

BRISTOL BAY

Subsistence

Regional Advisory Council



Carl Johnson

Hoar frost covers the ground near the Alaska Peninsula Highway between King Salmon and Naknek.

Meeting Materials

February 12–13, 2013

Naknek

What's Inside

Page

1	Agenda
3	Roster
4	WCR12-05
9	WCR12-07
16	Unit 17A Moose Management Plan
22	Guidance on Annual Reports
24	Draft Annual Report
26	News Release — Board seeks comments on the rural determination process
29	News Release — Call for proposals to change Federal subsistence hunting and trapping regulations
31	Letter from the Southeast Alaska Subsistence Regional Advisory Council on customary and traditional use determinations
81	Togiak National Wildlife Refuge Bulletin
87	Meeting Calendars
89	Charter

BRISTOL BAY SUBSISTENCE REGIONAL ADVISORY COUNCIL

Bristol Bay Borough Chamber—Naknek, Alaska
February 12–13, 2013

8:30 a.m. – 5:00 p.m.

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

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

*Asterisk identifies action item.

1. Call to Order (<i>Chair</i>)	
2. Invocation	
3. Roll Call and Establish Quorum (<i>Secretary</i>).....	3
4. Welcome and Introductions (<i>Chair</i>)	
5. Review and Adopt Agenda* (<i>Chair</i>).....	1
6. Election of Officers (<i>DFO</i>)	
A. Chair	
B. Vice-Chair	
C. Secretary	
7. Review and Approve October 24–25, 2012 Meeting Minutes* (<i>Chair</i>)	
8. Reports	
A. Council member reports	
B. 805c report	
C. Council Coordinator — Administrative items	
9. Public and Tribal Comment on Non-Agenda Items	
10. Old Business	
A. WCR12-05 Unit 9C Moose	4
B. WCR12-07 Unit 17A & C Caribou	9
C. Unit 17 Moose Management Plan	16
D. Approve Draft Annual Report for FY2012*	24
11. New Business	
A. Rural Determination Process (<i>David Jenkins, OSM</i>)*	26
B. Call for Wildlife Regulatory Proposals (<i>Wildlife Division, OSM</i>)*	29

- C. Review and Comment on Draft Tribal Consultation Implementation Guidelines (*Jack Lorrigan, OSM*)*
- D. Letter on Customary and Traditional Use Determinations31
- 12. Agency Reports**
 - A. OSM
 - 1. MOU with State of Alaska — Update
 - 2. Budget Update
 - 3. Staffing Update
 - 4. Council Appointments
 - 5. Regulatory Cycle Review
 - 6. RFP Fisheries Monitoring Plan Proposals
 - 7. Partners for Fisheries Monitoring Program
 - B. NPS
 - 1. Katmai/Aniakchak
 - 2. Lake Clark
 - C. USFWS
 - 1. Togiak NWR.....81
 - D. BLM
 - E. ADF&G
 - F. Native Organizations
 - 1. BBNA
- 13. Future Meetings**..... 87
 - A. Confirm date and location of fall 2013 meeting*
 - B. Select date and location of winter 2014 meeting*
- 14. Closing Comments**
- 15. Adjourn** (*Chair*)

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

The U.S. Fish and Wildlife is committed to providing access to this meeting for those with a disability who wish to participate. Please direct all requests for accommodation for a disability to the Office of Subsistence Management at least five business days prior to the meeting.

If you have any questions regarding this agenda or need additional information, please contact Bristol Bay Council Coordinator Donald Mike at 907-786-3629 or contact the Office of Subsistence Management at 1-800-478-1456 for general inquiries.

REGION 4—Bristol Bay Regional Advisory Council

Seat	Yr Apptd <i>Term Expires</i>	Member Name & Address	
1	1993 2013	Peter M. Abraham Togiak, Alaska	
2	1993 2013	Daniel James O'Hara Naknek, Alaska	
3	2003 2013	Nanci Ann Morris Lyon King Salmon, Alaska	Vice Chair
4	2007 2014	Molly B. Chythlook Dillingham, Alaska	Chair
5	2005 2014	Alvin Boskofsky Chignik Lake, Alaska	
6	2011 2014	John E. Jones, Sr. Chignik Lagoon, Alaska	
7	2003 2014	Dan O. Dunaway Dillingham, Alaska	
8	2012 2015	Lary J. Hill Iliamna, Alaska	
9	2006 2015	Thomas A. Hedlund Iliamna, Alaska	
10	2009 2015	Richard J. Wilson Naknek, Alaska	Secretary

Unit 9C remainder

Residents: One bull by permit available in person in King Salmon beginning Aug. 15 RM272

Sept. 1 – Sept. 15

Or

One antlered bull by permit available in person in King Salmon beginning Nov. 29

Or

Dec. 15 – Jan. 15

Nonresidents: One bull with 50 — inch antlers or antlers with 3 or more brow tines on at least one side by permit available in person in King Salmon beginning Aug. 15 RM282

Sept. 5 – Sept. 15

Regulatory Year Initiated

In 1992, the Federal Subsistence Board (Board) adopted regulations which closed Federal public lands of Unit 9C, that portion draining into the Naknek River from the south, during December, except to rural Alaska residents of Units 9A, 9B, 9C, and 9E.

Regulatory History

Proposal 45 (1992) — submitted by ADF&G and later adopted with modification by the Board, initiated the December closure. Proposal 45 was modified by the Board to require a Federal registration permit for the December hunt (Dec. 1–Dec. 31) on Federal public lands. Federal public lands draining from the south into the Naknek River drainage were closed to non-Federally qualified users to provide the best protection for the moose population.

Proposal 30 (1995) — established an early August Federal subsistence season (Aug. 20 – Aug. 31) for Unit 9C.

WP06-24 — submitted by ADF&G and later adopted with modification by the Board, eliminated the hunting of antlerless moose during the December season. The Federal registration permit requirement was retained for both the fall and December hunts as the permits provided valuable moose harvest information. The quota of 5 antlerless moose was eliminated.

WP10-45 — submitted by the Bristol Bay Subsistence Regional Advisory Council was deferred in 2010, and was adopted with modification by the Board at its January 2012 meeting. The proposal required a State registration permit to harvest moose in Unit 9 and added an additional 5 days to the fall seasons in Units 9B, 9C, and 9E. This proposal was consistent with the Unit 9 Moose Working Group recommendations.

Closure Last Reviewed: 2008 — WCR08-05

Justification for the Original Closure (ANILCA Section 815(3) criteria)

Section §815(3) of ANILCA states:

Nothing in this title shall be construed as — (3) authorizing a restriction on the taking of fish and wildlife for nonsubsistence uses on the public lands (other than national parks and monuments) unless necessary for the conservation of healthy populations of fish and wildlife, for the reasons

set forth in 816, to continue subsistence uses of such populations, or pursuant to other applicable law

In 1992, Proposal 45 was adopted with modification based on conservation concerns for the moose population in Unit 9. There was a question as to whether this population could withstand a cow harvest. In order to protect the herd and provide a priority for subsistence users, a bull-only harvest was initiated and Federal public lands in the Naknek River drainage from the south were closed to non-Federally qualified harvest of moose (this was the justification used by the Interagency Staff Committee in support of a modified Proposal 45, and supported by the Board) (FWS 1992).

Council Recommendation for the Original Closure

The Bristol Bay Subsistence Regional Advisory Council (Council) stated that, although local residents would desire an antlerless moose season as in the past, it is questionable whether this population could sustain a cow harvest. ADF&G and USFWS were in conflict as to the status of the Big Creek drainage population; however, cow harvest had been closed by Emergency Order during the 1990 and 1991 antlerless moose seasons. In order to protect the herd and provide a priority to subsistence users, the Council believed that a bull-only harvest should be allowed and that Federal public lands draining into the Naknek River from the south should be closed to non-Federally qualified users. The result would be a greater number of bulls available for subsistence users and a larger cow base for herd expansion in the future.

State Recommendation for the Original Closure

The State recommended that the Naknek River drainage be closed to the taking of antlerless moose during the State's December season. Their recommendation was based on their concern for the population of moose north of the Naknek River in the King Salmon Creek drainage. The original recommendation for closure from the State was presented in Proposal 46 of the same year, but was addressed in Proposal 45.

Biological Background

Moose population objectives for Unit 9 are to:

1. Maintain existing densities in areas with moderate (0.5 – 1.5 moose/mi²) or high (1.5 – 2.5 moose/mi²) densities.
2. Increase low-density populations (where habitat conditions are not limiting) to 0.5 moose/mi².
3. Maintain sex ratios of at least 25 bulls:100 cows in medium to high-density populations and at least 40 bulls:100 cows in low-density areas (Butler 2010).

The current moose populations in Unit 9 are considered stable albeit at low density (Butler 2010). Moose population estimates by subunits are: Unit 9A, approximately 300 moose; Unit 9B, approximately 2,000 moose; Unit 9C outside of Katmai National Park, approximately 800 moose; Unit 9D approximately 400, and Unit 9E approximately 2,500 (Butler 2010).

The most recent surveys in Unit 9C were in 2011 and showed a lower bull:cow ratio (27 bulls:100 cows) than had been observed during previous surveys in the subunit. Calf:cow ratios ranged from 6.5:100 in the Branch River to 17.6 in the King Salmon Creek area. The combined calf:cow ratio observed in Unit 9C of 9 calves:100 cows is lower than ratios observed during the five previous surveys (Riley 2012).

The bull:cow ratio is above the management objectives in Unit 9C and appears to be increasing after several years of improved recruitment. Bull harvest does not appear to be limiting the population at this time, even though the population remains at a low density. Although the calf:cow ratio was lower in 2008 than in 2005 and 2007, it was still within the normal range for Unit 9C over the last 25 years (Butler 2010).

