

SOUTHCENTRAL ALASKA Federal Subsistence Regional Advisory Council



USFWS

Hillside on the Kenai Peninsula.

Fisheries Meeting Materials

October 19, 2010

Cordova

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**SOUTHCENTRAL ALASKA SUBSISTENCE REGIONAL ADVISORY COUNCIL
OCTOBER 19, 2010
CORDOVA, ALASKA
MASONIC HALL
8:30 a.m. – 5:00 p.m.**

PUBLIC COMMENTS: Public comments are welcomed for each agenda item. Please fill out a comment form or be recognized by the Chair. Testimony time limits may be given to provide opportunity for all to testify and to keep on schedule.

PLEASE NOTE: Agenda is subject to change. Contact staff at the meeting for the current schedule.

Evening session may be called by the Chair of the Southcentral Regional Advisory Council.

AREA CONCERNS: The Regional Council arranges its meetings to hear and understand the subsistence concerns in the areas where it meets. Please share your subsistence concerns and knowledge. The agenda is an outline and is open to the area's subsistence concerns, listed or not.

DRAFT A G E N D A

- 1. **Call to Order** (*Ralph Lohse, Chair*)
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- D. U. S. Fish & Wildlife Service
- E. U. S. Forest Service
- F. Alaska Department of Fish and Game
- G. National Park Service
 - 1. Wrangell-St. Elias NP/P
 - a. Chisana Caribou Herd Management Plan Update
 - b. Fisheries Monitoring
 - c. Nabesna ORV EIS Draft Review
 - 2. Denali NP/P

13. Other Business

- A. Identify Council Topics for January 19-21, 2011 Board Meeting

14. Future Meeting Dates and Locations 95

- A. Winter 2011
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15. Adjourn

Persons with disabilities: *Special accommodations for persons with disabilities may be arranged by contacting Donald Mike, Regional Coordinator, toll free at 1-800-478-1456 ext. 3629 at least 72 hours prior to the meeting. Hearing or speech impaired individuals may call the Federal Relay Service at 1-800-877-8339 or 1-907-786-3595 TTY.*

Teleconferencing is available upon request. You must call the Office of Subsistence Management, 1-800-478-1456, 786-3888 or 786-3676, at least 72 hours prior to the meeting to receive this service. Please notify Donald Mike as to which agenda topic interests you and whether you wish to testify regarding it.

If you have a question regarding this agenda or need additional information, please contact Donald Mike toll free at 1-800-478-1456 ext. 3629 or 786-3888; or fax your comments to 907-786-3898.

REGION 2
Southcentral Alaska Subsistence Regional Advisory Council

Seat	Yr Apptd Term Expires	Member Name	City
1	2008 2010	Robert Henrichs	Cordova
2	2009 2010	Ricky Gease	Kenai
3	2003 2010	Doug Blossom	Clam Gulch
4	2003 2010	Greg Encelewski	Ninilchik
5	2006 2011	Tricia Waggoner	Palmer
6	2009 2012	Judith Caminer	Anchorage
7	2006 2011	John C. Lamb II	Hiline Lake
8	2003 2011	Gloria Stickwan	Tazlina
9	2008 2011	Donald Kompkoff, Sr.	Chenega
10	2003 2010	James Showalter	Sterling
11	1993 2012	Ralph Lohse, Chair	Lakina River
12	2003 2012	Tom Carpenter, Vice Chair	Cordova
13	1999 2012	Fred H. Elvsaaas	Seldovia

D R A F T

MINUTES

Southcentral Subsistence Regional Advisory Council

March 10-11 2010

Dimond Center Hotel

Anchorage, Alaska

COUNCIL MEMBERS

Doug Blossom, Greg Encelewski, John C. Lamb, Gloria Stickwan, Secretary;, James Showalter, Ralph Lohse, Chairman, Robert Henrich, Judy Caminer, Ricky Gease, Donald Kompkoff, Sr.,
Absent: Fred Elvsaaas, Tricia Waggoner

Council Coordinator: Donald Mike

Native & Nongovernmental Organizations and Public

Native Village of Eyak: Keith van der Broek, **MSTC:** Wilson Justin, **Chickaloon:** Kari Shagoff: **Knik:** Chief Paul B

PUBLIC: Austin Ahmasuk, Anchorage; Sky Starky

FEDERAL AGENCIES

U.S. Fish & Wildlife Service Office of Subsistence Management: Rod Campbell, Maureen Clark, Karen Hyer, Coleen Brown, David Jenkins, Spencer Rearden, Helen Armstrong, Polly Wheeler

Bureau of Indian Affairs: Pat Petrivelli, Warren Eastland

National Park Service: Barbara Cellarius, Dave Nelson, Judy Putera, Clarence Summers, Dave Mills

U. S. D. A. Forest Service: Steve Zemke, Jeff Bryden, Milo Burcham, Cal Casipit, Kevin Lowes

U.S. Fish & Wildlife Service: Todd Eskelin, Jerry Berg

ALASKA DEPARTMENT OF FISH AND GAME

George Pappas, Sherry Wright, Gino Del Frate

Bureau of Land Management: George Oviatt, Dan Sharp, Merben Cebrian

CALL TO ORDER Meeting called to order Chairman Lohse.

ROLL CALL Chairman Lohse requested the Coordinator call roll. Eleven Council members present, two absent. Quorum established.

INTRODUCTIONS Introduction of Council members, staff, agency, tribal organizations and public.

D R A F T

ELECTION OF OFFICERS

Nominations open for Chair. Chair Lohse turns gavel over to Vice Chair Carpenter to open the nomination for chair. Mr. Showalter nominates Mr. Lohse, second called by Mr. Gease. Question called, motion carries. Chair Lohse opens nominations for vice chair.

Mr. Kompkoff nominates Mr. Carpenter, second by Mr. Gease. Chair Lohse calls for other nominations, none called. Question called by Mr. Showalter, motion carries; Mr. Carpenter will serve as vice chair. Nominations now open for secretary.

Mr. Carpenter nominates Ms. Stickwan. Mr. Kompkoff calls for the second. Ms. Stickwan nominates Ms. Caminer and seconded by Mr. Gease. Move to close nomination by Mr. Showalter and second by Mr. Gease. Chair Lohse directs the Council to vote by paper for either Ms. Stickwan or Ms. Caminer. Council voted in favor of Ms. Stickwan as secretary.

REVIEW & ADOPTION OF AGENDA

Mr. Henrich requested to add the Federal Subsistence review and c&T use on marine mammals under other business. Mr. Gease added future meeting dates to change to not conflict with Alaska BOF meeting dates. In addition, add the 2010 census and how it impacts rural determination. Mr. Carpenter **moved** for the adoption of the agenda as modified. Mr. Lamb seconds the motion and question called by Mr. Kompkoff. Motion carries. second by Mr. Encelewski.

REVIEW & ADOPTION OF MINUTES

Mr. Carpenter **moved**, 2nd called by Mr. Showalter, to adopt the October 14, 2009 meeting minutes. Mr. Kompoff called for the questions to adopt the minutes.

Motion carries.

CHAIRS REPORT

Chairman Lohse briefed the Council that he attended with the other RAC chairs meeting with Mr. Pat Pourchet addressing the Federal subsistence review.

Other RAC member report: Mr. Henrich presented an overview with his other tribes visit with the Obama administration meeting with National tribal leaders.

ADMINISTRATIVE BUSINESS Overview of additional information presented to the Council.

D R A F T

FEDERAL SUBSISTENCE
WILDLIFE PROPOSALS

Chairman Lohse briefed the Council on the procedural process the Council will follow.

The following wildlife proposals are the final action taken by the Council for the Federal Subsistence Board to consider.

STATEWIDE PROPOSALS

WP10-01

Support proposal WP10-01 **with modification** The Council supported the proposal for a “drawing permit” definition as modified by OSM. This proposal, if adopted by the Board, will not negatively affect subsistence users.

WP10-03

Support proposal WP10-01 **with modification** and the modified proposed regulation should read:

§ ____ .25(g) Cultural/educational program permits

(1) A qualifying program must have instructors, enrolled students, minimum attendance requirements, and standards for successful completion of the course. Applications must ~~must~~ be submitted to the Federal Subsistence Board through the Office of Subsistence Management “and should be” submitted 60 days prior to the earliest desired date of harvest. Generally permits will be issued for no more than one large mammal per cultural/educational program, permits will be issued for no more than 25 fish per cultural/educational program, and permits for the harvest of shellfish will be addressed on a case by case basis. Any animals harvested will count against any established Federal harvest quota for the area in which harvested. Harvests must be reported and any animals harvested will count against any established Federal harvest quota for the area in which it is harvested.

(2) A permit to harvest fish, wildlife, or shellfish for a qualifying cultural/educational program which has been granted a Federal subsistence permit for a similar event within the previous 5 years may be issued by the Federal in-season manager (for fisheries) or the Federal local land manager (for wildlife). Requests for follow-up permits must be submitted to the in-season or local land manager and should be submitted 60 days prior to the earliest desired date of harvest.

D R A F T

The Council supported the proposal with amendments. The Council felt that its amendments provided more clarity, especially with respect to harvest limits. The proposal will not affect existing cultural camps and is consistent with existing regulations.

WP10-04

Support proposal WP10-04 **with modification** presented by OSM. The proposal will not impact subsistence users and no conservation concerns exist for the lynx population.

WP10-05

Support proposal WP10-05. This proposal is a housekeeping proposal that will not affect fish and wildlife populations and subsistence users.

Southcentral Regional Proposals

WP10-27

Oppose proposal WP10-27. If adopted by the Board, reduction in harvest will affect subsistence users. Currently, there is no conservation concern for the population and Federal and State management plans are in place to protect the Nelchina Caribou Herd from overharvest.

WP10-28

Oppose proposal WP10-28. The Council opposed the proposal to change the harvest limit to 1 antlered bull, as proposed; the proposal if adopted by the FSB will be more restrictive than current State regulations and will adversely affect subsistence users. No conservation concerns exist for the current moose population.

WP10-29/30

Support proposal WP10-29/30. Recommendations from Wrangell-St. Elias NP Subsistence Resource Commission, comments from the Ahtna Community, and the OSM staff analysis supported a positive customary and traditional use for brown and black bears in Unit 11 remainder for some rural residents of Unit 12. No conservation concerns exist for the brown and black bear population in Unit 11 remainder.

WP10-31

Support proposal WP10-31. The proponent demonstrated a customary and traditional pattern of use for moose and caribou in Unit 13E based on NPS documentation and the staff analysis presented in support of the request.

WP10-32a/32b

Support proposal WP10-32a. The communities of Hope and Sunrise exhibited rural characteristics and demonstrated a customary and traditional pattern of use of caribou in the area Unit 7.

Support proposal WP10-32b with **modification** and the modified proposed regulation should read:

D R A F T

Unit 7- *north of the Sterling Highway and west of the Seward Highway One caribou by Federal registration permit only. "Up to Five permits issued" ~~No Federal Open Season~~*

Aug. 10-Dec. 31

The Seward District Ranger is authorized to close the season ~~based on conservation concerns in consultation with ADF&G and the Chair of the Southcentral Alaska Subsistence Regional Advisory Council~~ "when five caribou are taken"

The season will be closed when the harvest limit of five caribou have been reached. This action will address the conservation concern to continue to protect the population when the limit has been reached. The total harvest limit of five caribou appears to be reasonable based on the staff analysis. Hope and Sunrise have a customary and traditional pattern of harvesting caribou in Unit 7.

WP10-33

Support proposal WP10-33. The residents of Hope and Sunrise, based on an analysis of the eight factors, have demonstrated a customary and traditional pattern of harvesting moose in Unit 7.

WP10-34

Support proposal WP10-34. The current wolverine population is stable and no conservation concern exists. Local trappers support having the wolverine season managed independently from the lynx season.

WP10-35

Oppose proposal WP10-35. The Native Village of Cantwell had changed its position on the proposal and opposed its own proposal. There was some concern that if the community supported its own proposal, they may lose access to the Ahtna Community Harvest hunt. The Council found this information compelling, so did not support the proposal even though Denali National Park staff continued to support it.

The late winter hunt, and easy access during the winter season, will affect the moose population in that area.

WP10-36/37/41

Oppose proposal WP10-36/37/41. No conservation concerns exist and the current wolf population is stable.

WP10-38

Oppose proposal WP10-38. No conservation concerns exist on the current wolf population and no public support for this proposal was provided.

WP10-39

Take No Action on WP10-39. The Council took no action on WP10-39 as stated in the OSM justification.

D R A F T

WP10-40

Support proposal WP10-40. There is little trapping activity in Unit 14C and conservation concerns are being addressed by changing the season and harvest limit. In addition, it will provide for some subsistence trapping opportunities in the area.

CROSSOVER PROPOSALS

WP10-87

Oppose proposal WP10-87. The Council opposed proposal WP10-87 to classify black bear as a furbearer, if adopted by the Board, the proposed regulation will create further confusion among subsistence users in Units 12, 20, and 25. The Alaska Board of Game adopted a parallel statewide regulation change that applies to all Federal public lands except National Parks to classify black bear as a furbearer.

WP10-90

Support proposal WP10-90. The information provided supports the proposal to recognize customary and traditional use of caribou in Units 13B and 13C by some residents of Unit 12.

WP10-97/98/99/100

Defer proposals WP10-97/98/99/100 to the Eastern Interior Subsistence Regional Advisory Council.

