistence uses of a fish or wildlife population after consultation with the State and the Federal Subsistence Board in accordance with the provisions of this section. The Superintendent may make a temporary closure or restriction notwithstanding any other provision of this part, and only if the following conditions are met:

(1) The restriction or closure must be necessary for reasons of public safety, administration, or to ensure the continued viability of the fish or wildlife population;

(2) Except in emergencies, the Superintendent must provide public notice and hold a public hearing near the affected NPS unit;

(3) The restriction or closure may last only so long as reasonably necessary to achieve the purposes of the closure.

* * * * *

Dated: September 9, 2015.

Michael Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2015-26813 Filed 10-22-15; 8:45 am]

BILLING CODE 4310-EJ-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2015-0337; FRL-9936-05-Region 4]

Approval and Promulgation of Implementation Plans; Florida; Regional Haze Plan Amendment—Lakeland Electric C.D. McIntosh

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing approval of the State of Florida's March 10, 2015, State Implementation Plan (SIP) revision, submitted by the Florida Department of Environmental Protection (FDEP). This submittal fulfills Florida's commitment to EPA to provide a regional haze SIP revision with a Best Available Retrofit Technology (BART) nitrogen oxides (NOx) emissions limit for Unit 1 at the Lakeland Electric—C.D. McIntosh Power Plant (McIntosh) reflecting best operating practices for good combustion. States are required to address the BART provisions of the Clean Air Act (CAA or Act) and EPA's

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

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NOV 20 2014

Mr. Bert Frost
Alaska Regional Director
National Park Service
240 West 5th Avenue
Anchorage, Alaska 99501

Dear Mr. Frost:

The Eastern Interior Alaska Subsistence Regional Advisory Council (Council) is one of ten Federal Subsistence Regional Advisory Councils that were formed under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) to represent subsistence users in their regions. We are writing in regards to the public comment period for proposed changes to 36 CFR 13 the National Park Service (NPS) published in the Federal Register on September 4, 2014 (RIN1024-AE21). We request the NPS rescind the proposed rule so the public process can be re-initiated and better organized with due public process procedures that allow for local community-level engagement at the outset. In the alternative, we request the public comment period be extended to allow time for the rural public to fully participate and all Federal Subsistence Regional Advisory Councils are provided an opportunity to respond at their scheduled winter 2015 meetings.

The Councils provide a public forum for discussion and recommendations on any matter related to subsistence uses of fish and wildlife. The Councils are also empowered to evaluate and make recommendations on management plans, proposed regulations, and other matters related to subsistence uses of fish and wildlife within their regions. The Eastern Interior Council's subsistence region encompasses Yukon-Charley Rivers National Preserve, and much of Denali and Wrangell-St. Elias National Park and Preserves.

The Councils are chartered under and governed by the Federal Advisory Committee Act (FACA), which requires that the Councils conduct their business at publicly-noticed meetings; including discussing and authorizing correspondence such as comments on public processes. However, your public process on this issue did not commence until September 4, 2014, after one of the Councils had already met and it was not communicated until after the next Council met in mid-September; too late to be included in Council meeting book materials and at a time when many are out fall subsistence hunting. Thus, our Council did not have its first opportunity to address the proposed rule on hunting regulations until it met for its public meeting on October 21-22, 2014, in Fairbanks.

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At this meeting the Council discussed at length its objection to an apparent circumvention of public process due to lack of early outreach efforts, few public meetings, and a short public comment period. Additionally, the Council wants to note that participation for rural residents is challenging due to their limited access to Internet and news media to obtain information and comment through a complicated internet-based national Federal Register system. Public meetings held during freeze-up greatly limit rural residents ability to participate since travel is often not possible by land or water. The Council is very concerned the public process was not designed to ensure that all of the Federal Subsistence Regional Advisory Councils had an opportunity to participate, especially when the process was initiated by one of the partner agencies in the Federal Subsistence Management Program.

The Council feels there should be an expanded public process so that rural residents who do not have the same access to public media and Internet resources have ample opportunity to learn about, deliberate, and make informed recommendations on the proposed rule. This Council was only provided a few weeks to review the press release and Federal Register notice in advance of formal discussion on the record to make recommendations prior to the end of the public comment period. Many Council members noted they had not seen or heard of the proposed ruling within their community or region. It is a normal part of our members' processes to discuss such matters with their communities prior to attending the meeting to deliberate. The proposed rule has multiple parts and requires some time to fully review discuss and clarify with regional NPS representatives.