Predation by brown bears on newborn moose calves and illegal harvest in some areas are thought to be the major factors limiting the moose population in Unit 9. However, reduction in predation rates could only be achieved by a substantial reduction in bear densities, which would most likely be opposed by a large segment of the public (Butler 2010). Reducing illegal harvest would only occur with wide support and active involvement from local communities (Butler 2010).

Harvest History

Federal subsistence registration permits are required for the fall and winter moose hunts within Unit 9C — that portion draining into the Naknek River from the south. Previously, the quota for the winter hunt was set at five antlerless moose, but the quota was eliminated and harvest was changed to bulls only in 2006. Between 2000 and 2010, a total of 67 moose were reported harvested by Federal permit. Total harvest under both State and Federal regulations has not exceeded 4 animals/year since 2005 and there has been no Federal harvest in the area since 2007 (**Table 1**).

OSM Preliminary Recommendation:

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

Table 1. State and Federal moose harvest in Unit 9C— that portion draining into the Naknek River from the south, 2000–2010 (Riley 2012, pers. comm.)

Regulatory Year	State Harvest	Federal Harvest
2000	4	0
2001	7	0
2002	10	4
2003	8	0
2004	6	5
2005	8	0
2006	2	0
2007	1	2
2008	2	0
2009	4	0
2010	4	0

Justification

In 2006, the Federal Subsistence Board adopted proposal WP06-24, which eliminated the antlerless moose harvest in this area, thus implementing conservation measures to help increase the moose population and eventually provide improved hunting opportunity for Federally qualified subsistence

users. In the six years since this proposal was passed, moose populations continue to be low, and harvests are also low.

The fall and winter hunts for Federally qualified subsistence users provide opportunities to harvest moose in Unit 9C — the portion that drains into the Naknek River from the south. The status quo is necessary to continue subsistence uses under Section 804 of ANILCA and does not violate the prohibition of ANILCA Section 815(3). Maintaining the status quo is consistent with sound management principles and the conservation of healthy wildlife populations.

LITERATURE CITED

Butler, L. 2010. Unit 9 moose management report. Pages 116–123 *in* P. Harper, editor. Moose management report of survey and inventory activities 1 July 2007–30 June 2009. Alaska Department of Fish and Game. Project 1.0. Juneau.

FWS. 1992. Staff Analysis Proposal 45. Pages 200–201 *in* Federal Subsistence Board Meeting Materials April 6–10, 1992. Office of Subsistence Management, FWS. Anchorage, AK. 966 pages.

FWS. 2012. Federal subsistence permit database. Microcomputer database. Accessed February 2012.

Riley, M. 2012. GMU 9 moose surveys. Alaska Department of Fish and Game memorandum. March 27, 2012. 4 pages.

Riley, M. 2012. Wildlife Biologist. Personal communication: email. Alaska Department of Fish and Game. King Salmon, AK.

FEDERAL WILDLIFE CLOSURE REVIEW
WCR12-07

Current Location: Units 17A and 17C—Caribou

Current Federal Regulations

Units 17A and 17C—that portion of 17A and 17C consisting of the Nushagak Peninsula south of the Igushik River, Tuklung River and Tuklung Hills, west to Tvativak Bay—up to 2 caribou by Federal registration permit. Public lands are closed to the taking of caribou except by residents of Togiak, Twin Hills, Manokotak, Aleknagik, Dillingham, Clark’s Point, and Ekuk hunting under these regulations. The harvest objective, harvest limit, and the number of permits available will be announced by the Togiak National Wildlife Refuge Manager after consultation with the Alaska Department of Fish and Game and the Nushagak Peninsula Caribou Planning Committee. Successful hunters must report their harvest to the Togiak National Wildlife Refuge within 24 hours after returning from the field. The season may be closed by announcement of the Togiak National Wildlife Refuge Manager.

*Aug. 1–Sept. 30.
Dec. 1–Mar. 31.*

Closure Dates: Aug. 1–Sept. 30, Dec. 1–Mar. 31

Current State Regulations

Species and Bag Limits – Caribou	Permit/Ticket Required	Open Season
<i>Unit 17A, all drainages east of Right Hand Point— one caribou</i>	<i>Harvest</i>	<i>may be announced</i>
<i>Unit 17C remainder—one caribou</i>	<i>Harvest</i>	<i>may be announced</i>

Note: The purpose of the “may be announced” season under State regulations is to provide a possible opportunity to harvest Mulchatna caribou, should they migrate into adjacent areas without mixing with Nushagak caribou.

Regulatory Year Initiated: 1994

Regulatory History

In 1994, Proposal 42 established a Jan. 1–Mar. 31 harvest season on the Nushagak Peninsula Caribou Herd (NPCH) in portions of Units 17A and 17C, and instituted a closure to all users except residents of Togiak, Dillingham, Manokotak, Twin Hills, Aleknagik, Clark’s Point, and Ekuk (FSB 1994). The newly established season started on January 1, 1995. Prior to the Board’s action, there had been no harvest season for the reintroduced Nushagak caribou population. Special Action S95-06 extended the season from Jan. 1–Mar. 31 to Dec. 1–Mar. 31 for the 1995/1996 regulatory year. When the Board adopted Proposal 34 in 1996, the season extension was adopted into Federal regulations and a fall season (Aug. 1 – Aug. 30) was established in the affected area (FSB 1996). In 1997, the Board adopted Proposal 47, which increased the harvest limit from one to two caribou on the Nushagak Peninsula portions of Units

17A and 17C, as there was a harvestable surplus of caribou and the previous year's harvest was well below the management objective (FSB 1997). In 1998, the Board approved Special Action 97-10, which extended the fall season from Aug. 1–Aug. 30 to Aug. 1–Sept. 30, and this extension became permanent when the Board adopted Proposal 39 in 1999 (FSB 1999).

There have also been a number of requests to changes the methods and means for harvesting Nushagak caribou that the Board has not adopted. In 1997, the Board rejected Proposal 48 that would have removed the same day airborne harvest restriction for caribou in Units 17A and 17C on the Nushagak Peninsula (FSB 1997). The issue was then resubmitted as Proposal 56 in 1998 and subsequently rejected by the Board (FSB 1998a). In 1998, Proposal 57 requested allowing NPCH caribou to be harvested from a snowmachine while it is in motion. The Federal Subsistence Board rejected the proposal for several reasons: harvesting caribou from a snowmachine in motion would have increased the likelihood of wounding animals; chasing with snowmachines could have caused undesirable physiological stress and decreased meat quality; and it would have caused misalignment between State and Federal regulations (FSB 1998b).

Closure last reviewed: 2008 — WCR08-07.

Justification for original closure (Section 815(3) criteria)

Section §815(3) of ANILCA states:

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

Caribou were reintroduced to the Nushagak Peninsula in February 1988 after an absence of over 100 years. The reintroduction was a cooperative project between the U.S. Fish and Wildlife Service, Alaska Department of Fish and Game (ADF&G), and the villages of Togiak, Manokotak, Dillingham, and Choggiung Limited, with the goal of reestablishing a caribou population large enough to sustain a reasonable harvest, while still allowing the herd to grow.

A subsistence hunt was established in 1994, and Federal public lands were closed to the harvest of Nushagak caribou by all users, except by residents of Togiak, Dillingham, Twin Hills, Manokotak, Aleknagik, Clark's Point, and Ekuk. Community studies conducted in four of the seven villages slated to participate in the Nushagak caribou harvest indicated that caribou were an integral component of the seasonal round of wild resource harvest activities.

The closure was established and has been maintained since the caribou population is not large enough to allow for uses other than subsistence uses.

Council Recommendation for the Original Closure

The Bristol Bay Subsistence Regional Advisory Council supported the establishment of the hunt as well as the closure to non-Federally qualified users by stating that “[Togiak National Wildlife Refuge] will be able to monitor the hunt fairly closely with the Traditional Councils administering the permits; there's a real ownership with the people in this herd and in the management. The State will keep it closed on the State side so they can honor the original agreement” (FWS 1994:340).

State Recommendation for the Original Closure

The State supported Proposal 42 in 1994, stating that they had been part of the Nushagak Peninsula Caribou Management Planning Committee and agreed with its recommendation (FWS 1994:340).

Biological Background

In February 1988, 146 caribou from the Northern Alaska Peninsula Herd were transplanted to the Nushagak Peninsula (FWS 1994). The Nushagak Peninsula Caribou Herd (NPCH) has since experienced six phases of growth, with the most pronounced being a large population increase ($r = 0.32$) from the 1988 introduction through 1994 (Hinkes et al. 2005, Aderman and Lowe 2012) (**Figure 1**). This period of population growth exceeded the maximum theoretical potential for exponential population growth for caribou ($r = 0.30$) estimated by Bergerud (1980). Factors attributed to this dramatic growth may have included a high percentage of females in the herd, high calf production and survival, pristine range condition, few predators, and that no hunting was allowed on the herd from 1988–1995 (Aderman and Lowe 2012). The NPCH herd peaked at 1,399 caribou in February 1998 (FWS 1999), subsequently declined to a low of 462 caribou in July 2007, and then began increasing again.