WP10-102

Oppose proposal WP10-102. The Council opposed the proposal based on conservation concerns and to protect the Mentasta Caribou Herd. The Council supported the Eastern Interior RAC rationale to oppose. Other opportunities exist to harvest caribou from the Forty Mile Caribou Herd.

WP10-103

Oppose proposal WP10-103. The Council opposed the proposal based on conservation concerns and to protect the Mentasta Caribou Herd, and supported the Eastern Interior RAC rationale to oppose. Other opportunities exist to harvest caribou from the Forty Mile Caribou Herd.

WP10-104

Oppose proposal WP10-104. Opening a hunt for the Chisana Caribou Herd is premature. A final management plan for the herd is not in place and the 2010 aerial survey will not be completed until fall 2010. A small harvest from the herd has the potential to threaten the existing population. The Council supported the idea of a local user being added to the planning effort. Additionally, opening a hunt on the Chisana Herd could also threaten the Mentasta Caribou Herd which is currently closed for harvest and further reduce that population. The Chisana Caribou Herd home range is within Federal public lands, therefore, before opening a season managers must consider a season for some Federally

D R A F T

qualified rural residents. The Council thought that if a hunt were to be opened, an ANILCA 804 analysis might have to be developed.

2009 Annual Report

The Council approved the topics for its 2009 annual report. 1) Meeting Windows: Conflict with moose hunting season, 2) Pillar for Sustainability for rural economy on Federal lands, 3) Future regulatory proposals, 4) Support for the Russian River Subsistence Fishery 5) Support for the FRMP, 6) Secretarial Subsistence review, 7) Support for RAC coordinators.

Other Business

The Council discussed the 2010 census timeline and how it affects the rural determination process.

The Council discussed marine mammals specifically sea otter pelts. Artists should be able to make handicrafts out of sea otter pelts without question to their blood quantum, Alaska Native. Encourage change or amendments to the marine mammal act to enact regulations similar to the State of Alaska Silver hand program.

Agency Reports

The Council listened to reports from various Federal and State agencies.

**Location/Time
Of Next meeting**

The Council selected its fall meeting date of September 28-29, 2010 in Cordova. The winter meeting will be March 16-17, 2010 in Cordova.

Adjournment

Mr. Kompkoff moved to adjourn the Southcentral RAC meeting. Motion carries.

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

Donald Mike, DFO
USFWS Office of Subsistence Management

Ralph Lohse, Chair
Southcentral Subsistence Regional Advisory Council

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

For a more detailed report of this meeting, copies of the transcript and meeting handouts are available upon request. Call Donald Mike at 1-800-478-1456 or 786-3629, email donald_mike@fws.gov



U.S. FISH and WILDLIFE SERVICE
BUREAU of LAND MANAGEMENT
NATIONAL PARK SERVICE
BUREAU of INDIAN AFFAIRS
FWS/OSM 10056/AW

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



JUL 1 2010

Mr. Ralph E. Lohse, Chair
Southcentral Alaska Subsistence
Regional Advisory Council
Post Office Box 14
Cordova, Alaska 99574

Dear Mr. Lohse:

Enclosed with this letter is a report of the Federal Subsistence Board's actions at its May 18-20, 2010, meeting regarding proposed changes to subsistence fisheries regulations. The Board used a consensus agenda on those proposals where the Regional Advisory Council(s), the Interagency Staff Committee, and the Alaska Department of Fish and Game were in agreement. The Board adopted the consensus agenda at the conclusion of the meeting. Details of these actions and the Board's deliberations are contained in the meeting transcripts. Copies of the transcripts may be obtained by calling our toll free number, 1-800-478-1456, and are available online at the Office of Subsistence Management website, <http://alaska.fws.gov/asm/index.htm>.

The Federal Subsistence Board appreciates the Southcentral Alaska Subsistence Regional Advisory Council's active involvement in and diligence with the regulatory process. The ten Regional Advisory Councils continue to be the foundation of the Federal Subsistence Management Program, and the stewardship shown by the Regional Advisory Council chairs and their representatives at the Board meeting was noteworthy.

If you have any questions regarding the summary of the Board's actions, please contact Donald Mike, 1-907-786-3629.

Sincerely,

/S/ Michael R. Fleagle

Michael R. Fleagle, Chair *U*

Enclosure

cc: Southcentral Alaska Subsistence Regional Advisory Council members
Peter J. Probasco, OSM

**FEDERAL SUBSISTENCE BOARD ACTION REPORT
MAY 18-20, 2010**

Note to Reader: 1) Changes to regulatory language are shown by strikeout **lettering** for deleted language and bolded **lettering** for new language. 2) The consensus agenda is comprised of proposals for which the Office of Subsistence Management, Regional Advisory Council(s), the Interagency Staff Committee, and the Alaska Department of Fish and Game agree on a recommended action. The Federal Subsistence Board does not address consensus agenda proposals individually unless requested to do so at the meeting.

STATEWIDE PROPOSALS

Proposal WP10-01

DESCRIPTION: Proposal WP10-01, submitted by the USFWS, Office of Subsistence Management (OSM), requests the addition of a definition for “drawing permit” to the Federal subsistence management regulations.

COUNCIL RECOMMENDATION/JUSTIFICATION:

Southeast Alaska SRAC: Support with modification as described in the OSM conclusion. This proposal is housekeeping and provides clarity for a term in common use.

Southcentral Alaska SRAC: Support with modification as described in the OSM conclusion. This proposal would not negatively affect subsistence users.

Kodiak/Aleutians SRAC: Support with modification as described in the OSM conclusion.

Bristol Bay SRAC: Support with modification as described in the OSM conclusion.

Yukon-Kuskokwim Delta SRAC: Support with modification as described in the OSM conclusion. This is a housekeeping proposal to clarify random drawing.

Western Interior Alaska SRAC: Support with modification as described in the OSM conclusion.

Seward Peninsula SRAC: Support with modification as described in the OSM conclusion. The Council agrees with clarifying definitions for “drawing permits.”

Northwest Arctic SRAC: Support. The Council supported the proposal because subsistence is a way of life and there are concerns about having to use a drawing permit.

Eastern Interior Alaska SRAC: Support with modification as described in the OSM conclusion. This proposal is housekeeping and would simplify and clarify regulations.

North Slope SRAC: Support. Subsistence is a way of life and there are concerns about having to use a drawing permit.

BOARD ACTION/JUSTIFICATION: **Adopted with modification**, as recommended by eight councils to read, “*Statewide-General Regulations §__ .25(a) Definitions. Drawing permit—a permit issued to a limited number of Federally qualified subsistence users selected by means of a random drawing.*” The definition clarifies a term that is used in the Federal subsistence hunting regulations and does not affect fish and wildlife populations, subsistence uses or other

uses. The modified wording simplifies the definition and makes it clear that drawing permits are based on a random drawing for all similarly situated Federally qualified subsistence users.

Proposal WP10-02

NOTE: The status of Proposal WP10-02 (deferred proposal WP08-05) was presented to all Regional Advisory Councils during the winter 2010 cycle of meetings. This proposal was further deferred until the assigned State-Federal workgroup completes its work and presents its findings to the Board in January 2011. The Southeast Alaska SCRAC was the only council that took action on the proposal.

COUNCIL RECOMMENDATION/JUSTIFICATION:

Southeast Alaska SRAC: Support use of brown bear parts for handicrafts. There is no evidence to indicate the need for a bear handicrafts workgroup or a need to limit or restrict the use of brown bear parts. There is no need to defer action.

BOARD ACTION/JUSTIFICATION: The Board did not address this proposal, preferring instead to wait until the workgroup has completed its work.

Proposal WP10-03

DESCRIPTION: Proposal WP10-03, submitted by the Office of Subsistence Management, requests the addition of a general provision in Federal subsistence management regulations to allow the harvest of fish and wildlife by participants in a cultural or educational program.

COUNCIL RECOMMENDATION/JUSTIFICATION:

Southeast Alaska SRAC: Support with modification as described in the OSM conclusion. The Council favors removing confusing language regarding the ceremonial use of fish and wildlife. However, it is unclear to the Council how OSM would define an educational camp. The Council favors simplifying regulations that do not include hard timelines and that provide flexibility in the number of animals that can be taken.

Southcentral Alaska SRAC: Support with modification to read “§~~___~~.27(e) §~~___~~.25(g) *Cultural/educational program permits. (2)(1) The U.S. Fish and Wildlife Service Office of Subsistence Management may issue a permit to harvest fish for a qualifying cultural/educational program to an organization that has been granted a Federal subsistence permit for a similar event with the previous 5 years. A qualifying program must have instructors, enrolled students, minimum attendance requirements, and standards for successful completion of the course. Applications must be submitted to the Federal Subsistence Board through the Office of Subsistence Management and should be submitted 60 days prior to the earliest desired date of harvest. Permits will be issued for no more than 25 fish per culture/education camp. Appeal of a rejected request can be made to the Federal Subsistence Board. Application for an initial permit for a qualifying cultural/educational program, for a permit when the circumstances have change significantly, when no permit has been issued within the previous 5 years, or when there is a request for harvest in excess of that provided in this paragraph (e)(2), will be considered by the Federal Subsistence Board. Harvest must be reported and any animals harvested will be*

counted against any established Federal harvest quota for the area in which it is harvested. (2) A permit to harvest fish, wildlife, or shellfish for a qualifying culture/educational program which has been granted a Federal subsistence permit for a similar event with the previous 5 years may be issued by the Federal in-season manager (for fisheries) or the Federal local land manager (for wildlife). Requests for follow-up permits must be submitted to the in-season or local land manager and should be submitted 60 days prior to the earliest desired date of harvest.” These amendments provide more clarity, especially with respect to harvest limits.

The proposal will not affect existing culture camps and is consistent with existing regulations. Kodiak/Aleutians SRAC: Support with modification as described in the OSM conclusion. The modified proposal will simplify the process.

Bristol Bay SRAC: Support with modification as described in the OSM conclusion. The proposal would simplify the current regulations to reduce confusion among the public and Federal managers.

Yukon-Kuskokwim Delta SRAC: Support with modification as described in the OSM conclusion. This is a housekeeping proposal; adding general provisions in the regulations would clarify subsistence management regulations.

Western Interior Alaska SRAC: Support with modification as described in the OSM conclusion.

Seward Peninsula SRAC: Support with modification as described in the OSM conclusion.

Northwest Arctic SRAC: Support with modification as described in the OSM conclusion. It is very important to provide opportunity for cultural/educational programs permits.

Eastern Interior Alaska SRAC: Support with modification as described in the OSM conclusion. This proposal supports subsistence uses of wildlife and retains the ability to obtain permits with less than a 60-day notice. The Council suggested further simplification by asking the Federal Subsistence Management Program to work with the Alaska Department of Fish and Game to develop a joint Federal-State permit.

North Slope SRAC: Support with modification as described in the OSM conclusion. It is very important to provide opportunity for cultural/educational programs permits.

BOARD ACTION/JUSTIFICATION: Adopted with modification, as recommended by nine councils, to read, §____.25(g) ***Cultural/educational program permits (1) A qualifying program must have instructors, enrolled students, minimum attendance requirements, and standards for successful completion of the course. Applications must be submitted to the Federal Subsistence Board through the Office of Subsistence Management and should be submitted 60 days prior to the earliest desired date of harvest. Harvests must be reported and any animals harvested will count against any established Federal harvest quota for the area in which it is harvested. (2) Requests for follow-up permits must be submitted to the in-season or local manager and should be submitted 60 days prior to the earliest desired date of harvest.***

The harvest of fish and wildlife by participants in cultural and educational programs is generally allowed in the Federal Subsistence Management Program regulations. Proposal WP10-03 will further clarify for fish and wildlife manager, Office of Subsistence Management staff, members of the Interagency Staff Committee, and members of the Federal Subsistence Board the cultural and educational permit regulations.

Proposal WP10-04

DESCRIPTION: Proposal WP10-04, submitted by the Office of Subsistence Management, would remove Units 6, 12, 20A, 20B, 20C east of the Teklanika River, 20D, and 20E from the areas for which the Assistant Regional Director for Subsistence Management has the delegated authority to open close or adjust Federal subsistence lynx seasons and to set harvest and possession limits.

COUNCIL RECOMMENDATION/JUSTIFICATION:

Southeast Alaska SRAC: No action taken.

Southcentral Alaska SRAC: Support with modification as described in the OSM conclusion. The proposed action would not impact subsistence users and there are no conservation concerns for the lynx population.

Kodiak/Aleutians SRAC: No action taken. The Council did not want to take action on a proposal that would affect another region.

Bristol Bay SRAC: Support with modification as described in the OSM conclusion. The Council supports Federal and State alignment of regulations that enhance the management of resources, reduce confusion for the public, and allow subsistence uses to continue.

Yukon-Kuskokwim Delta SRAC: Support with modification as described in the OSM conclusion. This is a housekeeping proposal and has no impact on the Yukon-Kuskokwim Delta Region.

Western Interior Alaska SRAC: Support with modification as described in the OSM conclusion.

Seward Peninsula SRAC: No action taken. The proposed action would not affect the Seward Peninsula Region.

Northwest Arctic SRAC: Oppose.

Eastern Interior Alaska SRAC: Support. This proposal could be considered housekeeping in that the ability to adjust seasons is still possible and this change would simplify regulations.

North Slope SRAC: Support with modification to delete the regulatory language found in § __.26(f)(3) and delegate the authority to open, close, or adjust Federal lynx seasons and to set harvest and possession limits for lynx via a delegation of authority letter only.