The Council appreciates the efforts of the local Wrangell-St. Elias NPS staff who attended its recent Council meeting. However, the absence of upper level regional NPS staff created a challenge for the Council to get questions answered when the present staff lacked the information or authority to respond. The Council would like to thank NPS Deputy Regional Director, Joel Hard, for responding to the Councils' request to participate in the meeting via teleconference. However, we were concerned to learn the proposed rule was submitted to the Department of Interior in January 2014, but not brought to the Council's attention until after mid-September. It would be very beneficial to the Council to have a longer comment period so that follow up questions and discussion can occur more fully with regional NPS staff attending the winter 2015 meeting.

The Council is very concerned about the NPS proposed hunting regulations for National Preserves in Alaska. While this proposed rule is not directed at current Federal subsistence regulations on National Park Service lands, we feel it *does* affect Federally qualified subsistence users. Many rural subsistence users hunt and trap under general State regulations and greatly benefit from those more liberal methods, seasons, and bag limits. If a current State regulation is not adopted in Federal regulations, that opportunity would be gone for Federally qualified subsistence unless those proposals are submitted through the Federal regulatory process and adopted by the Federal Subsistence Board. The proposal process is lengthy, taking over a year to complete. All State regulations not currently in Federal regulations would have to be adopted. The Council stresses that all changes to regulations that may have an impact on Federal subsistence and food security be given ample opportunity for input from subsistence users.

The Council is aware of the Master Memorandum of Understanding between the Alaska Department of Fish and Game and the National Park Service in regards to new regulations for fish and wildlife. It appears the State and the NPS are not communicating or coordinating well in accordance with that

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Memorandum. Too often the Council and public are caught in between State and Federal conflicts and we wish to see meaningful collaboration among all involved in resource management. We request that the NPS continue to pursue meaningful communication and consultation with the State and communities that may be affected by this proposed rule. Importantly, communication with affected Tribes needs to be initiated *prior* to proposed regulation changes with direct follow up to ensure opportunity for government to government consultation as part of the rule making process.

Therefore, the Eastern Interior Alaska Subsistence Regional Advisory Council respectfully requests the National Park Service rescind the proposed regulation until full public outreach procedures and comprehensive public process can be better implemented to reach rural users affected by these proposed regulations on Park lands. The Council recommends a scoping process starting with local communities and tribes prior to the development of a proposed rule. In the alternative, the Council requests that the National Park Service extend the proposed regulation comment period to allow time for a comprehensive public process to reach rural users affected by these proposed regulations on Park lands. The Council also requests a minimum extension for public comment through April 30, 2015 which would allow each of the ten Federal Subsistence Regional Advisory Councils opportunity to further review and comment during the winter 2015 meeting cycle. Thank you for your consideration. We hope to hear from you soon regarding this request.

Sincerely,



Sue Entsminger, Chair

cc: Eastern Interior Alaska Subsistence Regional Advisory Council
 Tim Towarak, Chair, Federal Subsistence Board
 Eugene R. Peltola, Jr., Assistant Regional Director, OSM
 Chuck Ardizzone, Deputy Assistant Regional Director, OSM
 Carl Johnson, Council Coordination Division Chief, OSM
 Chris McKee, Wildlife Division Chief, OSM
 Pippa Kenner, Anthropologist, OSM
 Jeff Brooks, Social Scientist, OSM
 Interagency Staff Committee
 Joel Hard, Deputy Regional Director, National Park Service
 Marcy Okada, National Park Service
 Barbara Cellarius, National Park Service
 Amy Craver, National Park Service
 Denali Subsistence Resource Commission
 Wrangell-St. Elias Subsistence Resource Commission
 Jennifer Yuhas, Federal Subsistence Liaison Team Leader
 Alaska Department of Fish and Game
 Administrative Record



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

Federal Subsistence Board

1011 East Tudor Road, MS 121
Anchorage, Alaska 99503 - 6199



FOREST SERVICE

OSM 17054. EP

Gordon Brower, Chair
North Slope Subsistence
Regional Advisory Council
c/o Office of Subsistence Management
1101 East Tudor Road, MS 121
Anchorage, Alaska 99503-6119

Dear Chairman Brower:

This letter responds to the North Slope Subsistence Regional Advisory Council's (Council) fiscal year 2016 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. Food Security, Preventing Deflection of Caribou and User Conflicts.