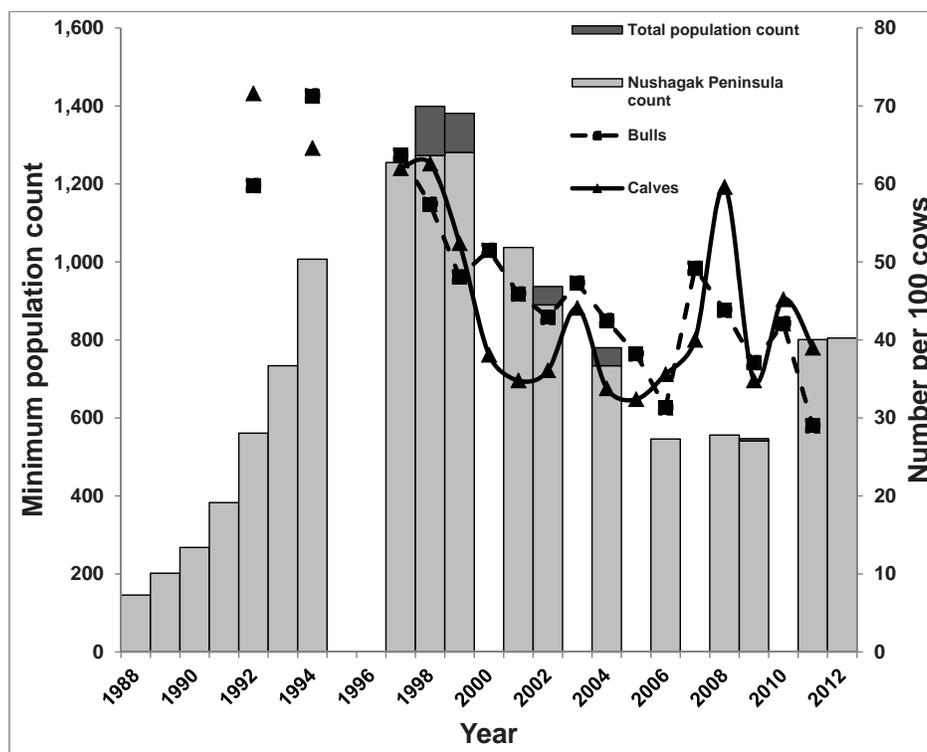


Figure 1. Estimated pre-calving minimum population counts (bars) and fall bull- and calf-to-cow ratios (lines) for the Nushagak Peninsula Caribou Herd, 1988–2011 (Aderman and Lowe 2012).

The most recent pre-calving survey was conducted in February 2012 and a minimum of 805 caribou were counted on the Nushagak Peninsula, which was similar to the 2010 survey results (**Figure 1**). In July 2012, the NPCH was estimated to contain a minimum of 902 caribou based on post-calving aerial surveys (Aderman 2012, pers. comm.), which is at the upper end of the Nushagak Peninsula Caribou Management Plan's population objective (to maintain a population of 400–900 caribou). The recent results also indicate the NPCH increased from a minimum of 859 caribou in July 2011 (Aderman and Lowe 2012). The herd is managed according to the guidelines of the management plan, which was prepared by personnel from the Togiak National Wildlife Refuge, ADF&G, and the Nushagak Peninsula Caribou Management Planning Committee (Committee). The Committee is made up of representatives from traditional councils of Togiak, Twin Hills, Manokotak, Aleknagik, Clark's Point, and Dillingham as well as the Nushagak Fish and Game Advisory Committee, Choggiung Limited, the Bristol Bay Native Association, Alaska Department of Fish and Game, and the Togiak National Wildlife Refuge.

Population composition surveys are conducted for the NPCH in early to mid-October. These surveys estimated 42 bulls:100 cows and 45 calves:100 cows in 2010 (Aderman and Lowe 2012) and 29 bulls:100 cows and 39 calves:100 cows in 2011 (Aderman 2012, pers. comm.). The average estimates from 1997 to 2010 were 46 bulls:100 cows and 36 calves:100 cows (**Figure 1**). At the time of reintroduction, the initial herd composition was heavily female biased, with 82.2% females, 9.6% males (12 males:100 females) and 8.2% calves (10 calves:100 females) (Aderman and Lowe 2012).

The causes of the decline between 1999 and 2009 are not clearly understood, and are almost certainly multi-factored (Aderman and Lowe 2012). The most likely explanation for the decline is that the exceptionally high growth through 1998 produced large annual cohorts of females that survived until a relative old age, at which time they declined in productivity. This high proportion of unproductive females, combined with high harvest years in 2001 and 2002, changed the population trajectory from an increasing trend to a decreasing trend, where it remained until the ultimate replacement of old, unproductive females with younger, productive females. Changing nutritional conditions (both short-term, such as those associated with drought or winter icing; as well as longer-term changes, such as lowered overall carrying capacity due to continuous grazing on the Nushagak Peninsula since 1988) underlay and exacerbated this decline, but were not likely the primary drivers. Wolf predation could be a factor in the decline; however, a study of wolf predation from 2007–2011 found that wolf predation was not a primary driver of Nushagak Peninsula caribou population dynamics (Walsh and Woolington 2012, report in progress). Brown bears are common on the Nushagak Peninsula and likely have learned to exploit the caribou population, but their impact on the NPCH is not known (Aderman and Lowe 2012).

Harvest History

Only Federally qualified subsistence users are allowed to harvest caribou from the NPCH. A Federal registration permit is required to harvest caribou on the Nushagak Peninsula in Units 17A and 17C and users are required to report their harvests to the Togiak National Wildlife Refuge within 24 hours of harvest. Reported harvest increased during the eight years after the season was established in 1994/1995 (**Table 1**). Unreported harvest can be high, similar to other rural areas in Alaska, and illegal take of NPCH caribou has been documented (Aderman and Lowe 2012). Most harvest occurred during the winter season, February and March, because of improved hunter access to the herd via snow machines (Aderman and Lowe 2012).

The NPCH Management Plan sets a harvest level of no more than 10 percent of the population when the population is over 600 caribou. In 2011, the Committee reviewed the management plan and updated the harvest strategy to make it more responsive to a dynamic caribou population. The updated strategy

Table 1. Reported harvest of caribou, by month, harvested on the Nushagak Peninsula during regulatory years 1994/1995 to 2011/2012 (Aderman and Lowe 2012; Aderman 2012, pers. comm.).

Regulatory year	Month							Total
	AUG	SEPT	DEC	JAN	FEB	MAR	Unknown	
1994/1995	NS ^a	NS	NS	3	1	25	6	35
1995/1996	NS	NS	3	0	5	43	1	52
1996/1997	5	NS	0	0	2	13	0	20
1997/1998	5	NS	0	2	25	35	0	67
1998/1999	0	2	0	0	0	50	3	55
1999/2000	0	0	0	2	7	54	0	63
2000/2001	0	6	0	0	22	98	0	126
2001/2002	0	3	0	0	9	115	0	127
2002/2003	3	0	0	0	0	0	0	3
2003/2004	2	3	0	0	0	29	0	34
2004/2005	1	0	0	0	0	8	0	9
2005/2006	1	1	0	0	0	9	0	11
2006/2007	NS	NS	NS	NS	0	NS	0	0
2007/2008	NS	NS	NS	NS	0	0	0	0
2008/2009	NS	NS	NS	NS	5	2	1	8
2009/2010	NS	NS	NS	NS	3	14	1	18
2010/2011	NS	NS	NS	NS	18	27	0	45
2011/2012	0	2	NS	NS	20	64	0	86
Total	17	17	3	7	117	586	12	759
% Total	2.2	2.2	0.4	0.9	15.4	77.2	1.6	-

^aNS = No season

annually establishes a harvest goal based on population size and trend, and permits harvest when the population exceeds 200 caribou and is stable or increasing. The Committee also updated the population objective, changing the previous goal of 600 to 1,000 caribou to 400 to 900 caribou. The Committee recommended the Federal registration permits be allocated to eligible communities based on a formula in which each community receives 5% of the total permits, plus additional permits based on a percentage of the aggregate participating communities.

Hunting effort is influenced by travel conditions, availability of and opportunity to take Mulchatna caribou and moose, and economic factors (Aderman and Lowe 2012). Most of the reported harvest has occurred in March (**Table 1**). Very difficult travel conditions limited the harvest in 2002/2003. As prescribed by the management plan, there were no fall hunts in 2006, 2007, and 2008 because the population was below 600 animals. There were a limited number of permits (five) available for the winter hunts in 2006/2007 and 2007/2008, but no harvest was reported (Aderman 2008, pers. comm.). Annual harvests have increased as the population has recovered and increased (**Table 1**). In 2011/2012 120 permits were issued, including two permits for the August and September 2011 season and the remaining 118 permits for the winter hunt (Aderman 2012, pers. comm.). In addition, the harvest limit was increased from one to two caribou for the Feb. 1–Mar. 31, 2012 season (Aderman 2012, pers. comm.).

Harvest reporting has not been completed, but two caribou were reportedly harvested in the fall season, and 84 caribou were harvested during the 2012 winter hunt (Aderman 2012, pers. comm.).

OSM PRELIMINARY RECOMMENDATION

Maintain status quo

Initiate proposal to modify or eliminate the closure

Other recommendation

Justification

The Nushagak Peninsula Caribou Herd has recovered from a recent population low in 2006, and the current population level is within the population objective set forth in the Nushagak Peninsula Caribou Herd Management Plan. The 2011/2012 harvest was 10% of the July 2011 minimum population count, which is the maximum harvest level identified in the Management Plan, and within the range of previous harvest levels (0–127 caribou harvested per year). Therefore, it is unlikely that a harvestable surplus is available beyond the Federal subsistence hunt, and the closure should remain in place. Lifting the closure could increase competition for a limited resource, and additional harvest could negatively impact the NPCH and be detrimental to subsistence users. Close monitoring by Togiak National Wildlife Refuge biologists and application of current regulations allow the Refuge Manager to adjust the harvest limit, to allocate the number of permits available to hunters, and to close the season if necessary.

Maintaining the status quo is necessary to conserve the caribou population and to continue subsistence uses under Section 804 of ANILCA and does not violate the prohibition of ANILCA Section 815(3). The status quo is consistent with sound management principles and the conservation of healthy wildlife populations while providing a preference for subsistence users.

LITERATURE CITED

Aderman, A. R. 2008. Wildlife biologist. Personal communication: email. Togiak National Wildlife Refuge, FWS. Dillingham, AK.