BOARD ACTION/JUSTIFICATION: **Adopted with modification** to delete the regulatory language found in § __.26 (f)(3), and delegate the authority to open, close, or adjust Federal lynx seasons and to set harvest and possession limits for lynx via a delegation of authority letter only, consistent with five of the Councils' recommendations.

Proposal WP10-05

DESCRIPTION: Proposal WP10-05, submitted by the Office of Subsistence Management, seeks to update, clarify, and simplify the regulations regarding accumulation of harvest limits for both fish and wildlife.

COUNCIL RECOMMENDATION/JUSTIFICATION:

Southeast Alaska SRAC: Support. This proposal is housekeeping and necessary to accommodate previous changes to Federal regulations.

Southcentral Alaska SRAC: Support. This is a housekeeping proposal that would not affect fish and wildlife populations and subsistence users.

Kodiak/Aleutians SRAC: Support.

Bristol Bay SRAC: Support. The proposal will not impact subsistence users and will not affect fish and wildlife populations.

Yukon-Kuskokwim Delta SRAC: Support. This is a housekeeping proposal that would benefit subsistence users.

Western Interior Alaska SRAC: Support.

Seward Peninsula SRAC: Support. The Council agrees with simplifying and clarifying wording for accumulations of harvest limits. This proposal does not affect the Seward Peninsula Region.

Northwest Arctic SRAC: Oppose. The Council expressed concerns about the State management program in relation to the Federal program.

Eastern Interior Alaska SRAC: Support. This proposal is housekeeping and would clarify current regulations.

North Slope SRAC: Support. This proposal does not change Federal subsistence regulations for the North Slope Region concerning accumulation of harvest limits or the timeframe for harvest limits.

BOARD ACTION/JUSTIFICATION: **Adopted**, as recommended by nine of the Councils. This action will simplify the regulations.

SOUTHCENTRAL REGION

Proposal WP10-27

DESCRIPTION: Proposal WP10-27, submitted by the Paxson Fish and Game Advisory Committee, requests that the harvest limit of 2 caribou in nits 13A and 13B and the harvest limit of 2 bulls in Unit 13 remainder be changed to 1 caribou for all of Unit 13. In addition, the proponent requests that the authority delegated to the Glennallen Field Office Manager of the Bureau of Land Management to announce the sex of the animals to be harvested be rescinded.

COUNCIL RECOMMENDATION/JUSTIFICATION:

Southcentral Alaska SRAC: Oppose. If adopted by the Board, reduction in harvest will affect subsistence users. Currently, there is no conservation concern for the population and Federal and State management plans are in place to protect the Nelchina Caribou Herd from overharvest.

Eastern Interior Alaska SRAC: Oppose. The Council determined that it is premature to know if land selections in this area may result in significantly more Federal land under Federal jurisdiction which may result in additional caribou harvest. The herd is healthy and is currently capable of supporting a two caribou limit.

BOARD ACTION/JUSTIFICATION: **Rejected**, as recommended by the Southcentral Alaska and the Eastern Interior Alaska Subsistence Regional Advisory Councils. There are no conservation concerns, the herd is healthy. It is unlikely that the BLM lands will be conveyed before the next wildlife cycle. After conveyances are completed, the Board may review the situation.

Proposal WP10-28

DESCRIPTION: Proposal WP10-28, submitted by the Paxson Fish and Game Advisory Committee, requests that the harvest limit of 1 antlered bull moose be changed to 1 antlered bull per household for Unit 13B and that the season be changed from August 1–September 20 to August 20–September 20.

COUNCIL RECOMMENDATION/JUSTIFICATION:

Southcentral Alaska SRAC: Oppose. The proposal would be more restrictive than current State regulations and will adversely affect subsistence users. No conservation concerns exist for the current moose population.

Eastern Interior Alaska SRAC: Oppose. The Council determined that there is no evidence to support this proposal. There is no reason to shift the moose hunting season into the breeding season.

BOARD ACTION/JUSTIFICATION: **Rejected**, as recommended by the Southcentral Alaska and the Eastern Interior Alaska Subsistence Regional Advisory Councils. There are no conservation concerns, the herd is healthy. It is unlikely that the BLM lands will be conveyed before the next wildlife cycle. After conveyances are completed, the Board may review the situation.

Proposals WP10-29/30

DESCRIPTION: Proposals WP10-29/30, submitted by the Wrangell-St. Elias Subsistence Resource Commission, request a positive customary and traditional use determination for brown bear and black bear in the Unit 11 remainder area for some rural residents of Unit 12: Tok Cutoff Road (mileposts 79-110, Mentasta Pass) and Nabesna Road (mileposts 25-46).

COUNCIL RECOMMENDATION/JUSTIFICATION:

Southcentral Alaska SRAC: Support. Recommendations from Wrangell-St. Elias Subsistence Resource Commission, comments from the Ahtna Community, and the OSM staff analysis supported a positive customary and traditional use for brown and black bears in Unit 11 remainder for some rural residents of Unit 12. No conservation concerns exist for the brown and black bear population in Unit 11 remainder.

Eastern Interior Alaska SRAC: Support. The Council determined that communities located along the road system generally exhibited the same use patterns of other adjacent communities. These communities should have the same customary and traditional use determination as the adjacent communities.

BOARD ACTION/JUSTIFICATION: **Adopted**. This proposal was on the consensus agenda.

Proposal WP10-31

DESCRIPTION: Proposal WP10-31, submitted by Kevin Mayo of Healy, requests an individual customary and traditional use determination for moose and caribou in Unit 13E. In areas managed by the National Park Service where subsistence uses are allowed, customary and traditional use determinations may be made on individual basis.

COUNCIL RECOMMENDATION/JUSTIFICATION: Support. The proponent demonstrated a customary and traditional pattern of use for moose and caribou in Unit 13E based on NPS documentation and the staff analysis presented in support of the request.

BOARD ACTION/JUSTIFICATION: **Adopted.** This proposal was on the consensus agenda.

Proposal WP10-32a

DESCRIPTION: Proposal WP10-32a, submitted by Paul Genne and Dennis Ressler of Hope, requests a positive customary and traditional use determination for Hope and Sunrise for caribou in Unit 7.

COUNCIL RECOMMENDATION/JUSTIFICATION: Support. The communities of Hope and Sunrise exhibited rural characteristics and demonstrated a customary and traditional pattern of use of caribou in Unit 7.

BOARD ACTION/JUSTIFICATION: **Adopted**, as recommended by the Southcentral Alaska Subsistence Regional Advisory Council. There is a proven pattern of use that was prevented by circumstances over which residents of the communities had no control. This action will provide a priority to Federally qualified subsistence users.

Proposal WP10-32b

DESCRIPTION: Proposal WP10-32b, submitted by Paul Genne and Dennis Ressler of Hope, requests that a caribou harvest season and limit be established in Unit 7 (if the Board adopts WP10-32a).

COUNCIL RECOMMENDATION/JUSTIFICATION: Support with modification to read:

Unit 7—Caribou

*North of the Sterling Highway and west
of the Seward Highway—One caribou by Federal
registration permit only.*

*No Federal Open Season
Aug. 10-Dec. 31*

*The Seward District Ranger is authorized to close the season
when a total of five caribou are harvested.*

The season will be closed when the harvest limit of five caribou has been reached. This action will address the conservation concern to continue to protect the population when the limit has been reached. The total harvest limit of five caribou appears to be reasonable based on the staff analysis. Hope and Sunrise have a customary and traditional pattern of harvesting caribou in Unit 7.

BOARD ACTION/JUSTIFICATION: **Adopted with the modification** recommended by the Southcentral Alaska Subsistence Regional Advisory Council.

Proposal WP10-33

DESCRIPTION: Proposal WP10-33, submitted by Paul Genne and Dennis Ressler of Hope, requests a positive customary and traditional use determination for residents of Hope and Sunrise for moose in Unit 7.

COUNCIL RECOMMENDATION/JUSTIFICATION: Support. The residents of Hope and Sunrise, based on an analysis of the eight factors, have demonstrated a customary and traditional pattern of harvesting moose in Unit 7.

BOARD ACTION/JUSTIFICATION: **Adopted**, as recommended by the Southcentral Alaska Subsistence Regional Advisory Council.

Proposal WP10-34

DESCRIPTION: Proposal WP10-34, submitted by Corey Schwanke of Glennallen, requests that the wolverine season be managed independently from the lynx season in Unit 11.

COUNCIL RECOMMENDATION/JUSTIFICATION: Support. The current wolverine population is stable and no conservation concern exists. Local trappers support having the wolverine season managed independently from the lynx season.

BOARD ACTION/JUSTIFICATION: **Adopted**, as recommended by the Southcentral Alaska Subsistence Regional Advisory Council. Tying the wolverine and lynx seasons together does not benefit users; there are no conservation concerns.

Proposal WP10-35

DESCRIPTION: Proposal WP10-35, submitted by the Native Village of Cantwell, requests that the harvest limit of 1 antlered bull moose for Unit 13E be extended to Traditional Use Areas in Denali National Park and that an additional harvest season be established from December 1–January 15.

COUNCIL RECOMMENDATION/JUSTIFICATION: Oppose. The Native Village of Cantwell changed its position and opposed its own proposal. There was some concern that if the community supported its own proposal, it may lose access to the Ahtna community harvest hunt. The Council found this information compelling, so did not support the proposal even though Denali National Park staff continued to support it. The late winter hunt and easy access during the winter season will affect the moose population in that area.

BOARD ACTION/JUSTIFICATION: The Board took **no action** on WP10-35 after hearing the Native Village of Cantwell's request to withdraw the proposal.

Proposals WP10-36/37/41

DESCRIPTION: Proposals WP10-36 and 37, submitted by the Defenders of Wildlife in conjunction with the Alaska Wildlife Alliance, seek to shorten wolf seasons and lower harvest limits for wolves in Unit 13D. Proposal 41, submitted by the Alaska Wildlife Alliance, seeks to close the Unit 14C wolf hunting season.

COUNCIL RECOMMENDATION/JUSTIFICATION: Oppose. No conservation concerns exist and the current wolf population is stable.

BOARD ACTION/JUSTIFICATION: **Rejected**. These proposals were on the consensus agenda.

Proposal WP10-38

DESCRIPTION: Proposal WP10-38, submitted by the Defenders of Wildlife in conjunction with the Alaska Wildlife Alliance, seeks to shorten wolf hunting seasons in Units 11 and 12.

COUNCIL RECOMMENDATION/JUSTIFICATION:

Southcentral Alaska SRAC: Oppose. No conservation concerns exist on the current wolf population and no public support for this proposal was provided.

Eastern Interior Alaska SRAC: Oppose. All public and advisory committee comments were in opposition to this proposal. There is no conservation issue for wolves and this would be an unnecessary restriction on subsistence use.

BOARD ACTION/JUSTIFICATION: **Rejected**. This proposal was on the consensus agenda.

Proposal WP10-39

DESCRIPTION: Proposal WP10-39, submitted by the Alaska Department of Fish and Game, requests that Federal subsistence regulations be clarified to show the requirements for harvest salvage, reporting, and sealing for Dall sheep in Units 11 and 12.

COUNCIL RECOMMENDATION/JUSTIFICATION:

Southcentral Alaska SCRAC: No action taken. The Council took no action for reasons stated in the OSM justification.

Eastern Interior Alaska SCRAC: This proposal is unnecessary because there already is a sealing requirement on the harvest permit.

BOARD ACTION/JUSTIFICATION: **No Action**. This proposal was on the consensus agenda.

Proposal WP10-40

DESCRIPTION: Proposal WP10-40, submitted by the Alaska Department of Fish and Game, requests that the wolverine trapping season in Unit 14C be changed from November 10—February 28 to November 10—January 31 and that the harvest limit be changed to 2 wolverines.

COUNCIL RECOMMENDATION/JUSTIFICATION: Support. There is little trapping activity in Unit 14C and conservation concerns are being addressed by changing the season and harvest limit. In addition, the proposal would provide for some subsistence trapping opportunities in the area.

BOARD ACTION/JUSTIFICATION: **Adopted**. This proposal was on the consensus agenda.

CROSSOVER PROPOSALS

Proposal WP10-87

DESCRIPTION: Proposal WP10-87, submitted by the Eastern Interior Alaska Subsistence Regional Advisory Council, requests black bear be added to the species list for furbearers for Units 12, 20, and 25.

COUNCIL RECOMMENDATION/JUSTIFICATION:

Eastern Interior Alaska SRAC: Support. There was testimony at the meeting that the ADF&G has plans to submit a trapping proposal at the November Board of Game meeting. Recent action by the State Board of Game defined black bears as furbearers statewide to allow sale of hides and other parts (except gall bladders). Council determined that supporting this proposal would align Federal and State regulations and would benefit subsistence users.

Southcentral Alaska SRAC: Oppose. The proposal would create further confusion for the subsistence users in Units 12, 20, and 25. The Alaska Board of Game adopted a parallel statewide regulation change that applies to all Federal public lands except National Parks to classify the black bear as a furbearer.

BOARD ACTION/JUSTIFICATION: **Rejected**, as recommended by the Southcentral Alaska Subsistence Regional Advisory Council but in opposition to the recommendation of the Eastern Interior Alaska Subsistence Regional Advisory Council. This proposal raised a number of

conservation issues: the likelihood of increased harvest, the lower reproductive rates of black bears compared to other furbearing species, and the infrequency of monitoring in the area. The proposed action is inconsistent with accepted principles of wildlife conservation.