The Council addressed pressing concerns in its previous annual report to the Board regarding food security for communities in the North Slope Region, user conflicts, and potential impacts from the deflection of caribou from traditional hunting areas by sport hunters. The Council appreciates the Board's reply but feels perhaps the gravity of the issue was underestimated. The Council would like to further address this issue with regards to the decline of the Western Arctic and Teshekpuk Caribou Herds. Subsistence is not only a food security issue but also the core of the social fabric of communities in the region. Food security is truly a matter of people going hungry. Council members heard that children in Anaktuvuk Pass came to school hungry because they had no access to caribou. Communities have been extremely stressed throughout the region where the caribou herd did not come through; struggling to feed their families, provide for their elders, and teach the younger generation the awareness and skills to hunt in a positive way. Sharing among communities has become strained as well. This fall the caribou finally came through Anaktuvuk Pass and were harvested there for the first time in a long while. When the caribou come, the traditional loving lifestyle of the culture starts to come back and people feel happy. The subsistence way of life, eating traditional foods, and providing for family

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and community promotes goodwill and a sense of well-being. The social fabric of communities comes alive again. The Council feels the issue of food security and subsistence priority in areas where there are user conflicts needs to be taken more seriously. The Council has heard from residents of Unit 23 that the closure to non-Federally qualified users made a positive change to their hunting experience in their traditional hunting areas and is looking into similar options to help support the people of Anaktuvuk Pass to meet their subsistence needs. The Council recognizes the challenge of managing hunting activities to avoid deflection of the herd, but feels that it is a central issue in supporting a meaningful subsistence opportunity and priority. Because caribou are managed across State and Federal lands, it will be challenging to find a unified way forward. The Council feels research that illuminates how disturbance by hunters may deflect the caribou herds and why the migration has shifted away from Anaktuvuk Pass would be of great assistance for informed management for the resource. The Council would like to see further efforts for this type of research to be conducted by the Federal land management agencies and is hopeful for collaboration with State biologists as well.

Given that caribou is the primary subsistence food that feeds the people of Anaktuvuk Pass, it is imperative to ensure the subsistence priority is met. The Council seeks avenues through the Federal Subsistence Management Program to ensure that Federal subsistence priority for caribou is met, which includes 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 Management Program to generate solutions to alleviate the situation. The Council will appreciate the support of Federal Subsistence Management Program staff in exploring possible pathways through both the Federal and State processes in the upcoming regulatory cycle.

Response:

The Board is pleased to hear that recent shifts in caribou migration patterns have improved access to this resource for some communities and we are dedicated to supporting efforts that help rural residents meet their subsistence needs. Previous testimony, particularly from residents of Noatak and Anaktuvuk Pass, have attested that shifts in caribou numbers and migration present severe food security concerns for rural residents. We recognize these concerns in light of ongoing declines in the Western Arctic, Teshekpuk, and Central Arctic caribou herds. Caribou migration patterns may shift in response to a number of variables, particularly when populations are substantially reduced. The Board is carefully monitoring the state of caribou populations on the North Slope and efforts by both the Federal Subsistence Management Program and the Alaska Board of Game to address conservation and subsistence issues pertaining to these herds. Because of jurisdictional boundaries across the range of these herds, we recognize the importance of working with Federal land management agencies and the State of Alaska, whenever possible, to address long-term management strategies. For this reason, the Board directed the Office of Subsistence Management to establish an interagency group to discuss these issues, particularly for the Western Arctic Caribou Herd.

The first meeting of the interagency working group took place in April of 2017. The meeting provided a forum for State and Federal agency personnel to come to the table to discuss their observations and concerns, and to offer suggestions for moving forward on these issues. The Board acknowledges that both herd declines and user conflicts are central to this issue and that both must be addressed in our efforts to effectively manage caribou populations. We recognize a long-history of concerns about user conflict and herd deflection in the vicinity of the Noatak, Squirrel, Agashashok, and Eli Rivers in Unit 23, as well as along the Dalton Highway corridor in Unit 26B. We furthermore recognize that subsistence activities provide more to rural residents than food alone. Title VIII of ANILCA affirms the sociocultural aspect of subsistence activities by stating explicitly states that subsistence opportunity "...is essential to Native physical, economic, traditional, and cultural existence and to non-Native physical, economic, traditional, and social existence."