Aderman, A. R. 2012. Wildlife biologist. Personal communication: email. Togiak National Wildlife Refuge, FWS. Dillingham, AK.

Aderman, A. R., and S. J. Lowe. 2012. Population monitoring and status of the Nushagak Peninsula Caribou Herd, 1988–2011. Unpublished report. Togiak National Wildlife Refuge, FWS. Dillingham, AK. 29 pages.

Bergerud, A. T. 1980. A review of the population dynamics of caribou and wild reindeer in North America. Pages 556–581 in E. Reimers, E. Gaare, and S. Skjenneberg, eds. Proceedings of the Second International Reindeer/Caribou Symposium, September 12-17, 1979. Roros, Norway.

FSB. 1994. Transcripts of Federal Subsistence Board proceedings, April 13, 1994. Office of Subsistence Management, FWS. Anchorage, AK.

FSB. 1996. Transcripts of Federal Subsistence Board proceedings, April 30, 1996. Office of Subsistence Management, FWS. Anchorage, AK.

FSB. 1997. Transcripts of Federal Subsistence Board proceedings, April 9, 1997. Office of Subsistence Management, FWS. Anchorage, AK.

- FSB. 1998a. Transcripts of Federal Subsistence Board proceedings, May 5, 1998. Office of Subsistence Management, FWS. Anchorage, AK.
- FSB. 1998b. Transcripts of Federal Subsistence Board proceedings, May 6, 1998. Office of Subsistence Management, FWS. Anchorage, AK.
- FSB. 1999. Transcripts of Federal Subsistence Board proceedings, May 5, 1999. Office of Subsistence Management, FWS. Anchorage, AK.
- FWS. 1994. Staff Analysis Proposal 42. Pages 335-341 in Federal Subsistence Board Meeting Materials April 11–15, 1994. Office of Subsistence Management, FWS. Anchorage, AK. 726 pages.
- Hinkes, T. H. et al. 2005. Influence of population growth on caribou herd identity, calving ground fidelity, and behavior. *Journal of Wildlife Management* 69:1147–1162.
- Walsh, P., and J. Woolington. 2008. Temporal use of the Nushagak Peninsula by wolves, Togiak National Wildlife Refuge, southwest Alaska. Unpublished report. Togiak National Wildlife Refuge, FWS. Dillingham, AK. 19 pages.

January 8, 2013

**MOOSE MANAGEMENT PLAN
for
GAME MANAGEMENT UNIT 17A**

INTRODUCTION

Since creation of the Togiak National Wildlife Refuge in 1980, moose numbers and harvest opportunities have changed dramatically, especially within Game Management Subunit (Unit) 17A. While moose have occurred in the Togiak and Kulukak drainages since before Statehood, their numbers were few and harvest pressure was high. This trend continued throughout the 1980's despite a closure to moose hunting implemented in 1981. During the same time, numbers were increasing in the Nushagak Bay drainages (Unit 17C) to the east providing a source for moose emigrating west. In 1995, a cooperative survey with the Alaska Department of Fish and Game (ADF&G) estimated 136 moose in Unit 17A. From this initial survey in 1995 until 2011, the population has been closely monitored through eight subsequent population estimates which have revealed a progressive and substantial increase in moose numbers. The most recent estimate, conducted in March 2011, indicated a minimum population of 1,166.

Probable reasons for the moose population increase in Unit 17A include: 1) continued immigration from neighboring Unit 17C; 2) regulation changes implemented by the Alaska Board of Game; 3) cooperation and commitment by local Unit 17 residents in helping the moose population to grow; 4) availability of Mulchatna caribou in Units 17 and 18; and 5) good productivity and recruitment of moose in Unit 17A due to abundant forage, mild winters, and relatively low predation rates.

Coincident with the increasing Unit 17A moose population, a group of entities interested in the management of this moose population was formed (the Unit 17A Moose Management Group), consisting of the Bristol Bay Federal Subsistence Regional Advisory Council, the Nushagak and Togiak Fish and Game Advisory Committees, the Togiak National Wildlife Refuge, and the Alaska Department of Fish and Game GMU 17 management office. The Group drafted several versions of a Unit 17A Moose Management Plan from 1996 to 2004. The February 23, 2004 draft plan has been used as a guide in monitoring and managing moose in this area.

During the years 1996-2004, several regulatory requests to open/change hunting seasons were proposed. Fall hunting for bulls was reinstated in 1997. When the population exceeded 600 moose, a winter hunt for antlered bulls was approved for 2002-03. Preliminary habitat surveys in the late 1990's estimated a carrying capacity of 1,100 to 1,750 moose for Unit 17A, and these estimates served as the basis for the original version of this plan. However, refinement of the estimate of moose winter habitat based on a revised habitat map indicates a carrying capacity of 900 to 1,350 moose may be more realistic. Thus, this updated plan incorporates changes to the 2004 plan based on the refined carrying capacity estimate and moose demographic and harvest monitoring through 2012.

17A Moose Management Plan, January 8, 2013

The Moose Management Plan (Plan) is intended to guide future regulatory proposals and decisions regarding moose in Unit 17A. Cooperation among Plan participants and area residents is critical to the success of this Plan.

PRINCIPLES

The Plan acknowledges the need for coordinated management consistent with State and Federal laws and regulations, and traditional lifestyle of area residents. Principles agreed upon by all parties concerning Unit 17A moose include:

1. Moose are an important subsistence resource for area residents.
2. The users and management agencies want moose to expand their range and increase in numbers consistent with available habitat.
3. Moose reproductive and physical measures and estimates of carrying capacity will be used when setting population level goals to ensure protection of the vegetation resource.
4. Effective management of Unit 17A moose is a high priority to insure a sustainable level of harvest as well as providing a subsistence priority on State and Federal lands.
5. Cooperation and participation between Plan participants is essential to achieve the goals and objectives of this Plan.
6. The management planning process is ongoing. Updating and improving the Plan will increase its effectiveness.
7. Continued monitoring of the size, production, movements, distribution and habitat of Unit 17A moose is essential to the success of the Plan.
8. The Plan should be integrated with other management programs.

MOOSE MANAGEMENT GOALS AND OBJECTIVES

Management goals of this plan explain what is planned for the management of moose in Unit 17A. Management objectives describe how the goals can be carried out.

Goal 1: Ensure a self-sustaining moose population in Unit 17A.

Management Objectives for Goal 1

1. Maintain the Unit 17A moose population at 800 to 1,200 moose. This population range may be adjusted based on moose reproductive and physical parameters.

17A Moose Management Plan, January 8, 2013

2. Monitor moose population parameters through aerial radio-tracking surveys, and a population estimate conducted every two years or as needed.
3. Maintain a minimum of 20 radio-collared moose to monitor calf production, survival and recruitment, movements and adult mortality.
4. Maintain a close working relationship among Plan participants in managing this moose population.
5. Consider and implement other research as necessary.

Goal 2: Maintain and protect moose habitat and other necessary components of the ecosystem in Unit 17A upon which the moose population depends.

Management Objectives for Goal 2

1. Continue to describe, quantify, and map existing vegetation cover types.
2. Ensure the Unit 17A moose population does not exceed carrying capacity.
3. Determine nutritional qualities of moose browse.
4. Work with village corporations and private landowners to minimize the impacts to moose habitat in Unit 17A.

Goal 3: Provide for a regulated harvest in a manner consistent with Federal and State laws, and the goals and objectives of this management plan.

Management Objectives for Goal 3

1. When the population is less than 300 moose, no harvest will occur.
2. When the population trend is stable or increasing above 300 moose, allow a fall and winter harvest of bulls, by State registration permit available in Togiak and Dillingham. If the population trend is declining and is between 300 – 600 moose, harvest may be reduced or suspended.
3. When the population trend is stable or increasing and above 600 moose, allow a limited winter hunt for antlerless moose. When the population trend is declining and is between 600 and 900 moose, the antlerless harvest may be suspended.

17A Moose Management Plan, January 8, 2013

4. Aircraft access will be restricted for the fall hunt for two miles either side of the Togiak River, Togiak Lake, Izavieknik River, Upper Togiak Lake (Second Lake), Ongivinuck River and along the lower five miles of both the Kemuk (also known as Narogurum) and Nayorurun (also known as Nagugun or Kashaiaik) Rivers (Figure 1).
5. When the population trend is stable or increasing and exceeds 1,000 moose, allow a limited fall nonresident hunt by State permit. When the population exceeds 1,000 but shows a declining trend, nonresident hunting will be suspended. Permits will be phased in with up to 5 permits issued in the first year and up to 10 permits issued in the second year of non-resident hunting. After the second year, up to 5 permits will be available when the population is between 1000 and 1100, up to 10 permits will be available when the population is between 1100 and 1200, and up to 20 permits when the population exceeds 1200.
6. Hunting regulation proposals and recommendations, consistent with this management plan, will be developed cooperatively with Plan participants and submitted to the Federal Subsistence Board and Alaska Board of Game.

Goal 4: Encourage cooperative management and communication between Plan participants in developing and carrying out management, research and enforcement programs, and with the public by exchanging ideas and knowledge about Unit 17A moose.

Management Objectives for Goal 4

1. Plan participants will meet as needed to update the plan and discuss issues involving moose in Unit 17A.
2. Plan participants will cooperate in formulating and reviewing management and research programs including but not limited to an aerial census, aerial surveys, radio telemetry monitoring, composition counts, recruitment surveys and harvest reporting.
3. Plan participants will coordinate to the extent possible enforcement activities that are to be conducted within Unit 17A or adjacent areas.
4. Plan participants will provide information to local residents and conduct public programs concerning the importance of managing the moose population. In addition both agencies plan to provide information and educational materials concerning moose ecology, subsistence use and stress the significance of the cooperative moose management plan. Plan participants will work closely with area residents to ensure there are opportunities to discuss management activities and concerns people may have.