Proposal WP10-90

DESCRIPTION: Proposal WP10-90, submitted by the Eastern Interior Alaska Subsistence Regional Advisory Council, requests the addition of some of the residents of Unit 12, the Tok Cutoff Road (milepost 79-110 Mentasta Pass), to the list of those communities and residents with a customary and traditional use determination for caribou in Units 13B and 13C.

COUNCIL RECOMMENDATION/JUSTIFICATION:

Eastern Interior Alaska SRAC: Support. The Council determined that residents of this area have the same characteristics of the nearby communities of Slana and Mentasta Lake. Simply because some people reside near a road should not preclude them from the subsistence use of caribou. Harvest records are tabulated by address and many residents of this section of the highway have mailing addresses in Tok, Mentasta, or Gakona.

Southcentral Alaska SRAC: Support. The information provided supports the proposal to recognize customary and traditional use of caribou in Units 13B and 13C by some resident of Unit 12.

BOARD ACTION/JUSTIFICATION: **Adopted**. This proposal was on the consensus agenda.

Proposals WP10-97/98/99/100

DESCRIPTION: Proposals WP10-97/98/99/100, submitted by the Defenders of Wildlife in conjunction with the Alaska Wildlife Alliance, seek to shorten wolf seasons and lower harvest limits for wolves in Units 20A, 12, and 25A.

COUNCIL RECOMMENDATION/JUSTIFICATION:

Eastern Interior Alaska SRAC: Oppose. The Council determined that wolf populations are healthy in these areas and there is no evidence presented that would be a reason to restrict subsistence use.

Southcentral Alaska SRAC: Defer to the Eastern Interior Alaska Subsistence Regional Advisory Council.

BOARD ACTION/JUSTIFICATION: **Rejected**. These proposals were on the consensus agenda.

Proposal WP10-102

DESCRIPTION: Proposal WP10-102, submitted by the Upper Tanana/40 Mile Fish and Game Advisory Committee, requests the Unit 12 remainder harvest limit for caribou during the winter season (October 1—April 30) be increased from one caribou to two caribou. The sex of the animals allowed to be taken would continue to be announced by the Tetlin National Wildlife Refuge manager in consultation with other State and Federal agencies involved in Nelchna Caribou Herd management.

COUNCIL RECOMMENDATION/JUSTIFICATION:

Eastern Interior Alaska SRAC: Oppose. Although limiting the harvest to only bull caribou would tend to minimize the negative effects of this proposal on Mentasta caribou, the Council felt that there was unacceptable risk to the health of the herd if the proposal was adopted. Adopting this proposal would result in an unnecessary conservation issue.

Southcentral Alaska SRAC: Oppose. The Council has conservation concerns and wants to protect the Mentasta Caribou Herd. The Council supports the Eastern Interior Alaska Subsistence Regional Advisory Council's rationale to oppose. Other opportunities exist to harvest caribou from the Forty-Mile Caribou Herd.

BOARD ACTION/JUSTIFICATION: Rejected. This proposal was on the consensus agenda.

Proposal WP10-103

DESCRIPTION: Proposal WP10-103, submitted by Michael Cronk of Tok, requests the winter Federal caribou hunting season for Unit 12 remainder be opened by regulation October 21 and remain open until closed by the Tetlin National Wildlife Refuge manager in consultation with other Federal and State staff, councils, and committees. The harvest limit would stay at one caribou.

COUNCIL RECOMMENDATION/JUSTIFICATION:

Eastern Interior Alaska SRAC: Oppose. Monitoring efforts of the migratory trends of Mentasta and other caribou herds indicate there is likely some mixing of populations in the fall. The local manager must retain the flexibility to open and close the hunt as necessary for conservation.

Southcentral Alaska SRAC: Oppose. The Council has conservation concerns and wants to protect the Mentasta Caribou Herd. The Council supports the Eastern Interior Alaska Subsistence Regional Advisory Council's rationale to oppose. Other opportunities exist to harvest caribou from the Forty-Mile Caribou Herd.

BOARD ACTION/JUSTIFICATION: Rejected. This proposal was on the consensus agenda.

Proposal WP10-104

DESCRIPTION: Proposal WP10-104, submitted by the Upper Tanana/40 Mile Fish and Game Advisory Committee, requests that a joint Federal-State draw permit hunt for the Chisana Caribou Herd be established in Unit 12 beginning in Fall of 2011. The harvest quota would be in accordance with the recommendations of the Chisana Caribou Herd Management Plan, the harvest limit would be one bull and the hunting season would be September 1—September 30. A portion of the permits would be issued to Federal-qualified subsistence hunters for a Federal hunt and the remainder of the permits would be issued to Alaska residents and nonresidents for a State hunt.

COUNCIL RECOMMENDATION/JUSTIFICATION:

Eastern Interior Alaska SRAC: Support. The Council determined there was no reason to defer this proposal. Although population assessments are not available as yet for 2010, there is sufficient information to support the Chisana Caribou Herd Management Plan. The Council supported a similar recommendation for a parallel State regulation (**State 18**) and is generally in favor of joint management planning.

Southcentral Alaska SRAC: Oppose. Opening a hunt for the Chisana Caribou Herd is premature. A final management plan for the herd is not in place and the 2010 aerial survey will not be completed until fall 2010. A small harvest from the herd has the potential to threaten the existing population. The Council supported the idea of a local user being added to the planning effort. Additionally, opening a hunt on the Chisana Herd could also threaten the Mentasta Caribou Herd which is currently closed for harvest and further reduce that population. The Chisana Caribou Herd home range is within Federal public lands, therefore, before opening a season managers must consider a season for some Federally-qualified rural residents. The Council thought that if a hunt were to be opened, an ANILCA 804 analysis might have to be developed.

BOARD ACTION/JUSTIFICATION: **Deferred** until no later than the next wildlife cycle. This will allow time for the Chisana Caribou Herd Management Plan, 2010-2015, to be completed.



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

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



FWS/OSM 10070/AW

JUL 22 2010

Mr. Ralph Lohse, Chair
Southcentral Alaska Subsistence
Regional Advisory Council
Post Office Box 14
Cordova, Alaska 99574

Dear Mr. Lohse:

This letter responds to the Southcentral Alaska Subsistence Regional Advisory Council's 2009 Annual Report. The Federal Subsistence Board (Board) appreciates your effort in developing the Annual Report and values the opportunity to review the issues brought forward concerning your region. Annual Reports allow the Board to become more aware of the issues that fall outside the regulatory proposal process and affect subsistence users in your region.

The responsibility to respond to these reports has been delegated to the Board by the Secretaries of the Interior and Agriculture. The Board has reviewed your Annual Report and offers the following responses.

Issue 1: Meeting Window: Conflict with Fall Hunting Moose Season

Council members, recognizing the busy schedule of its members and their families during the fall harvest season, in addition to participating in civic duty responsibilities to address subsistence related management issues in a public forum setting, recommend that Federal Subsistence Management Program avoid scheduling public meetings for the fall meeting sessions.

Response

We do our best to schedule meetings outside of key times of year for subsistence users. Unfortunately, we are also bound by our regulatory requirements, which call for publication of a proposed rule, a public comment period, and then development of staff analyses on proposals that are then provided to the Regional Advisory Councils for their review and recommendations. This process is necessary for new wildlife or fisheries regulations to be published by April (in odd years for fisheries regulations) or July (in even years for wildlife regulations) of each regulatory year. I recognize that this timing can conflict with subsistence activities, but I believe that the Federal Subsistence Management Program has tried to strike a balance between subsistence

Mr. Ralph Lohse

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schedules and regulatory requirements. One of the ways that this is accomplished is through establishing council meeting windows.

Regional Advisory Councils are encouraged to use the window to plan a year in advance to avoid dates that may conflict with events in which Council members are involved. If necessary and approved by the Office of Subsistence Management, the Council may meet outside the published meeting window calendar. The Board will make an effort to accommodate the Council's needs but must follow the timeline established to meet regulatory requirements.

Issue 2: Pillar for Sustainability for Rural Economy on Federal Lands

The Council represents subsistence users and will continue its efforts through recommendations on fish and wildlife proposals to the Federal Subsistence Board to provide and protect subsistence opportunities for rural Alaska residents to sustain rural economies. The Council recommends the Board not place undue burden on rural subsistence users in the use of the natural resources that are available for rural residents to use for economic growth and stimulus. The Council also encourages the use of natural resources including plants, animal parts, and wood and furbearer hides in local industry to sustain rural economies.

Response

The Board is aware of and shares in the Council's interest in protecting and providing for the subsistence uses of natural resources by Federally qualified users. In general, the Board has focused on protecting subsistence uses of fish and wildlife on Federal public lands, although the Board is aware that ANILCA Section 802(2) specifically states that the "nonwasteful subsistence uses of fish and wildlife and other renewable resources shall be the priority consumptive use of all such resources on public lands in Alaska..." (emphasis added). The Board recognizes the importance of wild renewable resources such as plants, berries, wood, shed antlers, etc. to subsistence users. The Board, and the agencies that comprise the Federal Subsistence Management Program also recognize the importance of these resources to rural Alaska economies, and are committed to providing for their continued use by rural Alaskans. The Board encourages the Council to offer solutions to the Federal agencies addressing how they may better protect subsistence uses of these other wild renewable resources, and in so doing, protect subsistence economies.

Issue 3: Support for the Russian River Subsistence Fishery

The Council, through consensus among various user groups in the region, expresses its gratitude to the Federal Subsistence Board and the subsistence program to allow the Council to provide subsistence fishing opportunities for federally qualified users in the Kenai Peninsula. With its diligence, the Councils recommendation, and allowing the public process to work, subsistence opportunities for the rural residents living in the Kenai Peninsula has been successful.

Mr. Ralph Lohse

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Response

The Board acknowledges the Council's gratitude and agrees that the re-establishment of the Russian River subsistence fishery was the result of years of effort by many people. The Council played an important role in this process and the Board appreciates its efforts.

Issue 4: Support for the Fisheries Resource Monitoring Program

The Council continues to fully support the Fisheries Resource Monitoring Program and encourages the Board to continue to fund this program. The information provided by the FRMP assisted the Council to develop its recommendations on important subsistence fisheries related issues for the Board's consideration.

Response

The Board appreciates your support for the Fisheries Resources Monitoring Program (Monitoring Program). We would like to make you aware that future funding levels for the Monitoring Program could be reduced due to possible funding decreases for both the U.S.D.A. Forest Service and the DOI, Office of Subsistence Management. Forest Service funding for the Monitoring Program has ranged between \$1.4 million and \$2.0 million since 2001; DOI through the Office of Subsistence Management, has contributed \$5.25 annually to the Monitoring Program, including the Partner's Program. For the 2010 Monitoring Program, U.S.D.A. contributed \$1.4 million. Based on the President's budget request to Congress, the 2011 Forest Service funding for the Southeast and Southcentral regions could be significantly reduced compared to previous years. Assuming Congress appropriates the level in the President's budget request and other funds do not become available, the contribution by the Forest Service to the Monitoring Program will be substantially diminished. The status of the Department of the Interior's budget, and the effect on the Office of Subsistence Management, are not known at this time.

Issue 5: Secretarial Review of the Federal Subsistence Management Program

The Council is very interested in and supportive of the Secretarial Review of the Federal Subsistence Management Program that was announced at the annual AFN meeting in October 2009. The Council has a few key points that it would like to express to the Federal Subsistence Board regarding the review. First, the Council is concerned about the short timeframe of the review and is concerned that the extremely short time frame precluded full Council participation in and input to the review process. While the Special Assistant for the Secretary of the Interior did meet with Regional Council Chairs, the timeframe did not allow for the Councils to provide their input as Councils, with individual members participating and providing their input. Also, the Council feels that the every other year regulatory cycle that began in 2009 is not as responsive as the annual cycle, and would like to request that the Federal Subsistence Board consider going back to the annual cycle, where both fish and wildlife regulations are addressed every year.

Mr. Ralph Lohse

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Response

The Board appreciates your perspectives on the Secretarial review of the Federal Subsistence Management Program, and has forwarded them to Pat Pourchot, Special Assistant to the Secretary for Alaska Affairs. As you know, the review was intended to focus on how the program is meeting the purposes and subsistence provisions of ANILCA, and how the Program is serving rural subsistence users as envisioned when the program was begun in the early 1990s. At the time of the announcement, a six month time frame was envisioned, although given events that have unfolded since then, the process has taken longer than originally intended.

Led by Pat Pourchot, the review team traveled throughout Alaska to meet with, listen to, and solicit comments from a wide variety of stakeholders. Participants in this process included subsistence users from throughout Alaska, Regional Advisory Council members, Alaska Native groups, including regional tribal, non-profit and profit organizations, commercial fishing groups, representatives of recreational and sport user groups, and the State of Alaska, among others. In addition to meeting with these groups, the review team also encouraged electronic submittal of comments to their web site. Comments were received from over 115 individuals, agencies and/or entities. For a summary of all issues raised and comments received on the Secretarial Review, you can go to the Department of the Interior, Alaska Region web site at:
<http://www.doi.gov/whatwedo/subsistencereview/>

If you go to that site and review the summary of comments, I think you will find that all of the comments raised by your Council are represented. Based on these comments, the Secretary, working with the Secretary of Agriculture, is considering programmatic changes. Given the unfortunate happenings in the Gulf of Mexico beginning in April of this year, most Department of the Interior attention has been directed there, and the time table for completion of the Program review is not known at this time.

In closing, I thank the members of the Southcentral Alaska Subsistence Regional Advisory Council for their continued involvement and diligence in matters regarding the Federal Subsistence Management Program. I speak for the entire Board in expressing our appreciation for your efforts and our confidence that the subsistence users of the Southcentral Region are well represented through your work.