The Board will continue to encourage our member agencies, the State of Alaska, academic institutions, and private organizations to undertake collaborative caribou research in the Arctic that would enhance our understanding of populations, migration patterns, and disturbance behavior. A recent study in the journal *Movement Ecology* titled "Effects of environmental features and sport hunting on caribou migration in northwestern Alaska" suggested that caribou migration through the Noatak River drainage is unlikely to be inhibited by sport hunting activity. However, the study was of limited scope and did not address variables such as the hunting of lead caribou, flying at low altitudes in proximity of the herd, and migration patterns through smaller drainages and mountain corridors. We hope that this research will be expanded in the future to begin addressing some of these outstanding questions.

Disturbance of caribou during migration is an issue the Board has heard about from Federally qualified subsistence users for many years. The Board supports recent efforts by the Councils to submit proposals to both the Board and the Alaska Board of Game. Restricting or limiting the use of aircraft, closing certain areas to caribou hunting, and restricting the take of cows during critical caribou migration periods are just a few issues that have been addressed in recent years. We are committed to remaining diligent and responsive in our management actions that affect the well-being of Federally qualified subsistence users and the animal populations they depend on.

2. Increased shipping traffic in the Chukchi Sea and potential impacts to subsistence.

Council member Steve Oomituk of Point Hope relayed concerns about the opening of the Northwest Passage and the potential impacts to subsistence from increased shipping traffic by coastal communities. The Council realizes the marine waters are beyond the jurisdiction of the Federal Subsistence Board, but seeks awareness about the interaction of all subsistence activities and the relationship between marine subsistence foods and those managed on Federal lands and waters. The Council also seeks the assistance of the Federal Subsistence Board in relaying these issues of concern to the relevant Federal agencies.

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For coastal communities, the ocean is their garden. Subsistence foods of all kinds are provided to us with the ocean currents. When caribou are in low numbers or do not come through, then the ocean provides; the fish, the seal, walrus, whales, and the polar bear. Point Hope is located in an area where the currents come through and has provided for the community for thousands of years. It is the oldest continuously inhabited village in North America. The ocean is vital to us. It is our food supply and our identity as a people. It is a short migration time when the leads are open in the summer and all the animals migrate north to their feeding and calving grounds. The animals and our subsistence way of life are tied to both the land and the ocean. Point Hope and other communities have been experiencing increasing ship traffic and are very concerned about impacts to the ocean environment, the marine animals, and our subsistence way of life. The Council would like assistance relaying these concerns to the appropriate agencies and support in seeking avenues for protections from shipping pollutants being dumped at sea or near coastal communities and the emergency response systems in place to respond in the event of an accident or major spill.

Response:

The Federal Subsistence Board recognizes the importance of the Chukchi Sea to Federal subsistence harvesters and the possible impact that increased ship traffic could have on subsistence resources. The Chukchi Sea is a productive ocean ecosystem that provides habitat for a multitude of important fish and wildlife species. A surge in shipping traffic may increase the possibility of a vessel incident that could be harmful to those resources. As stated by the Council, the Federal Subsistence Board has limited jurisdiction or authority over Federal undertakings that occur outside of the Federal Subsistence Management Program. However, if there is a specific concern from the Council, the Board will consider the concern and if appropriate support the Council in conveying that concern to the appropriate Federal or State management agency. The Aleutian Bering Sea Landscape Conservation Cooperative has done some excellent modeling and assessment of marine traffic and the possible implications to the Aleutian Islands. This information may be of interest to the Council to evaluate and consider relative to future studies for the Chukchi Sea.¹

3. Council membership and engagement with communities in the North Slope region.

The Council has been struggling to recruit new members to fill several vacant seats as well as to ensure that the Council has a membership representing each of the eight communities in the North Slope Region. Currently the Council is missing representation from the North Slope communities of Wainwright and Point Lay and was only recently able to fill vacant seats for members from Nuiqsut, Atkasuk and Anaktuvuk Pass. Application to serve on the Council from these communities was a direct result of having the opportunity to hold a meeting in Nuiqsut and Anaktuvuk Pass and the connections that were generated as a result.