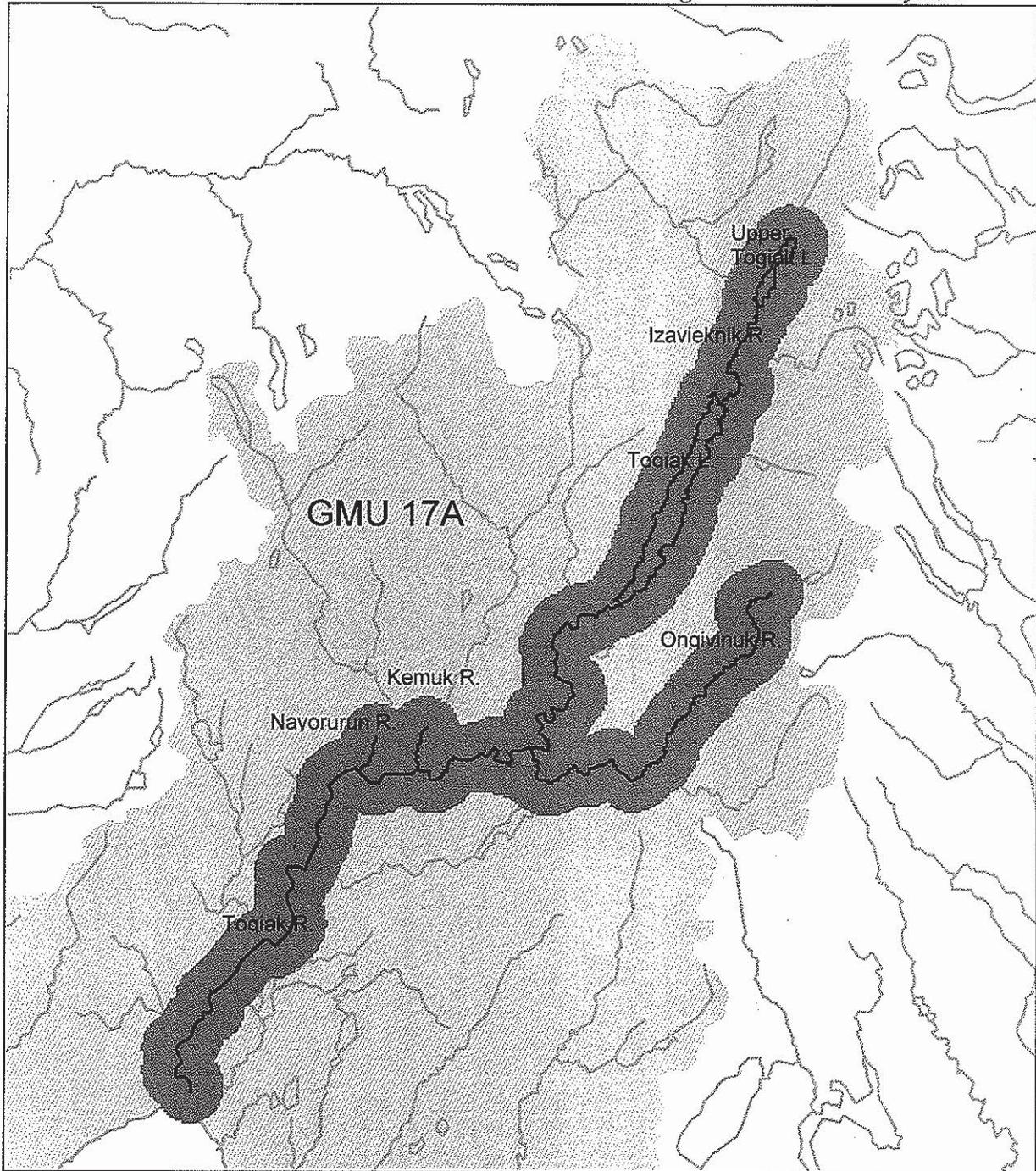


Figure 1. Central portion of GMU 17A, showing aircraft restricted area extending 2 miles to either side of Togiak, Navorurun, Kemuk, Ongiviniuk, and Izavieknik Rivers and Togiak and Upper Togiak Lakes.

17A Moose Management Plan, January 8, 2013

SIGNATURES

By their signatures below, the undersigned hereby certify their participation in and agreement with the Moose Management Plan for Game Management Unit 17A.



Togiak Advisory Committee, Chairman
1/8/13
Date



Nushagak Advisory Committee, Chairman
1/8/13
Date

Bristol Bay Regional Advisory Council, Chair
Date



Togiak National Wildlife Refuge, ^{Acting} Refuge Manager
1/8/2013
Date



Alaska Department of Fish & Game, Area Biologist
1/8/2013
Date

GUIDANCE ON ANNUAL REPORTS

Background

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

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

Report Content

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

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

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

Report Clarity

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

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

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

Report Format

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

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

Bristol Bay Alaska Subsistence Regional Advisory Council
c/o U.S. Fish & 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

Tim Towarak, Chair
Federal Subsistence Board
c/o U.S. Fish and Wildlife Service
Office of Subsistence Management
1011 East Tudor Road, MS 121
Anchorage, Alaska 99503

Dear Mr. Towarak:

This letter is the 2012 annual report of the Bristol Bay Subsistence Regional Advisory Council. The Council has permissive authority to submit the report under Title VIII of the Alaska National Interest Lands Conservation Act, Section 805(a)(3)(D). At its public meeting held in Dillingham, Alaska on October 24-25, 2012, the Council brought forward the following concerns for its 2012 report and approved the annual report at its February 12-13, 2013 meeting.

Chignik Fishery Information

The Council at its fall 2012 meeting addressed Federal fishery proposals in the Chignik fishery management area. Information on commercial harvest is readily available. The Council, when developing its recommendation for the FSB's consideration, found it lacked data on subsistence and sport use harvest to develop sound recommendations on Federal subsistence proposals.

The Council requests a summary report on what it recognizes as information gaps on the total number of harvest by subsistence and sport fish user groups during the salmon fishing season. The information provided will enable the Council, with recent data, to develop sound recommendations based on the recent harvest information provided by Federal and State agencies.

Stocks of Concern

The Council has concerns of stock interception in the Area M fishery for the terminal sockeye fishery in Bristol Bay and Western Alaska. Initial reports on genetic information may well be that 50 percent of the commercial catch in the Area M fishery are potential Bristol Bay bound sockeye. The sockeye return to the Bristol Bay region is an important fishery for the residents of the Bristol Bay region which in some cases fall under Federal fishery management jurisdiction. The Council requests a briefing on genetic information

of bycatch occurring in the Area M fishery for sockeye bound for Bristol Bay and Western Alaska.

Bering Sea Bycatch

The Council requests to be provided continued briefings on the Bering Sea Pollock Fishery which harvest salmon as bycatch bound for Bristol Bay and Western Alaska. Salmon species for Bristol Bay and Western Alaska is an important resource for these area residents for their livelihood and subsistence needs.

Thank you for the opportunity for this Council to assist the Federal Subsistence Program to meet its charge of protecting subsistence resources and uses of these resources on Federal public lands and waters. The Council looks forward to continuing discussions about the issues and concerns of subsistence users of the Southcentral Region. If you have questions about this report, please contact me via Donald Mike, Regional Council Coordinator, with the Office of Subsistence Management at 1-800-478-1456 or (907) 786-3629.

Sincerely,

Molly Chythlook
Chair, Bristol Bay RAC

cc: Federal Subsistence Board
Interagency Staff Committee
Bristol Bay Subsistence Regional Advisory Council



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

Federal Subsistence Board News Release



Forest Service

For Immediate Release:

January 14, 2013

Contact:

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

Federal Subsistence Board Seeks Comments on Rural Determinations Process

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

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

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

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

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

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

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

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

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

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

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

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

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

Submit written comments by one of the following methods:

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

E-mail: subsistence@fws.gov

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

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

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

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

-###-



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

Federal Subsistence Board News Release



Forest Service

For Immediate Release:

January 14, 2013

Contact:

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

Call for Proposals to Change Federal Subsistence Hunting and Trapping Regulations

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

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

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

Submit proposals:

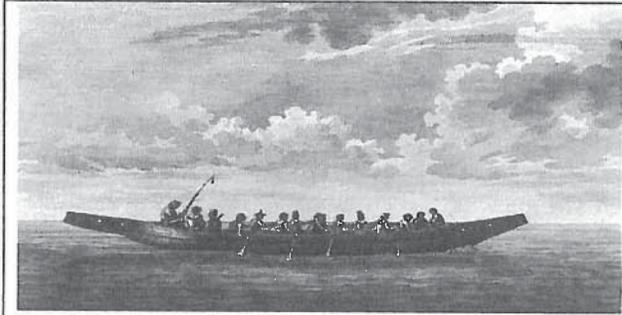
- **By mail or hand delivery**
Federal Subsistence Board
Office of Subsistence Management -- Attn: Theo Matuskowitz
1011 East Tudor Road, MS-121
Anchorage, AK 99503
- **At any Federal Subsistence Regional Advisory Council meeting**
See the Meetings and Deadlines page of the Federal Subsistence Management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

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

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

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

-###-



**Southeast Alaska Subsistence Regional
Advisory Council**

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

kaadashan@alaska.net

RAC SE13001.RL

JAN 11 2013

Ms. Molly Chythlook, Chair
Bristol Bay Alaska Subsistence
Regional Advisory Council
1356 Nerka Drive
Dillingham, Alaska 99576

Dear Ms. Chythlook:

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

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

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

Ms. Molly Chythlook

2

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

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

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

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

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

Ms. Molly Chythlook

3

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

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

Gunalchéesh (thank you).