Sincerely,

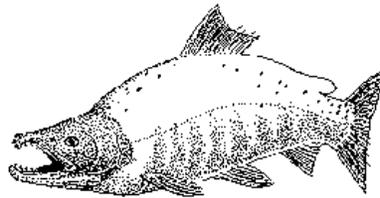
/S/ Michael R. Fleagle

Chair, Federal Subsistence Board

cc: SCASRAC Members
Federal Subsistence Board
Interagency Staff Committee
Peter J Probasco, Office of Subsistence Management

PRIORITY INFORMATION NEEDS

FEDERAL SUBSISTENCE FISHERIES



2012 FISHERIES RESOURCE MONITORING PROGRAM

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

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

July 23, 2010

The Office of Subsistence Management (OSM) invites the submission of proposals for fisheries investigation studies to be initiated under the 2012 Fisheries Resource Monitoring Program (Monitoring Program). Taking into account funding commitments for ongoing projects, we anticipate approximately \$2.7 million available in 2012 to fund new monitoring and research projects that provide information needed to manage subsistence fisheries for rural Alaskans on Federal public lands. Funding may be requested for up to four years duration.

Although all proposals addressing subsistence fisheries on Federal public lands will be considered, the 2012 Request for Proposals is focused on priority information needs. The Monitoring Program is administered by region, those being the Northern, Yukon, Kuskokwim, Southwest, Southcentral, and Southeast regions. Strategic plans developed by workgroups of Federal and State fisheries managers, researchers, Regional Advisory Council members and other stakeholders, have been completed for three of the six regions: Southeast, Southcentral (excluding Cook Inlet Area), and Southwest Alaska. These plans identify prioritized information needs for each major subsistence fishery and can be viewed on or downloaded from OSM's website: <http://alaska.fws.gov/asm/index.cfml>. Independent strategic plans were completed for the Yukon and Kuskokwim regions for salmon in 2005, and jointly for whitefish in 2010. For the Northern Region and the Cook Inlet Area, priority information needs were developed with input from Regional Advisory Councils, the Technical Review Committee, Federal and State managers and staff from OSM.

This document summarizes priority information needs for 2012 for all six regions and a multi-regional category that addresses priorities that may extend to more than one study region. Investigators preparing proposals for the 2012 Monitoring Program should use this document and relevant strategic plans, and the Request for Proposals, which provides foundational information about the Monitoring Program, to guide proposal development. While Monitoring Program project selections may not be limited to priority information needs identified in this document, proposals addressing other information needs must include compelling justification with respect to strategic importance.

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

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

Projects with an interdisciplinary emphasis are encouraged. The Monitoring Program seeks to combine ethnographic, harvest monitoring, traditional ecological knowledge, and biological data to aid in finding effective management approaches to fisheries. Investigators are encouraged to combine interdisciplinary methods, theories, and data to address information needs. Consideration should be given to the cultural context of key research topics.

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

The following sections provide specific regional and multi-regional priority information needs for the 2012 Monitoring Program. They are not listed in priority order.

Northern Region Priority Information Needs

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

For the Northern Region, the 2012 Request for Proposals is focused on the following priority information needs:

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

Yukon Region Priority Information Needs

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

For the Yukon Region, the 2012 Request for Proposals is focused on the following priority information needs:

- Reliable estimates of Chinook and chum salmon escapements (e.g., weir and sonar projects).
- Effects on salmon stocks and users of fishery management practices implemented to conserve Chinook salmon (e.g. gillnet mesh size, gillnet depth, and windowed openings).
- Methods for including “quality of escapement” measures in establishing Chinook salmon spawning goals and determining the reproductive potential of spawning escapements.
- Trends in Yukon River Chinook salmon production relative to other spawning stocks of the Bering Sea and Gulf of Alaska.
- Contemporary economic strategies and practices in the context of diminished salmon runs. Topics may include an evaluation of barter, sharing, and exchange of salmon for cash, as well as other economic strategies and practices that augment and support subsistence activities. Of particular interest are distribution networks, decision making, and the social and cultural aspects of salmon harvest and use.
- Description of the use of gillnets to harvest salmon species by residents of the Yukon River drainage.
- Location and timing of Bering cisco spawning populations in the Yukon River drainage.
- Complete genetic baseline sampling and population marker development for sheefish spawning populations in the Yukon River drainage.
- Harvest, use, and associated contextual information for whitefish by species in lower Yukon River drainage communities.

Kuskokwim Region Priority Information Needs

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

For the Kuskokwim Region, the 2012 Request for Proposals is focused on the following priority information needs:

- Reliable estimates of Chinook, chum and coho salmon escapement (e.g. weir projects).
- Harvest, use, and associated contextual information for whitefish by species in upper Kuskokwim River drainage communities. Communities of interest include McGrath, Telida, Nikolai, Takotna, and Lime Village.

- Traditional ecological knowledge of whitefish by species in central Kuskokwim River drainage communities. Communities of interest include Upper Kalskag, Lower Kalskag, Aniak, Chuathbaluk, Red Devil, Sleetmute, Stony River, and Crooked Creek. The findings from this research will supplement harvest and use information from previous research.
- Harvest, use, and associated contextual information for whitefish by species in lower Kuskokwim River drainage communities. Specific groups of communities of interest are Kwethluk, Akiachak, Napaskiak, and Tuluksak, or Chefornak, Kipnuk, Kongiganak, and Kwigillingok.
- Broad whitefish population assessment, including distribution and age structure.
- Location and timing of Bering cisco spawning populations in the Kuskokwim River drainage.
- Complete genetic baseline sampling and population marker development for sheefish spawning populations in the Kuskokwim River drainage.
- Status of sheefish spawning population in Highpower Creek, an upper tributary of the Kuskokwim River (this could be part of the genetic baseline study listed directly above).

Southwest Region Priority Information Needs

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

For the Southwest Region, the 2012 Request for Proposals is focused on the following priority information needs:

- Trends in whitefish harvest and use from Lake Clark communities.
- Environmental, demographic, regulatory, cultural, and socioeconomic factors affecting harvest levels of salmon for subsistence use in the Kodiak Area. Researchers should consider evaluating factors influencing use patterns and describing the socioeconomic impacts of other fisheries.
- Harvest of salmon for subsistence use by residents of the Aleutian Islands Area, including current and traditional harvest methods and means by species, and current and traditional uses and distribution practices.

Southcentral Region Priority Information Needs

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

For the Southcentral Region, the 2012 Request for Proposals is focused on the following priority information need:

- Historical and current subsistence use areas for harvest of salmon and non-salmon fish species by residents of Ninilchik, Hope, and Cooper Landing. Research should include intensity of use and use on Federal public lands and waters.

Southeast Region Priority Information Needs

A strategic plan was developed for Southeast Region in 2006 and was reviewed to ensure that priority information needs are identified. The 2012 Request for Proposals is focused on priority information needs for sockeye salmon and steelhead trout. It should be noted that current Department of Agriculture funding levels for the monitoring program in Southeast Alaska are fully committed to continuation of projects initiated in 2010. However, this request for proposals includes solicitation for the Southeast Region so as to maintain options for 2012 should additional funding become available.

For the Southeast Region, the 2012 Request for Proposals is focused on the following priority information needs:

- Reliable estimates of sockeye salmon escapement. Stocks of interest include: Gut Bay, Red, Kah Sheets, Salmon Bay, Sarkar, Lake Leo, and Hoktaheen.
- In-season subsistence harvest of sockeye salmon. Stocks of interest include: Hatchery Creek, Gut Bay, Red, Kah Sheets, Salmon Bay, Sarkar, Kanalku, and Hoktaheen.
- Contribute to the genetic stock identification baseline of Chatham Strait sockeye salmon.
- Reliable estimates of steelhead escapement, especially for systems on Prince of Wales Island.

Multi-Regional Priority Information Needs

The Multi-regional category is for projects that may be applicable in more than one region. For the Multi-Regional category, the 2012 Request for Proposals is focused on the following priority information needs:

- Changes in subsistence fishery resources and uses, in the context of climate change where relevant, including but not limited to fishing seasons, species targeted, fishing locations, harvest methods and means, and methods of preservation. Include management implications.
- An indexing method for estimating species-specific whitefish harvests on an annual basis for the Kuskokwim and Yukon drainages. Researchers should explore and evaluate an approach where sub-regional clusters of community harvests can be evaluated for regular surveying with results being extrapolated to the rest of the cluster, contributing to drainage-wide harvest estimates.
- Evaluation of conversion factors used to estimate edible pounds from individual fish, and from unorthodox units such as tubs, sacks, or buckets.

REQUEST FOR RECONSIDERATION 09-01 EXECUTIVE SUMMARY

Request for Reconsideration 09-01, submitted by the Ninilchik Traditional Council, requests that the Federal Subsistence Board reconsider its decision on Proposal FP09-07. The Ninilchik Traditional Council also submitted Proposal FP09-07 which requested that Ninilchik be added to the communities with a positive customary and traditional use determination for all species of fish¹ in the Kenai River Area.² At its meeting on January 14, 2009, the Federal Subsistence Board voted to oppose Proposal FP09-07.³

The Ninilchik Traditional Council requests reconsideration of the Federal Subsistence Board's action on Proposal FP09-07 because, in its view, the Federal Subsistence Board's interpretation of information, applicable law, or regulation was in error or contrary to existing law.

The Federal Subsistence Board has recognized Ninilchik resident's customary and traditional uses of *all fish* in the Kasilof River drainage, but *only salmon* in the Kenai River Area. In Proposal FP09-07, the Ninilchik Traditional Council requested that the Federal Subsistence Board expand the customary and traditional use finding to *all fish* in the Kenai River Area.

The first step in addressing a request for reconsideration is through an analysis to determine if the request meets the threshold for reconsideration. The Federal Subsistence Board considered the threshold analysis for the Request for Reconsideration 09-01 at its public work session November 12, 2009. After much discussion of the claims, the Federal Subsistence Board voted to accept Claim 3.7 in Request for Reconsideration 09-01. In accepting claim 3.7, however, the entire issue of the customary and traditional use determination of all fish in the Kenai River Area by residents of Ninilchik is once again before the Federal Subsistence Board. As discussed by members of the Federal Subsistence Board:

MR. BUNCH: . . .If we vote in favor of this proposal, does this mean that all of the proposal is going to be before the Board at some point in the future?

CHAIRMAN FLEAGLE: Yes. And what we're voting on, just procedurally, again, here, is we're just voting on whether or not the NTC has a valid claim that the Board did not act with all the information that it could have. If we vote affirmatively here we're agreeing to that claim, which then puts the proposal back in front of the Board for reconsideration, and all of the debate about the content of that proposal will be taking place at that time. We're just dealing with the procedure here. But, yes, that entire question of whether or not a positive customary and traditional use determination exists for resident species of fish on the Upper Kenai for the Ninilchik residents; that's the question that will be discussed..... at a future meeting. . .

MR. GOLTZ: ...the Board's in charge of this process and it could vote to limit their consideration to a smaller aspect of this proposal, but I don't think Geoff's motion does that. The way I'm looking at it is that a vote today would open up this particular issue. . . the entire issue, for the Board's reconsideration (FSB 2009:67).

¹"All fish" refers to salmon plus resident species of fish, which includes Dolly Varden, rainbow trout, lake trout, steelhead trout, Arctic char, burbot, grayling, and pike.

²The Kenai River Area is defined as the Kenai River Peninsula District waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest

³Published in the Federal Register of March 30, 2009 (74 FR 14051).

The Federal Subsistence Board has considered the issue of Ninilchik's customary and traditional uses of fish many times since 2001. The regulatory history is summarized in **Table 1**. A full description of the regulatory history is provided in the threshold analysis for Request for Reconsideration 09-01 below (**Appendix 2**).

There is no new information to consider for Proposal FP09-07 since it was last addressed by the Federal Subsistence Board in January 2009. The staff analysis for Proposal FP09-07 thus stands in its entirety as it was presented at that time. The materials provided include the Southcentral Subsistence Regional Advisory Council recommendation, public comments, and the Interagency Staff Committee comments. The OSM Preliminary Conclusion to support Proposal FP09-07 remains unchanged. The Federal Subsistence Board's task is to reconsider Proposal FP09-07 and assess if there is sufficient information to recognize the residents of Ninilchik's customary and traditional use of nonsalmon fish in the Kenai River Area by residents of Ninilchik.

Included in the following pages are:

- **Appendix 1:** Staff Analysis of Proposal FP09-07 (reviewed and voted on by the Federal Subsistence Board at its January 14, 2009 meeting).
- **Appendix 2:** Draft Threshold Analysis, RFR09-01, including the Request for Reconsideration 09-01 (Appendix A), which was reviewed by the Federal Subsistence Board at its November 12, 2009 meeting. At that time, the Board accepted claim 3.7, which effectively brings the analysis of FP09-07 back for its consideration and decision, as outlined above.