Those two meetings were the first and only time that the North Slope Council has met in the region outside of Barrow. These meetings were very well attended, including youth, elders,

¹ Information can be found online at <https://absilcc.org/SitePages/Home.aspx>.

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tribal members, and subsistence hunters who were all able to participate fully in ways that are not possible via teleconference. This was the first opportunity for these communities to learn about the Federal Subsistence Management Program and the Council directly. This was also the first opportunity for the Council to meet and interact directly with communities other than Barrow in order to learn more about their subsistence way of life and work to address their concerns.

The Council feels it is imperative to hold Council meetings in communities outside of Barrow in order to build understanding and relationships throughout the region and not only serve Barrow as the hub community. The Council greatly appreciates that the Office of Subsistence Management supported holding the meeting in Nuiqsut in fall of 2014 and Anaktuvuk Pass in fall of 2015. The Council was greatly encouraged by the high level of local participation at these meetings. Council and community members alike expressed just how much they learned from each other and the opportunity to participate directly in the subsistence management process.

Regional Advisory Council members are appointed to represent the whole region, not just the communities where they live or where meetings occur. The Council understands that budget restrictions play a role in meeting outside of a hub community but would like to stress that the Council and the Federal Subsistence Management Program is more effective in meeting its responsibilities to rural residents when they meet in rural communities throughout the region. The fact that the Council had never had an opportunity to meet outside of Barrow in its entire history until 2014 played a big role in the difficulty of engaging and recruiting new membership. If communities never meet with the Council or have a chance to learn firsthand what the Federal Subsistence Management Program does, then there is no incentive to participate. The Council would like consideration of this history to be evaluated along with cost in determining approval for meetings outside of Barrow.

The Council requests to meet in Wainwright for its fall 2017 meeting in order to make a connection directly with this community to encourage application to serve on the Council and more importantly, to address the community's subsistence concerns in light of the current decline of the Western Arctic Caribou Herd. The fall 2017 meeting in Wainwright would be timely given that the Council will be addressing wildlife proposals concerning caribou management and the community would have an opportunity to provide input directly on subsistence issues that are central to their way of life, social fabric, and food security.

Response:

The Board shares the Council's concern regarding decreased number of applications, and this is a problem not unique to the North Slope Region. Over the last decade, applications from all of the Councils above the Yukon River have been in decline. There have been some increases here and there in some regions, and that has been as a result of very aggressive, targeted outreach by the Council Coordinators for those regions. In recent years, your Council Coordinator has been very successful with her outreach efforts to get new applicants from several villages. While having meetings in new locations certainly may help, her efforts cannot be discounted.

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The Board is pleased that the Council found its meetings in Nuiqsut and Anaktuvuk Pass to be productive. Everyone can agree that meetings in rural communities have considerable potential to benefit both the public and the Council. In recent years, it has been the practice of the Office of Subsistence Management to authorize meetings in non-hub communities approximately every two years, so long as the Council could provide a justification for meeting in that particular location and the costs were not too prohibitive. Several Councils have enjoyed the opportunity to meet outside of their hub communities, and the benefits of those meetings have been shown. However, in the face of anticipated steepening budget cuts, it may likely be the case that meetings in non-hub communities will be authorized under increasingly rare circumstances.

It is also worth noting that there is another factor which determines the Council's membership. Even when the Federal Subsistence Board receives applications from some of the target communities the Council mentioned, and recommends those individuals for appointment to the Secretary of the Interior, it is the Secretary who has final appointment authority. In some instances, applicants deemed highly-qualified by the Board for service on the North Slope Subsistence Regional Advisory Council were rejected by the Secretary, and for reasons unknown. And unfortunately, excellent outreach efforts and meetings in rural communities cannot ultimately control the membership on the Council.

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,

Anthony Christianson
Chair

cc: Federal Subsistence Board
North Slope Subsistence Regional Advisory Council
Eugene R. Peltola, Jr., Assistant Regional Director, Office of Subsistence Management
Thomas Doolittle, Deputy Assistant Regional Director, Office of Subsistence Management
Carl Johnson, Council Coordination Supervisor, Office of Subsistence Management
Eva Patton, Subsistence Council Coordinator, Office of Subsistence Management
Jill Klein, Special Assistant to the Commissioner, Alaska Department of Fish & Game
Interagency Staff Committee
Administrative Record

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