Sincerely,
/S/

Bertrand Adams Sr., Chair

Enclosures

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

Federal Subsistence Board
Policy 07-XX

Customary and Traditional Use Determinations

DRAFT (07/13/07)

Authority: The statutory basis for the following policy is Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 3101 et seq. The regulatory framework for the Federal Subsistence Board is contained in 36 C.F.R. Part 242 and 50 C.F.R. Part 100.

Preamble:

Since the inception of the Federal subsistence management program, the Federal Subsistence Board's (Board) practice has been to make C&T use determination findings based on a holistic application of the eight factors. While ANILCA does not require that C&T determinations be made, nor that the eight factors be utilized in evaluating subsistence uses, implementing regulations require the Board to make C&T determinations by applying the eight factors to evaluate whether or not a community or area seeking a C&T determination "shall generally exhibit" the same eight factors. 50 C.F.R. 100.16(b). While the Board has focused on this one aspect of use since the inception of the Program, it recognizes that the discretion of ANILCA is much broader, and it is within the purview of the Board to alter its approach. Nonetheless, as long as that practice of making C&T determinations continues, the following policy is in place.

I. Introduction

ANILCA provides for "...the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption such as food, shelter, fuel, clothing, tools or transportation..." (Title VIII, Sec. 803). Title VIII of ANILCA established a preference for customary and traditional uses of fish and wildlife by according a priority for non-wasteful subsistence taking by rural Alaska residents (Sec. 804). To assist in implementing this preference, the Board determines which rural Alaska areas or communities have customary and traditional uses of fish and wildlife populations.

II. Management Principles

The purpose of ANILCA is to provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so (Sec. 102).

The users protected under ANILCA are rural users, and the use protected is that which is customary and traditional.

The customary and traditional use determinations that the Board makes must be based on a community's use of a fish stock or wildlife population. But nothing in section 100.16(a) states that a specific wildlife population or fish stock has to be defined in terms of a specific geographical area.

Subsistence uses are dynamic and adaptive, and change over time in response to environmental, technological, demographic and social influences. The Board provides for these dynamic customary and traditional uses, in part by considering regional, temporal, and cultural variation.

ANILCA describes subsistence use as that which is rural and customary and traditional. Not all rural uses are customary and traditional, and it is the responsibility of the Board to determine, based on the information before it, which rural uses are customary and traditional.

III. Customary and Traditional Use Determinations

The Board shall adhere to the statutory standard of customary and traditional use in making customary and traditional use determinations. Need is not the standard.

The Board shall base its determination of customary and traditional use on information of a reasonable and defensible nature contained within the administrative record. However, as noted in a recent court decision, there is no requirement that the Board's decision be supported by substantial evidence.¹

The Board makes customary and traditional use determinations based on a holistic application of eight factors, as outlined in 50 CFR 100.16(b) and 36 CFR 242.16(b), and whether a community or area generally exhibits them. Together, the eight factors elucidate the economic, nutritional, cultural and social character of customary and traditional resource harvest and use.

The Board recognizes that coverage, application and assessment of the eight factors may vary due to regional, cultural and temporal variations.

IV. Board Implementation

In the absence of a specific C&T finding, all rural residents are the eligible pool of users. If a C&T finding was adopted from the State program, the Board may expand or further limit that finding. Finally, in the event that the Board has already made a C&T finding, the Board may expand the existing finding, or more narrowly delineate the finding. In all instances, the Board makes a decision based upon the best available information.

The Board bases its C&T determinations on holistic application of the eight factors with regard to use of a resource by residents of a community or area, to evaluate whether a community or area generally exhibits the eight factors.

The Board has discretion in deciding whether the eight regulatory factors (including factor 4) are met. Inherent in that general discretion is the specific discretion to determine the geographical extent of the area relevant to the use of a specific fish stock or wildlife population. There is no

¹ As noted in *State of Ak. v. Fleagle*, 6/27/07, pg. 38: "... Plaintiff also argues that the defendant's promulgation of the C&T determination was arbitrary and capricious because it was not supported by substantial evidence. There is no requirement that the FSB's decision be supported by substantial evidence... The substantial evidence standard of review only applies only when the agency decision involves a rulemaking procedure under 5 U.S.C. 553 or is based on a public adjudicatory hearing.

rigid regulatory requirement that a C&T determination can be made only for an area for which actual use had been demonstrated.

The Board recognizes that overly narrow standards for customary and traditional ignore the historic adaptability of subsistence economic and social systems. At the same time, overly broad standards for customary and traditional use could extend protections of ANILCA to those uses that are not customary and traditional.

The Board further recognizes that C&T determinations are not intended to be an additional hurdle that subsistence users must pass in order to qualify as a subsistence user under ANILCA. Rather, C&T determinations are a tool to identify uses to be protected under ANILCA.

If no information exists for a certain community or area, the Board can extrapolate based on information from other, similarly situated communities or areas.

ANILCA Section 803 defines subsistence uses and Section 804 requires that ‘nonwasteful subsistence uses’ be given a preference over other uses. All ‘subsistence uses’ as defined in section 803 qualify for the section 804 subsistence preference. To the extent that a particular population is relatively unimportant for subsistence purposes, this should be reflected in relatively low customary and traditional use of the population.

ANILCA does not differentiate between natural, introduced, or recently migrated species. The Board shall therefore consider all resources in the context of customary and traditional use determinations.

In addition to the analysis, the Board considers the knowledge, reports and recommendations of the appropriate Regional Advisory Council regarding customary and traditional use of subsistence resources (50CFR100.16(b) and 36 CFR 242.16(b)).

V. Definitions:

As defined in ANILCA, the term subsistence uses refers to “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 non-edible by-products of fish and wildlife taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade.”

The eight factors are as follows (50CFR100.16(b) and 36 CFR 242.16(b)):

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

7. A pattern of use, in which the harvest is shared or distributed within a definable community of persons; and;
8. A pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social, and nutritional elements to the community or area.

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

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

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

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

Southcentral Subsistence Regional Advisory Council

Comments on Draft C&T Policy

Decision Making

The Board shall:

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

Together,

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

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

Additional Guiding Considerations:

The Board recognizes that:

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

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

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

On Page 3 of the Draft Policy:

Decision Making

The Board shall:

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

Chuck Burkhardt
PO Box 272
Gustavus, AK. 99826

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

Federal Subsistence Board and Staff:

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

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

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

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

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

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

Respectfully,

Chuck Burkhardt

/S/

To: Theo Matuskowitz and Subsistence Board

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

Re: Customary and Traditional use Policy Draft.

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

Thanks for listening.

Erik Weingarh



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

November 28, 2007

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

RE: Comments on Draft Customary & Traditional Use Policy

Dear Mr. Matuskowitz:

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

Purpose

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

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

Introduction

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

Board Authorities:

No Comment

Policy

Paragraph one - No comment

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

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

Paragraph four - No comment

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

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

Decision Making

Bullet one - No comments

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

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

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

Bullet five - No comments

Additional Guiding Considerations

No comment

Definitions

No comment

Summary

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

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

Thank you for the opportunity to provide these comments.

Sincerely,
/S/

Wilson Justin

Cc MSTC Board
Elaine Sinyon
Shawn Sanford



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

November 30, 2007

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

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

Dear Federal Board Members,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,
/S/

Ivan Encelewski
NTC Executive Director



YAKUTAT TLINGIT TRIBE

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

December 7, 2007

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

Subject: Policy on Implementation of Customary and Traditional Use Determinations

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

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

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

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

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

Thank you for the opportunity to respond.

Sincerely,

/S/

Victoria L. Demmert, President
Yakutat Tlingit Tribe

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



November 28, 2007

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

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

Dear Federal Board Members,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

/S/


Linda Tyone,
Chairperson



CENTRAL COUNCIL

Tlingit and Haida Indian Tribes of Alaska

ANDREW P. HOPE BUILDING

Office of the President

320 W. Willoughby Avenue • Suite 300

Juneau, Alaska 99801-9983

December 7, 2007

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

Subject: Policy on Implementation of Customary and Traditional Use Determinations

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

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

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

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

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

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

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'W. E. Martin', with a horizontal line underneath the signature.

William E. Martin
President

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

December 1, 2007

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

RE: Comments on Draft Customary and Traditional Use Policy

Dear Federal Board Members:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,



Julie Kitka
President

/chd

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

SARAH PALIN, GOVERNOR

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

December 7, 2007

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

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

Dear Mr. ^{Mike}Fleagle:

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

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

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

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

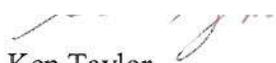
does not provide guidance in the form of procedural steps, identifiable criteria, or analytic thresholds that are necessary to prevent inconsistent and unjustified C&T determinations. The record clearly confirms that such thresholds, criteria, and procedural steps are needed in order to reduce the ongoing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

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

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

Sincerely,

/s/ 


Ken Taylor
Deputy Commissioner

Attachment A: Section Specific Comments on the Draft Policy

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

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

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

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

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

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

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

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

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

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

This section of Title I actually states:

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

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

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

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

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

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

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

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

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

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

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

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

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

Decision Making:

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

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

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

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

Additional Guiding Considerations

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

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

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

Additional Guiding Considerations

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

Definitions

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

ATTACHMENT B

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

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

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

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

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

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

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

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

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



December 4, 2007

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

FAX: (907) 786-3898

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

Dear Mr. Matuskowitz,

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

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

Policy Purpose and Background:

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

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

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

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

Review and Comments:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Summary:

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

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

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

Respectfully,

Ricky Gease, Executive Director
Kenai River Sportfishing Association



UNITED FISHERMEN OF ALASKA

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

December 7, 2007

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

Re: Draft Customary and Traditional Use Policy

Dear Mr. Matuskowitz:

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

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

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

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

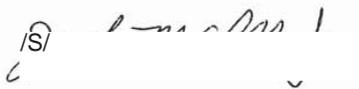
The policy also states that determinations "must be based on a community's long term consistent pattern of use" and that "in all instances, the Board makes a decision based upon the best available information." However, without accountability in the decision making process, it is unclear how the "best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

Theo Matuskowitz

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

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

Thank you for your consideration,



Joe Childers
President

MEMBER ORGANIZATIONS

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



IN REPLY REFER TO:

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Togiak National Wildlife Refuge
P.O. Box 270
Dillingham, Alaska 99576
Phone 907-842-1063
Fax 907-842-5402

INFORMATION BULLETIN - January 2013

The Roles of Alder and Salmon in Driving Aquatic Productivity Contact: Pat Walsh

In 2010, Togiak Refuge, the University of Illinois, the University of Washington, and ADF&G began a 4-year project to determine the relative role of salmon and alder in controlling productivity in lakes. Both salmon and alder contribute nutrients to lakes: salmon do so via decomposition of carcasses after spawning, and alder does so through nitrifying the soil, and by mobilizing soil nutrients which would otherwise be biologically inaccessible. This project will measure the contribution of nutrients from both sources by analyzing water samples from thirteen Refuge lakes over a four year period. The information that will come from this project will help salmon managers better understand the ecological consequences of harvest. Since 2010, we have installed water quality and quantity monitoring equipment at 13 lakes on Togiak Refuge. We collected and processed water samples in summer and fall 2010, 2011, and 2012 and have begun laboratory analysis for a battery of biological and chemical attributes. We monitored stream discharge in summer and fall at 26 streams entering the study lakes in order to estimate lake water budgets. We performed aerial sockeye salmon surveys at all study lakes and estimated run size in each. We updated an existing landcover map to refine our estimate of alder cover in the study area. A progress report is available.

Cooperative Salmon Escapement Monitoring Projects Contact: Mark Lisac

In 2012 Togiak Refuge provided support to the Native Village of Kwinhagak (NVK) and ADF&G to operate salmon escapement monitoring projects (weirs) on the Kanektok (KRW) and Middle Fork Goodnews Rivers (MFGRW).

On the Middle Fork Goodnews River, ADF&G has monitored Chinook, chum and sockeye salmon escapement since 1980. Escapement goals and management of the commercial fishery are based on salmon escapement at the weir. Togiak Refuge has worked with ADF&G since 1992 to include the coho salmon and Dolly Varden runs in the project operation. ADF&G, Togiak Refuge and the Office of Subsistence Management (OSM) fund the project operation. This weir project also uses an underwater video system which allows the weir to be opened to salmon passage more hours a day. Use of motion sensors and digital recording video can improve fish counting accuracy, especially during periods of high water and poor visibility. The MFGRW was fish tight on 29 June and continued operation 18 September 2012. The weir was not fully operational for 25 of the 82 days due to high water.

On the Kanektok River, ADF&G, NVK and Togiak Refuge have worked cooperatively to monitor salmon and Dolly Varden runs since 2001. This project is currently funded by OSM and Coastal Villages Region Fund. Escapement goal ranges have not been established for the Kanektok River because the weir has not been operational for enough years. This weir operated from 5 July to 15 August. Escapements were

estimated for 10 of 51 days because the weir was not operational.

Preliminary escapement counts to 29 August (MFGRW) and 15 August (KRW) 2012 are:

	Chinook	Sockeye	Chum	Coho	Pink	Dolly V.
MFGRW	513	30,472	10,723	13,679	6,316	798
KRW	1,568	88,800	24,173	4,248	62,141	20,547

Rainbow Trout Population Identification Contact: Pat Walsh

Togiak Refuge, ADF&G Sport Fish, and the Conservation Genetics Laboratory are working together to inventory populations and determine the genetic relationships between populations of rainbow trout throughout Togiak Refuge. Archived genetic material collected from previous investigations were inventoried and assessed for suitability in the current study. A collection plan for unsampled populations was completed and new tissue collections began in the Goodnews, Kanektok, Igushik, Snake, and Wood River watersheds in summer 2009. Collections continued in Ice Creek and the Osviak River in 2012. All collections are now complete, and genetic analysis is underway. A progress report is available.

Chinook Salmon Escapement In The Togiak River Watershed Using Radio Telemetry Contact: Theresa Tanner (Anchorage Fish & Wildlife Field Office)

In 2012 the Anchorage Fish and Wildlife Field Office completed the final year of a five year study funded by OSM to determine Chinook salmon run timing, distribution and abundance in the Togiak River watershed. Chinook salmon were captured and implanted with radio transmitters or were marked with a brightly colored spaghetti tag in the lower river. These fish were tracked using a combination of seven fixed data-logging receiver stations, and intensive aerial and boat tracking surveys to document movement and final spawning destinations. Preliminary analysis indicates that there are significantly more Chinook salmon spawning in the lower river than previously thought; tributary spawners appear to enter the river earlier in the run; all fish hold in the lower mainstem for some time before advancing to spawning areas; and, spawning distribution between tributaries and the mainstem varies from year to year. In 2010 thru 2012 a mark-recapture experiment was attempted by using the known number of Chinook salmon that past a weir on the Gechiak River tributary to extrapolate an escapement estimate for the entire Togiak drainage. The 2012 estimate is not available at this time. The estimate for 2010 was 10,096 fish (95% CI = {5,709 to 18,849}) and for 2011 the estimate was 7,041 fish (95% CI = {4,160 to 14,143}). ADF&G has set the sustainable escapement goal threshold at 9,300 Chinook salmon for the entire Togiak drainage.

Mulchatna Caribou Contact: Andy Aderman

Togiak Refuge assisted ADF&G with telemetry monitoring flights, radiocollar deployment, satellite data acquisition, data entry and database management. Primary calving areas in 2012 were near Lime Village (Unit 19A) and the mid-Nushagak River area (Unit 17C) similar to the past several years. Caribou were also observed calving in the southern Kilbuck Mountains (Unit 18). A photocensus was attempted on July 6 in the eastern portion of the range, and on July 7 in the west. A composition survey in early October 2012 estimated 29.8 calves: 100 cows and is considerably greater than that from the 2010 and 2011 surveys (19.5 and 19.0 calves: 100 cows respectively) and the second highest calf ratio since 1998. The bull:cow ratio for the combined fall 2012 surveys (23.2 bulls: 100 cows) is the highest since fall 2002.

Nushagak Peninsula Caribou Contact: Andy Aderman

Eighty-six caribou were reported harvested during the 2011-2012 hunting seasons. This was the third highest harvest since hunting began on this herd in 1995. Radio collars were deployed on five short-yearling females in early April. During late May 2012, 21 of 25 (84.0%) radiocollared caribou produced a calf. A photocensus conducted on July 7, 2012 found a minimum of 902 caribou. A similar effort in

2011 found a minimum of 859 caribou. Ten caribou permits each were made available in Manokotak, Dillingham, and Aleknagik for the fall hunt. Nine caribou were reported harvested during the fall hunt. A composition survey in early October 2012 estimated 50.2 calves and 52.0 bulls: 100 cows. For the 2012-13 winter hunt, 160 caribou permits were made available in Aleknagik, Dillingham, Manokotak, Togiak, and Twin Hills.

Wolf Predation on Nushagak Peninsula Caribou Contact: Pat Walsh

Using radio telemetry, Togiak Refuge and ADF&G are investigating the seasonality and duration of wolf use of the Nushagak Peninsula, in order to assess whether predation is a likely factor in driving population dynamics of Nushagak Peninsula caribou. From 2007 through 2011, we placed GPS radio transmitters on wolves from two packs located within 30 km of the Nushagak Peninsula. Collars were programmed to record locations every three hours. Tracking flights have been flown monthly to locate wolves and to download location data from the GPS collars. One of the two packs used the Nushagak Peninsula approximately 36% of the year, spending less than 10% of its time on the Peninsula during winter months, and up to 70% during late summer. Since 2008, wolf use of the Nushagak Peninsula increased steadily, although overall wolf numbers remained relatively constant. During this same time, the Nushagak Peninsula caribou population increased from an estimated 579 to 859. We tentatively conclude that wolf predation has not been the primary population driver for this caribou herd during the years of this study, but that the wolf population has responded to increased caribou abundance by shifting the amount of time it spends on the Peninsula. This study continued through spring 2012, at which time collars were removed from wolves. A final report will be prepared in 2013.

Moose Contact: Andy Aderman

In May 2012, 22 of 25 radiocollared cows produced a minimum of 36 calves, or 144 calves:100 cows. Twinning rate was 63.6%. Calf survival from birth to November was 38.9% suggested a fall recruitment rate of 56 calves: 100 cows. Significant progress was made in updating the Moose Management Plan for Unit 17A. Four of the 5 signatories have signed off on the plan as of January 10, 2013. Winter moose population surveys will be conducted in Unit 17A and southern Unit 18 if adequate survey conditions occur.

Walrus Contact: Michael Winfree

Togiak National Wildlife Refuge monitored Pacific walrus haulouts located at Cape Peirce and Hagemeister Island in 2011-2012. Remote cameras, which take a photo every hour, were installed on haulout beaches at Cape Peirce in 2010 and on Hagemeister Island in 2011. Furthermore, Togiak Refuge worked with Alaska Peninsula/Becharof National Wildlife Refuge and ADF&G to install cameras at Cape Seniavin and Round Island.

There were 15 haulout events documented at Cape Peirce from October 2011-June 2012. No walrus were documented at Cape Peirce from December 24, 2011 through June 2, 2012. The first haulout of 2012 occurred on June 3, 2012. The peak number of walrus hauled out at Cape Peirce was 486 animals on November 17, 2011. Cameras at Hagemeister Island documented 18 haulout events from June 2011-June 2012. The peak count of walrus using the Hagemeister Island haulout was 568 walrus on September 8, 2011.