Table 1. Federal Subsistence Board actions 1999–2009 regarding Niniichik customary and traditional use determinations for fish on the Kenai Peninsula

DATE	PROPOSAL OR RFR #	ISSUE CONTENT	FEDERAL SUBSISTENCE BOARD ACTION
1999			Federal subsistence fisheries regulations fisheries established. No C&T determinations; all Federally qualified rural residents of Alaska eligible.
December 2000	FP01-13/33	C&T request for salmon	Board deferred until Kenai rural request for reconsideration decision made.
December 11, 2001	FP02-11a, FP02-12a, FP02-13a	C&T requests for all fish and shellfish in the Cook Inlet area for residents of the Kenai Peninsula District	Board deferred decisions on fish in the Cook Inlet area until completion of a FWS funded study, <i>Cook Inlet Customary and Traditional Subsistence Fisheries Assessment</i>
January 6, 2006	FP06-09	C&T request for all fish and shellfish in the Cook Inlet area for residents of the Kenai Peninsula District (deferred from 2002, FP02-11a/12a/13a)	Board adopted positive C&T determinations for: <ul style="list-style-type: none"> • Hope and Cooper Landing for all fish in the Kenai Peninsula District • Niniichik for all fish in the Kasilof River drainage as an "interim" C&T
May 2006	RFR06-02/03/08	RFRs submitted by State of Alaska and Niniichik Traditional Council contesting the Board's January 2006 decision on FP06-09	
November 17, 2006	RFR06-02/03/08	Board addressed RFR06-02/03/08	Board revisited its decision on FP06-09 and added Niniichik to the C&T determination for all fish for the Kenai River Area.
January 2007	RFR06-09	State of Alaska request to rescind decision of November 2006 on RFR06-02/03/08	Motion to amend the C&T failed and Board's decision from November 2006 remained in place
May 2, 2007	RFR06-09	Board addressed one claim in RFR06-09	Board voted, but the motion was made incorrectly. The vote was a tie vote and the issue could not be resolved at the Board meeting.
May 8, 2007	FP07-28	Proposal from Kenai River Sportfishing Association request to rescind the C&T for all fish for Hope, Cooper Landing, and Niniichik in the Kenai Peninsula District and to create a "No federal subsistence priority" for all fish	Special out-of-cycle meeting was held for the Kenai fish proposals. Board rejected Proposal FP07-28.
June 2007	RFR07-05	RFR submitted by State requesting the Board revisit FP07-28 and its decision for RFR06-09	
September 13, 2007	RFR07-05	Board met to correct voting error from May 2, 2007 (out of compliance with Robert's Rules of Order) through RFR07-05	Board modified the existing determination through a motion that found a positive C&T for Niniichik for salmon only in the Kenai River Area and for all fish in the Kasilof River drainage.
January 13–15, 2009	FP09-07	Niniichik Traditional Council request to be added to the positive C&T for all fish in the Kenai Peninsula District	Board rejected Proposal FP09-07. The C&T for Niniichik remained for residents of Niniichik for salmon only in the Kenai River Area and for all fish in the Kasilof River drainage.
May 29, 2009	RFR09-01	RFR submitted by the Niniichik Traditional Council contesting the Board's January 2009 decision	
November 12, 2009	RFR09-01	Board considered threshold analysis for RFR09-01	Board voted to reconsider its January 2009 decision on FP09-07; Board will address RFR09-01 at its January 2011 meeting.

FP09-07 [The recommendations in the following table were made during the fall 2008 meetings]

FP09-07 Executive Summary	
General Description	Proposal FP09-07 requests that Ninilchik be added to the communities with a positive customary and traditional use determination for harvesting all fish in the Kenai Peninsula District waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest. <i>Submitted by Ninilchik Traditional Council</i>
Proposed Regulation	<p><i>COOK INLET AREA</i></p> <p><i>Kenai Peninsula District— All fish Residents of the Waters north of and including the communities of Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest. Ninilchik, Hope and Cooper Landing.</i></p> <p><i>*Kenai Peninsula District— Salmon Residents of the Waters north of and including the community of Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest. Ninilchik</i></p> <p>*NOTE: This portion of the regulation that should be deleted was not included in the proposal book in error.</p>
Southcentral Regional Council Recommendation	<p>Support Proposal FP09-07 with modification to specify use of Dolly Varden/Arctic char, lake trout, and rainbow/steelhead only. The modified regulation should read:</p> <p><i>COOK INLET AREA</i></p> <p><i>Kenai Peninsula District— All fish Residents of the Waters north of and including the communities Kenai River drainage within the Hope and Cooper Kenai National Wildlife Refuge Landing. and the Chugach National Forest.</i></p> <p><i>Kenai Peninsula District— Salmon, Residents of the Waters north of and including the Dolly community of Kenai River drainage within the Varden/ Ninilchik Kenai National Wildlife Refuge Arctic Kenai Peninsula District— char, lake Forest. trout, and rainbow/ steelhead trout</i></p>

continued on next page

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WP09-07 Executive Summary (continued)	
Interagency Staff Committee Comments	See comments following the analysis.
ADF&G Comments	Oppose
Written Public Comments	1 Oppose

FP09-07

**REGIONAL ADVISORY COUNCIL RECOMMENDATION
FP09-07**

SOUTHCENTRAL REGIONAL ADVISORY COUNCIL

Support Proposal FP09-11 **with modification** to also include Dolly Varden/Arctic char, lake trout, and rainbow/steelhead only.

The modified regulation should read:

COOK INLET AREA

*Kenai Peninsula District—
Waters north of and including
the Kenai River drainage
within the Kenai National
Wildlife Refuge and the
Chugach National Forest.*

All fish

*Residents of the communities
of Hope and Cooper Landing.*

*Kenai Peninsula District—
Waters north of and including
the Kenai River drainage
within the Kenai National
Wildlife Refuge and the
Chugach National Forest.*

*Salmon,
**Dolly Varden/
Arctic char,
lake trout,
and rainbow/
steelhead
trout***

*Residents of the community of
Ninilchik*

There is documented use of fish in the Kenai River by residents of Ninilchik. It is the nature of subsistence to use what is harvested. Harvest of resources is opportunistic, often associated with other subsistence activities. The Council recommended the customary and traditional use determination be limited to fresh water fish species that were historically harvested prior to 1952 when subsistence fishing was allowed.

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November 20, 2008

**STAFF ANALYSIS
FP09-07**

ISSUES

Proposal FP09-07, submitted by the Ninilchik Traditional Council (NTC), requests that Ninilchik be added to the communities with a positive customary and traditional use determination for harvesting all fish in the Kenai Peninsula District waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest (**Map 1**).

DISCUSSION

Ninilchik has a positive customary and traditional use determination for all fish in the Kasilof River drainage. In the Kenai River Area (defined as the waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest), the Federal Subsistence Board (Board) has recognized the customary and traditional uses of salmon, but not resident species, by Ninilchik residents. The proponent of Proposal FP09-07 requests that the Board recognize the community of Ninilchik's customary and traditional uses of all fish in the Kenai River Area, similar to its uses of salmon.

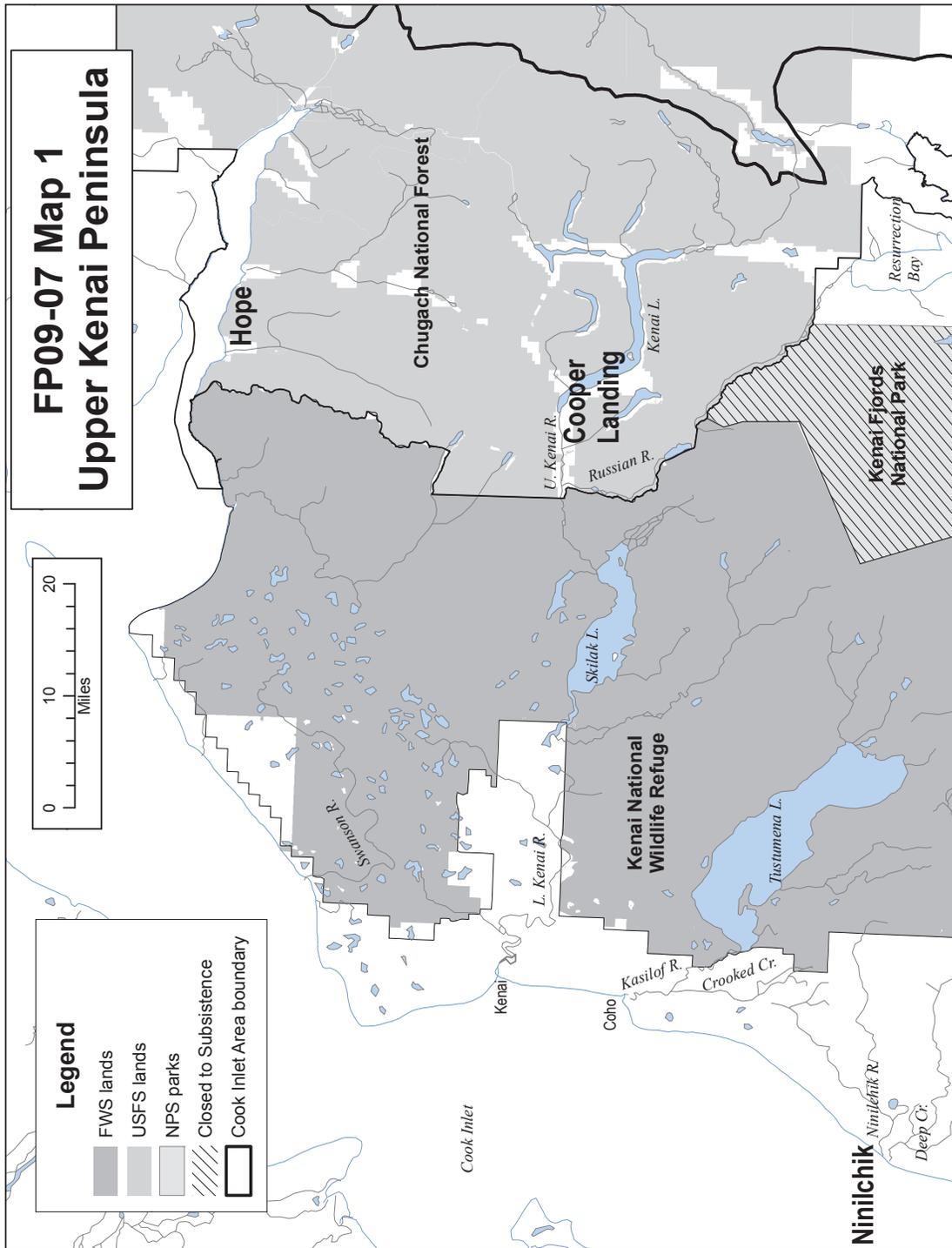
The analysis for this proposal incorporates information from ethnographic studies, public testimony and written comments at meetings of the Southcentral Alaska Subsistence Regional Advisory Council (Southcentral Council) and the Board, and the staff analyses of: 1) Proposal FP06-09, addressed by the Board at its January 2006 public meeting (FSB 2006a); 2) Fisheries requests for reconsideration (FRFR) FRFR06-02/03/08, addressed by the Board at its November 2006 work session (FSB 2006b); 3) FRFR06-09 addressed by the Board at its May 2, 2007 public meeting (FSB 2007a) and again at its September 13, 2007 work session (FSB 2007b); and 4) Proposal FP07-28 (FSB 2007c) addressed by the Board at its May 8, 2007 public meeting.

The analysis for this proposal focuses on the uses of resident fish (nonsalmon freshwater fish) in the Federal public waters of the Kenai River Area by the residents of Ninilchik.

Existing Federal Regulation*COOK INLET AREA*

<i>Kenai Peninsula District—Waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest.</i>	<i>All fish</i>	<i>Residents of the communities of Hope and Cooper Landing.</i>
<i>Kenai Peninsula District—Waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest.</i>	<i>Salmon</i>	<i>Residents of the community of Ninilchik</i>

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Proposed Federal Regulation

COOK INLET AREA

Kenai Peninsula District—Waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest.

All fish

*Residents of the communities of **Ninilchik**, Hope and Cooper Landing.*

**Kenai Peninsula District—Waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest.*

Salmon

*Residents of the community of **Ninilchik***

*NOTE: This portion of the regulation that should be deleted was not included in the proposal book in error.

Extent of Federal Public Waters

The areas affected by this proposal include the Federal public waters in the Cook Inlet Area north of and including the Kenai River within the Kenai Peninsula District within the exterior boundaries of the Kenai National Wildlife Refuge (Kenai Refuge) and the Chugach National Forest (**Map 1**) (referred to as the Kenai River Area in this analysis).

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

Regulatory History

Until 1952, freshwater streams in the Kenai Peninsula were open to subsistence fishing. In 1952, all streams and lakes of the Kenai Peninsula were closed to subsistence fishing under Territory of Alaska regulations and only rod and reel or hook or line were allowed for “personal use” (Fall et al. 2004:25–26). Since 1952, it has been illegal for Ninilchik residents to subsistence fish for resident fish species in the Kenai River Area. (See Proposal FP06-09 staff analysis for a more complete regulatory history of fishing in the Kenai Peninsula, as well as Appendix B, Table 1 in FP06-09, for a summary of the history of Cook Inlet subsistence and personal use salmon fishing regulations).

Federal regulations for subsistence fisheries were first established in 1999 when the Federal program assumed limited fisheries management authority. For salmon, trout, Dolly Varden, and char in Cook Inlet there were no customary and traditional use determinations; therefore, all rural residents of Alaska qualified under the Federal program as eligible subsistence users.

In 2001, the Board considered Proposal FP02-11a, submitted by NTC, Stephen Vanek and Fred H. Bahr, that requested a positive customary and traditional use determination for all fish and all shellfish in the Cook Inlet Area for residents of the Kenai Peninsula District. The Board deferred making decisions on the use of fish in the Cook Inlet Area until the completion of an OSM funded study, Cook Inlet Customary and Traditional Subsistence Fisheries Assessment (Fall et al. 2004), because the Board felt that historical, contemporary, community and area specific harvest use information was needed to properly analyze customary and traditional patterns of use in the Cook Inlet region.