Cliff-falling mortality events have been documented at Cape Peirce in 1994-1996, 2005, and 2006-2009. Since 2005, these events have coincided with the increased haulout use late in the fall. One factor causing this is erosion of sand dunes that once acted as a barrier between the haulout and the bluff. Walrus travel up the eroded sand dune and are exposed to cliff ledges. A high-tensile electric fence was constructed across the dune to prevent walrus from accessing the bluff in 2010, and for the second

consecutive year zero walrus died at Cape Peirce due to falling off the cliff. Thus, we tentatively accept that the fence is working effectively.

Seabirds Contact: Michael Swaim

Togiak National Wildlife Refuge has monitored seabird populations at Cape Peirce since 1980, making this one of the longest continuously studied seabird colonies in the state of Alaska. During this period, pelagic cormorant populations have remained relatively constant, while black-legged kittiwakes and common murre populations declined.

Eelgrass Monitoring Contact: Michael Swaim

Togiak Refuge has partnered with the USGS Alaska Science Center to map and inventory 23 eelgrass beds along the refuge coastline since 2007. Work was primarily focused on the reacquisition of aerial imagery in Goodnews Bay and Togiak Bay in 2012. The density and distribution of eelgrass will be recorded at select sites via boat-based sampling in 2013.

Water Temperature Monitoring Contact: Michael Swaim

Togiak Refuge has collected continuous water temperature measurements at 18 sites since 1990. The refuge will continue monitoring water temperature indefinitely, since these data provide important baseline information for a variety of other biological and climate-related studies.

Quantifying River Discharge Contact: Michael Winfree

Togiak Refuge and the USFWS Water Resources Branch have worked cooperatively since 1999 to acquire baseline hydrologic data of the flow regime (magnitude, duration, timing, frequency, and rate of change) and water quality. A network of stream discharge gages collected stream flow data from 1999-2005 at 20 locations. A subset of five of these stations continued to collect data through fall 2009, after which three of the five stations were removed. We will continue indefinitely to monitor discharge in the Togiak and Kulukak Rivers. Each gage is instrumented with pressure sensors that measure water level every 15 minutes. Five discharge measurements occurred at each site from October 1, 2011 through September 2012.

Salmon River Water Quality Contact: Michael Winfree

The Salmon River drainage, just south of Platinum, has been the site of a placer mine since the 1930's. Major production by the Goodnews Bay Mining Company stopped in 1976. The mine was sold to Hanson Industries in 1980, who in turn sold it to XS Platinum in 2007. In the summer of 2009, re-mining of the old tailings began. In September 2009, Togiak Refuge installed a continuous water-quality gage on the Salmon River. The gage monitors pH, turbidity, specific conductivity, dissolved oxygen, temperature, and depth. The gage runs continuously, taking a reading every 15 minutes. Baseline value estimates from April 1, 2010 through February 29, 2012 were: temperature = 2.4°C, specific conductivity = 78 µS/cm at 25°C, pH=7.3, turbidity=4.6 NTU, dissolved oxygen= 12.9 mg/L. Baseline values will be further refined with the collection of more data.

Education and Outreach Contact: Terry Fuller

Togiak Refuge has an active education and outreach program including the Migratory Bird Calendar (a Togiak entrant was the state-wide grand prize poster winner) and Junior Duck Stamp contests; National Wildlife Refuge Week; career fairs; production of Bristol Bay Field Notes (aired twice times weekly @ 10 minutes per episode on KDLG); and numerous classroom presentations in 12 villages in the Southwest Region, Lower Kuskokwim, and Dillingham City school districts. Field trips with area students for the 2011-2012 school year included bird walks, animal tracks and ID, archery, salmon life cycles, aquatic resources and bear safety. The refuge website is also a valuable education tool and is available at <http://togiak.fws.gov>. Also, the refuge partners with others to conduct three environmental education

camps described below:

Southwest Alaska Science Academy Contact: Terry Fuller

This past July, Togiak Refuge helped with the 11th year of a summer camp aimed at teaching middle and high school students about fisheries science and the importance of salmon to our ecosystem. Students were selected from the Bristol Bay region. During the camp students worked in the field alongside fisheries professionals. Cooperators with the refuge on this project included the Bristol Bay Economic Development Corporation, Bristol Bay Science and Research Institute, University of Alaska, University of Washington School of Fisheries, the Dillingham City and Southwest Region school districts, and the Alaska Department of Fish and Game.

Cape Peirce Marine Science and Yup'ik Culture Camp Contact: Terry Fuller

Togiak Refuge holds a junior high Science camp at Cape Peirce that is designed to educate area students about seabirds, marine mammals and how field studies are conducted. It also introduces them to a variety of outdoor resource related topics and activities.

Due to poor weather conditions (and two attempts to get to Cape Peirce), the camp was abruptly moved to an alternate location (Lake Nunavaugaluk) during 2012. Some of the activities that the students participated in included wilderness survival skills (water, fire, shelter, first aid), catch and release angling, archery, identification of aquatic organisms and canoeing. Other topics that were discussed included Leave No Trace camping practices, bear safety, stewardship and careers with the USFWS. Traditional councils and school districts from throughout western Bristol Bay are cooperators with this camp.

Summer Outdoor Skills and River Ecology Float Camp Contact: Terry Fuller

The 2012 Float Camp took place on the Pungokepekuk and Togiak Rivers. Students learned about river ecosystems and how to enjoy them safely and responsibly while taking part in a float trip. Students observed and learned about the many fish, wildlife and plant species found on refuge rivers and streams. Rafting skills, water safety, different angling methods (Catch and Release), Leave No Trace camping practices and bear safety were topics during the trip. Students also participated in other outdoor activities such as outdoor survival skills, identification of juvenile salmonid species and archery. Other topics of discussion included bear safety, Leave No Trace camping practices and careers with the USFWS. On this particular camp students were also able to assist refuge staff with data collection for a water temperature project. This camp helped students understand the biological diversity of riparian ecosystems and the importance of salmon as a nutrient source, while developing a deeper sense of stewardship for local natural resources. Traditional councils and school districts from western Bristol Bay are cooperators in this camp.

River Ranger Program Contact: Allen Miller

The Refuge River Ranger Program was conceived during the public use management planning process and was first implemented in 1991. The program serves many purposes. River Rangers are the main contact source for sport fishermen and local residents. Information distributed to the public includes Service policies, regulations, resource management practices, State sport fish regulations, bear safety, wilderness ethics, Leave-No-Trace camping, and information about private lands to prevent trespass. Rangers document public use occurring on the river along with the location and timing of activities, conflicts between users, and sport fish catch/harvest per unit effort. Rangers also assist Refuge and ADF&G staff at the Kanektok River and Middle Fork Goodnews River weirs, and assist Refuge staff with biological studies. In addition, Rangers patrol campsites for litter, monitor compliance of sport fishing guides, and offer assistance as needed.

Two River Rangers were stationed in the village of Togiak during summer 2012 and patrolled the Togiak River several times each week. One River Ranger was also stationed in Quinhagak and patrolled the Kanektok River. All three rangers were residents of the villages where they were assigned. Two River Rangers stationed out of Dillingham patrolled the north and middle forks of the Goodnews River, and the Kanektok River using inflatable kayaks. Use of kayaks allowed rangers to access the entire length of the Kanektok and Goodnews rivers, which are inaccessible to power boats during most water levels.

Fall 2013 Regional Advisory Council Meeting Calendar

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

Meeting dates and locations are subject to change.

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

Winter 2014 Regional Advisory Council Meeting Calendar

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

Meeting dates and locations are subject to change.

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

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

Bristol Bay Subsistence Regional Advisory Council

CHARTER

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

- (3) A recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs; and
 - (4) Recommendations concerning policies, standards, guidelines and regulations to implement the strategy.
 - e. Appoint three members to the Lake Clark National Park and three members to the Aniakchak National Monument Subsistence Resource Commissions, in accordance with Section 808 of the Alaska National Interest Lands Conservation Act (ANILCA).
 - f. Make recommendations on determinations of customary and traditional use of subsistence resources.
 - g. Make recommendations on determinations of rural status.
 - h. Provide recommendations on the establishment and membership of Federal local advisory committees.
5. **Agency or Official to Whom the Council Reports.** The Council reports to the Federal Subsistence Board Chair, who is appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture.
 6. **Support.** The U.S. Fish and Wildlife Service will provide administrative support for the activities of the Council through the Office of Subsistence Management.
 7. **Estimated Annual Operating Costs and Staff Years.** The annual operating costs associated with supporting the Council's functions are estimated to be \$125,000, including all direct and indirect expenses and .75 staff years.
 8. **Designated Federal Officer.** The DFO is the Subsistence Council Coordinator for the region or such other Federal employee as may be designated by the Assistant Regional Director - Subsistence, Region 7, U.S. Fish and Wildlife Service. The DFO is a full-time Federal employee appointed in accordance with Agency procedures. The DFO will:
 - Approve or call all of the Council and subcommittee meetings;
 - Prepare and approve all meeting agendas;
 - Attend all Council and subcommittee meetings;
 - Adjourn any meeting when the DFO determines adjournment to be in the public interest; and
 - Chair meetings when directed to do so by the official to whom the advisory committee reports.

9. Estimated Number and Frequency of Meetings. The Council will meet 1-2 times per year, and at such times as designated by the Federal Subsistence Board Chair or the DFO.

10. Duration. Continuing.

11. Termination. The Council is subject to biennial review and will terminate 2 years from the date the charter is filed, unless prior to that date, the Charter is renewed in accordance with the provisions of Section 14 of the FACA. The Council will not meet or take any action without a valid current charter.

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

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

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

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

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

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

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

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

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

//Signed//

Secretary of the Interior

DEC - 2 2011

Date Signed

DEC 03 2011

Date Filed