During the 2001 cycle, there was also a staff analysis for the combined proposals, Proposal FP01-13/33, on the customary and traditional use portion for salmon only. During its December 2000 meeting,

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the Board deferred action until after a decision on the Kenai Peninsula rural determination request for reconsideration (RFR). A decision on the Kenai Peninsula rural RFR was made on June 28, 2001, rescinding the May 2000 decision which made the whole Kenai Peninsula rural and reverting to the 1991 rural determinations. Therefore, during the 2002 regulatory cycle, the customary and traditional use analysis for salmon was revised to include only communities determined to be rural as a result of the June 2001 RFR decision and an analysis of the use of the other requested fish species was incorporated. A decision on the customary and traditional use of shellfish also was deferred.

In December 2001, the Board considered Proposals FP02-11b through 14b for seasons and harvest limits for fish in the Cook Inlet Area (FSB 2001:97–105). The Board adopted regulations that allowed the subsistence take of salmon, Dolly Varden, trout, and char with seasons, harvests, possession limits, and methods and means that were the same as for the taking of fish under State of Alaska sport fishing regulations (FSB 2001:102–105). The modification of the proposal was considered an interim step while needed information gathering and further analysis continued (FSB 2001:103).

The Board did not consider any further regulatory proposals for the Cook Inlet Area until 2006, thus from 2002 to 2006 all Federally qualified rural residents, including Ninilchik, could harvest fish under Federal subsistence regulations in the Cook Inlet Area. With new information available (Fall et al. 2004), the Board took up consideration of customary and traditional use determinations, and continued to defer proposals for take until completion of those deliberations. During this time, no proposals for harvest were under consideration, and regulations for subsistence harvest were identical to State of Alaska sport fishing regulations with the exception of the temporary 2006-2007 winter subsistence fishery for resident species in Tustumena Lake that was established in November 2006 when the Board adopted fisheries special action FSA06-01b.

In January 2006, the Board considered Proposal FP06-09 (FSB 2006a), the deferred proposal from the 2002 regulatory cycle, Proposal FP02-11a. Proposal FP06-09 was submitted by NTC, Stephen Vanek and Fred H. Bahr and requested a positive customary and traditional use determination for all fish and all shellfish in the Cook Inlet Area for residents of the Kenai Peninsula District. During the January 2006 public meeting, the Board applied the eight factors to determine specific communities' use in Cook Inlet as described in § ___ .16 (50 CFR 100.16(b) and 36 CFR 242.16(b)). Those customary and traditional use determinations for Cook Inlet are largely based upon information provided by Fall et al. 2004 and presented in the staff analysis for Proposal FP06-09.

At its January 2006 public Board meeting, the Board made a positive customary and traditional use determination for: 1) Hope and Cooper Landing for all fish in the Federal public waters of the Kenai Peninsula District, north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest; and 2) Ninilchik for all fish in the Federal public waters of the Kasilof River drainage. During consideration of Proposal FP06-09, both ADF&G and NTC indicated that they could provide additional relevant information; hence, the Board's characterization of the customary and traditional use determinations as "interim." The intent in using the word interim was to "signal to everybody that we're not done yet, we're just starting, and that's all it was meant to do" (FSB 2006a:507–508). The Board's decision provided an opportunity to gather information to provide a more definitive picture of historic and current use patterns on Federal public lands throughout the various drainages on the Peninsula and to better integrate the information from the two BIA funded studies that were not fully available when Dr. Fall's study was completed (FSB 2006a:500–501).

In May of 2006, the State of Alaska and the NTC submitted requests for reconsideration (FRFR06-02/03/08) of the Board's customary and traditional use determinations made in January 2006. The Board

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revisited its decision in a work session on November 16–17, 2006 and added Ninilchik to the customary and traditional use determination for all fish for the Kenai River Area. The ADF&G, Division of Subsistence, provided new information on the levels of use of the Kenai River Area by Ninilchik residents (FSB 2006b).

In a public meeting on May 2, 2007, the Board considered FRFR06-09, submitted by the State of Alaska, which requested that the Board reconsider and rescind its decision of November 17, 2006 on FRFR06-02/03/08 that recognized the community of Ninilchik's customary and traditional use of all fish in the Kenai Peninsula District. The Board considered this RFR, but a motion to amend the existing customary and traditional use determination failed and the original decision from November 2006 remained in place (FSB 2007a). On September 13, 2007, the Board met in a work session to correct a voting error from the May 2, 2007 meeting that did not comply with Robert's Rules of Order. The Board modified the existing determination through a new motion that found a positive customary and traditional use determination for the community of Ninilchik for salmon only in the Kenai River Area (FSB 2007b). The customary and traditional use determination for Hope and Cooper Landing residents for all fish in the Kenai River Area remained in place as did the customary and traditional use determination for Ninilchik residents for all fish in the Kasilof River drainage.

On May 8, 2007, the Board considered a proposal from the Kenai River Sportfishing Association (Proposal FP07-28) requesting that the positive customary and traditional use determinations for taking all fish by Hope, Cooper Landing, and Ninilchik residents be rescinded in the Kenai Peninsula District and that there be no Federal subsistence priority for all fish. The Board rejected this proposal (FSB 2007c).

The Board considered fishery regulatory harvest proposals for Cook Inlet in both 2007 and 2008, and adopted several proposals establishing subsistence fisheries for salmon and resident fish species in the Kenai and Kasilof River drainages. These include dip net salmon fisheries at designated sites in the Kenai, Russian, and Kasilof Rivers; rod and reel salmon and resident species fisheries in the Kenai and Kasilof River drainages; an under-the-ice gillnet and jig resident species fishery in Tustumena Lake, and a temporary fish wheel salmon fishery in the Kasilof River. The Board considered, but did not adopt, a 2008 proposal that would have allowed dip net fishing from the shore in the Moose Range Meadows site of the Kenai River (FWS 2007 and FSB 2007d).

Community Characteristics

The only community under consideration in this analysis is Ninilchik, which is comprised of two census-designated places (CDPs): Ninilchik and Happy Valley. ADF&G subsistence use studies conducted in 2002–03 on Ninilchik included Ninilchik and Happy Valley CDPs (Fall et al. 2004). Thus, when reference is made to Ninilchik in this analysis, it includes people living in the Ninilchik CDP as well as the Happy Valley CDP. In the 2000 U.S. Census, Ninilchik CDP had 772 year-round, permanent residents and Happy Valley had 489 year-round permanent residents (U.S. Census 2001); thus the total population for the two CDPs from the last census under consideration in this analysis is 1,261. In 2008, the estimated population was 778 in Ninilchik CDP and 495 in Happy Valley CDP. There is one school in Ninilchik with 186 students (ADCED 2008).

The Ninilchik tribal government (which is the NTC) is the only local government in the Ninilchik area. There is no local municipal government, although Ninilchik is part of the Kenai Peninsula Borough. The community of Ninilchik is similar to road-connected rural portions of the Copper River Basin where the local governments of communities are tribal, not municipal (Stratton and Georgette 1984).

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The Ninilchik tribe had about 652 tribal members in 2006. Of these, about 333 members (51%) lived in the Ninilchik tribal area (Wolfe 2006a).

Ninilchik is within the traditional territory of the Dena'ina Athabaskans, which dates to around 1000 A.D, extends from Kachemak Bay on the Kenai Peninsula, west across Cook Inlet to the Stony River and northeast to the Susitna Basin, as well as the traditional territory of the Sugpiaq (Alutiiq) which includes the southern portion of the Kenai Peninsula, bridging the Sugpiaq territories of Prince William Sound with Kodiak Island and the Alaska Peninsula (de Laguna 1934, Krauss 1982, Stanek 1980).

Non-Native settlement of the Kenai Peninsula began in the 18th century with the Russians and the fur trade, and later mining efforts in Kachemak Bay. At the end of the 19th century, commercial fishing brought about new settlements, such as the herring saltery at Seldovia in 1896. The next major non-Native settlement period began during the Gold Rush era at the end of the 19th century. With the construction of roads and local oil development after about 1950, the population of the Kenai Peninsula increased substantially through in-migration of people born outside Alaska.

Brief history of Ninilchik

The original Ninilchik inhabitants came to the Kenai Peninsula and settled within the traditional territory of two Alaska Native cultures and areas used by non-Native settlers. Long-term residents of Ninilchik trace their origins to the descendants of Alaska Natives (predominately Sugpiaq from Kodiak Island) who married Russian American Company employees and settled on the Kenai Peninsula in the Ninilchik area in 1847 (Wolfe 2006a, b; Arndt 1993). The children of these “mixed marriages” between the Russians and the Alaska Natives were commonly called “Creoles” by the Russians (Fall et al. 2004:33). By 1861, Ninilchik had become a “Creole” settlement because all of the original Russians had died (Arndt 1993:42). The U.S. Census in 1880 enumerated the population at Ninilchik as 53 “Creoles” (Fall et al. 2004:33). In 1890, the U.S. Census noted that there were “50 Russian Creoles and a small number of Tnaina [sic] tribe” (U.S. Census 1890:69). There were 16 “Indians” enumerated (U.S. Census 1890). During the last 160 years, the Ninilchik population has increased and become connected by marriage and birth with other Dena'ina (including the Kenaitze) and Sugpiaq (Alutiiq) groups in the Cook Inlet Area.

By 2006, from the 53 people counted in 1880, the Ninilchik tribe numbered about 652, of which about 333 members live in the Ninilchik tribal area (Wolfe 2006a) (which includes Happy Valley [Williams 2006, pers. comm.]).

The Ninilchik area's population has grown in the past 50 years through in-migration, becoming more demographically diverse (Wolfe 2006a). Georgette (1983:183–184) concluded that Ninilchik's expanding population accounts for an increasing diversity of values, beliefs, and resource harvest and use patterns among its residents. Reed (1985:96) noted that for many long-term Ninilchik residents resource harvesting was an important household economic strategy, but for newcomers resource harvesting was more for recreational purposes. These differences between Ninilchik residents contribute to the lack of a community-wide pattern of resource use, beliefs, and values. For long-term residents, “resource utilization was a tradition and production was family based...for others it was productive recreation or . . . leisure time” (Reed 1985:96).

Happy Valley CDP is a census designated place created by the U.S. Census, but also is considered a residential extension of Ninilchik. Happy Valley was first noted in 1950 by the U.S. Geological Survey as a “geographic location” (ADCED 2008). There are no facilities, no schools, no post office, and no government. Students who reside in Happy Valley go to school in Ninilchik and Happy Valley residents receive their mail in Ninilchik.

Eight Factors for Determining Customary and Traditional Uses

A community or area's customary and traditional use is generally exemplified through the eight factors: (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 Board makes customary and traditional use determinations based on a holistic application of these eight factors (50 CFR 100.16(b) and 36 CFR 242.16(b)). In addition, the Board takes into consideration the reports and recommendations of any appropriate Regional Advisory Council regarding customary and traditional use of subsistence resources (50 CFR 100.16(b) and 36 CFR 242.16(b)). The Board makes customary and traditional use determinations for the sole purpose of recognizing the pool of users who meet the eight factors. The Board does not use such determinations for resource management or restricting harvest. If a conservation concern exists for a particular population, the Board addresses that concern through the imposition of harvest limitations or seasonal restrictions rather than by limiting the customary and traditional use finding.

Specific information on each of the eight factors is not required because a community or area seeking a customary and traditional use determination only has to "generally exhibit" the eight factors (50 CFR 100.16(b) and 36 CFR 242.16(b)). However, subtitles are used in this analysis as a management tool to organize the information.

The subsistence way of life is based on contingencies and opportunity (what is available). Many, but not all, subsistence harvests include the bulk harvest and processing of large quantities of fish and wildlife at a time for long-term consumption. However, subsistence harvests may also include small incidental harvests during travel. Because the subsistence way of life is based on contingencies and opportunity, the fact that a harvest may be quite low does not indicate these fisheries are not customary and traditional.

It is important to note that customary and traditional use determinations are based on the uses of the resource and not on the users. The Federal subsistence management program applies to Federally-qualified rural users and does not differentiate between Alaska Native and non-Natives.

Long-term, consistent pattern of use, excluding interruptions beyond the control of the community

When making a customary and traditional use determination, one of the factors considered by the Board is a long-term consistent pattern of use, excluding interruptions beyond the control of the community or area (50 C.F.R. § 100.16(b)(1)). This is an important point to consider, because interruptions beyond the control of Kenai Peninsula residents could affect their harvest and use of fishery resources in Federal public waters. First, subsistence fishing in the freshwaters of the Kenai Peninsula was prohibited from 1952 until the Federal Subsistence Board created a subsistence fishery in 2002 which mirrored the State sport fishing regulations. Second, since statehood, legal availability of fishery resources in Federal

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public waters has been defined by State sport fishing regulations, and these regulations do not provide for harvest of all species or harvest by traditional methods and means. In this area, preferred traditional methods and means include nets, an efficient method and means of harvest for subsistence users who traditionally harvest as much fish as they can process at once. Rod and reel is considered a traditional subsistence gear type under Federal subsistence regulations and under State regulations in some parts of the State. In some cases under State regulations, rod and reel have been recognized as traditional gear in places where fish fences or traps are no longer a legal means to harvest fish and rod and reel is the only legal alternative (Williams et al. 2005:31–32). Georgette (1983:185) noted that some Ninilchik residents said they have never learned to fish successfully with a rod and reel and that fishing with a rod and reel consumes too much of their time.

In 1878, the first commercial fish packing operation was established at the Kenai River and the first canneries were established in the 1880s. The fur trade had collapsed, the Russian era had ended, and more American non-Natives had moved into the area. Many Dena'ina fished fall runs of coho salmon up-river along the Kenai and Kasilof river drainages at traditional settlements like Stepanka at Skilak Lake in the Kenai River drainage or camps along the Killey and other tributary rivers (both Skilak Lake and the Killey River are within the Kenai Refuge). The gold rush in the late 1890s brought the first major in-migration of Euro-Americans to the Kenai Peninsula with settlements created at Kenai, Knik, and Hope. With the arrival of the Euro-Americans came new diseases, which caused declines in the Dena'ina population.

Documentation of early fish uses by the Ninilchik residents is not extensive. However, references can be found regarding the fish uses by the Kenaitze. In a book published in 1897 by Henry Elliott, *Our Arctic Province*, Elliott notes that the Kenaitze in Cook Inlet were “fairly independent of salt water, and seldom pass many hours upon it, except in traveling and trading with one another, and the Creoles: they are, however, very expert at fresh-water fishing through holes in the ice for trout in the thousand and one lakes, large and small, which are so common in their country” (Elliott 1897:91).

In the early 1900s, the annual subsistence cycle of the Dena'ina included commercial fishing in the inlet and the mouth of the Kenai River during the spring and summer, and going up-river in the fall to harvest coho salmon, fish for freshwater fish, hunt moose, and trap furbearers. This continued until the 1940s with the creation of the Kenai National Moose Range. In the early 1940s, many Dena'ina continued their traditional pattern of going to the Stepanka camps. By this time, the Dena'ina population had been so decimated by disease that most Dena'ina were predominantly (but not exclusively) in Kenai (Fall et al. 2004:16–20).

Some of the Dena'ina—the Kenaitze—who lived in the Kenai Peninsula are related to those who settled in Ninilchik (FSB 2006b). There were Kenaitze who married into families in Ninilchik as documented in public testimony (FSB 2006a, b) and in *Agrafena's Children*, a history of Ninilchik's families, where reference is made to the intermarriage between Ninilchik and Kenai people, and the intermingling of families (Leman 1993:576) as well as in the U.S. Census in 1890 (see previous discussion under “community characteristics”). As a member of the public from Kenai testified to the Board, “Maybe they're [Ninilchik] not brothers and sisters, maybe they're cousins. But the bottom line is, they're the same [as Kenaitze], you know, whether they originated in a Russian village—they more than likely originated with Native women and they are our brothers and sisters in some sort of way” (FSB 2006b:100). A member of the Ninilchik Tribe testified, “I was born in Anchorage...raised in Ninilchik until third grade and grew up in Kenai. About 1967 I was a member of the Kenaitze Tribe until just about six years ago when I transferred back to Ninilchik. And the reason I point that out is it just shows some of

the ties between the tribes. You know, my grandmother was a Darian from the Kenaitze Tribe. My aunt is a member of the Kenaitze Tribe. I got uncles that are members of the Kenaitze Tribe” (FSB 2006b:97).

In 1941, the Kenai Moose Range was established and only those who had permits could use the cabins previously built by trappers and subsistence fishermen. However, Alaska Natives continued to use their ancestral locations for trapping, hunting, and fishing activities in spite of Federal rules prohibiting use of cabins on refuge lands. Land claim hearings were held in the 1970s attesting to traditional uses of lands and cabins along the upper Kenai River, and fishing between the Kenai River and Tustumena Lake into the mid-1940s (Fall et al. 2004:22).

Homesteaders arrived in the Kenai Peninsula, including the Ninilchik area, in the early 1930s, 1940s, and after World War II and commercial and subsistence fishing became important aspects of their annual cycle. Fall et al. noted, “In freshwater, gillnets and seines were used in the Kenai, Skilak, and Tustumena lakes to harvest lake trout, Arctic grayling, whitefish, and [Dolly Varden] char” (Fall et al. 2004:20–21). Trappers in the upper Kenai River area maintained gillnets in the upper Kenai and caught salmon and trout. Other uses mentioned included taking coho salmon through the ice in the winter and steelhead below Skilak Lake in the late 1940s and early 1950s (Fall et al. 2004:20–21).

There were no legally recognized subsistence fisheries in the freshwaters of the Kenai Peninsula for 50 years. In 1952, gillnets were made illegal in many freshwaters, thus the Kenai Peninsula Dena’ina ceased using gillnets in the fall occupation of their upriver sites. The Stepanka fishery (Skilak Lake), that had been a traditional, long-standing source of salmon for the Dena’ina (Kenaitze) Indians, was closed. As a result of this closure, snagging became the primary harvest method, but snagging was made illegal in 1973. Local residents turned to sport fishing without snagging, and continued to fish the beaches of Cook Inlet with gillnets in the subsistence fishery. In the 1970s, sport fishing had grown and the Kenai had become a favorite spot for sport fishing. The Kenai Peninsula is unique in that rural communities are interspersed among much larger nonrural communities. By the early 1980s the Alaska Board of Fisheries added more restrictions on subsistence and personal use fishing along the Cook Inlet beaches, closing beaches to subsistence gillnetting. By the mid-1990s, only two personal use fisheries remained at the mouth of the Kenai and Kasilof rivers (Fall et al. 2004:22–23; 30).

Regulations relating to areas, seasons, and methods have changed consistently over the past 54 years, and have become more restrictive. The changing regulations have affected Ninilchik’s access to fish resources over time and have encouraged multiple opportunistic approaches towards obtaining subsistence resources. For example, in the case of salmon, as regulations and conditions have changed, residents have adapted their traditional practices to continue to obtain salmon—trade it, buy it, or harvest it in new ways under various regulatory regimes (Georgette 1983:186–187). In 1993, ten years after the above cited-report was written, a State judge ordered the development of educational fisheries for the NTC, the Knik Tribal Council, the Native Village of Eklutna and the Kenaitze Tribe (Loshbaugh 1993:1, 14). These fisheries were established as the result of lawsuit filed by the Kenaitze Tribe. The educational fishery provided another means for residents of Ninilchik to harvest salmon using gillnets. The educational permits, however, were a compromise: “Villagers—who have traditionally focused on early-run king salmon will be catching mostly reds under the proposed permit” (Loshbaugh 1993:14).

Other historic evidence of use of fish by the Dena’ina is provided in a 1975 study of historic sites in the Cook Inlet Region. Nine locations on Federal public lands are described which may have signs of fish camps or caches (Brelsford 1975:38–65, maps). One of these sites at the Russian River campground in the Chugach National Forest was thoroughly investigated and a faunal analysis completed, identifying fish bones used by the Riverine Kachemak and Dena’ina peoples (Corbett 1999:6).

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Leman (1993:3–4) makes a number of references to Ninilchik fishing such as a fish trip to Humpy Point south of the Kasilof River outside of present-day Federal public waters, (Leman 1993:218); an article about Ninilchik fisherman making fish traps by hand for river fishing (Leman 1993:374); a poem regarding sharing the first Chinook salmon of the year with everyone in the community (Leman 1993:72); and an article referencing how the Ninilchik people traditionally focused on the early-run Chinook salmon (Leman 1993:71). Reference is also made to Ninilchik residents often walking long distances—one reference to a man walking from Ninilchik to Homer, and another reference to a woman walking 40 miles packing furs from Ninilchik to Kenai (Leman 1993:362). Testimony at the January 2006 Board meeting noted that early settlers would walk long distances to harvest subsistence resources, including fish (FSB 2006a).

In 1994, NTC conducted a survey of NTC households regarding lifetime subsistence harvest areas pre-1994. NTC households harvested nonsalmon throughout the Kenai Peninsula (NTC 1994). NTC interviewed 25 heads of households out of about 100 NTC households whose household heads were NTC members (Brelsford 1994). Respondents marked areas used during their lifetime for harvesting subsistence resources. These maps were combined to create maps combining all of the respondents' lifetime use areas (NTC 1994; Wolfe 2006a). This technique of gathering information on the use area of a community is also used by ADF&G Division of Subsistence (Wolfe 2006a). These lifetime-uses present patterns which are similar to those of other rural communities in Alaska in that the use areas are contiguous to the community and accessible by boat and ground travel rather than aircraft, showing an efficiency and economy of effort. Use areas are not always constant and adapt to new transportation networks, i.e., the construction of roads, which can become a more efficient means for accessing subsistence resources (Wolfe 2006a). Chen (2005:2) noted that Ninilchik residents would travel by dogteam to pursue subsistence activities, including freshwater fishing, in the interior of the Peninsula.

In 2002/2003, Fall et al. (2004) conducted a survey of 100 Ninilchik households selected at random, constituting a 17% sample of the 577 known permanent households in that community. Based on the survey data, Fall and his co-authors at ADF&G Division of Subsistence described the community's pattern of use in terms of percentage of households. Community estimates were made using the findings from the random sample, expanding them to account for that fraction of the community that was not surveyed¹.

The following discussion uses percentages from the expansion of the sample survey data in order for the sample data to represent the whole community. Percentage figures are followed by the estimated number of Ninilchik households each percentage figure represents.

In surveys conducted in 2003 by Fall et al., respondents were asked three questions—but no reference was made regarding what species of fish. The questions were:

- (1) Have you ever fished in Federal public waters?
- (2) Have you fished in the Federal public waters of the Kenai River or Swanson River Areas, in your lifetime?

¹Thus, 1% of the sampled households and represents an estimated 5.77 households (1% of the 577 total households, which equals 5.77). As it pertains to harvest estimates, as an example, if the total number of moose harvested by the surveyed households equals 3, then the estimated community harvest would equal 17.31 (3 x 5.77). This method of expansion is used frequently in analyzing survey results, and is the standard method of ADF&G Division of Subsistence in describing community harvest patterns. This method was also used in Fall et al.'s 1998 research in Ninilchik (Fall et al. 2000).

- (3) If yes to fishing in the Kenai and Swanson River areas, how often did you fish in these waters? Three choices were provided to answer question (3): Frequent use, Intermittent Use, and Infrequent Use.

Federal Public Waters, Responses to Questions 1 and 3: According to the findings in Fall et al. (2006), 28% of Ninilchik’s households (an estimated 162 households out of a community total of 577 households), have fished at some point in their lifetime in Federal public waters. Of these estimated 162 households, 62% (100 households) reported frequent use (“about every year”) of Federal public waters. These approximately 100 households represented 17% of all Ninilchik households. Sport fishing or ice fishing accounted for all of this use (subsistence fishing was not permitted) (**Table 1**).

Federal Public Waters of Kenai River, Responses to Questions 2 and 3: In response to questions about use of the Federal public waters of the Kenai River, 21% (an estimated 121 households) of the 577 households of the community of Ninilchik said they had fished in these waters at some point in their lifetime. Frequent use “about every year” of Federal public waters was reported by 13% (an estimated 73 households) of the community. Sport fishing or ice fishing accounted for all of this use. Another 4% (an estimated 23 households) of the 577 Ninilchik households reported intermittent use of the Kenai River (“on and off over the years”) and 4% (an estimated 23 households) reported infrequent use (“1 or 2 years”) (**Table 1**).

Swanson River, Responses to Questions 2 and 3: Thirteen percent (75 households) of the 577 households of the community of Ninilchik reported some use of the Swanson River area. “Frequent use” was reported by 10% (an estimated 56 households) of the 577 households of the community of Ninilchik (Fall et al. 2006:5) (**Table 1**).

Ninilchik’s percentages of lifetime use of the Kenai Peninsula Area from Fall’s study (Fall et al. 2006) are consistent with other research conducted in Alaska. In 1992 and 1993, ADF&G, Division of Subsistence, analyzed 1988 Tongass Resource Use Cooperative Study (TRUCS) data and made intensity-of-use maps as part of the Tongass Subsistence Studies project. In TRUCS, about 1,450 households in 30 Southeast Alaska communities were interviewed. Respondents were asked to draw lines on maps showing where they hunted, fished, or gathered during their residence in the community; mapping was done by species or resource category. In the 1992 and 1993 analysis, subsistence use was categorized on these maps according to the percentage of households that used an area (by species or resource category) during the time they lived in the study community. The analytic maps provided a measure of intensity of use based on the mapped data provided by respondents. Other research in many Southeast Alaska communities had documented intensity of use. Intensity of use was categorized by less than 1%, 1–5%, 5–10%, 10–15%, 15–20%, 20–25%, and greater than 25%. In general, only a small amount of the total community use area was found to be used by more than 25% of the households interviewed. This research finding was unexpected at the time and may result from a number of characteristics of subsistence harvesting in Southeast Alaska: 1) a good deal of subsistence harvesting is specialized, meaning that not all households hunt seals or deer and not all households catch salmon or halibut, 2) high harvesting households account for a large portion of total fish and wildlife taken for subsistence, and a relatively small number of high harvesting households may account for most of the use of a community’s subsistence use area, and 3) cultural factors may determine geographical use, for example, clan members may mainly harvest in their clan areas or family members may be site loyal and not use the whole of a community subsistence use area (Schroeder 2006, pers. comm.).

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Table 1. Characteristics of sampled Ninilchik households that have ever fished in Federal waters of the Kenai River or Swanson River areas.

	Kenai River	Swanson River area	Any Federal waters
Number of households in random sample using areas ¹	21	13	28
Total number of Ninilchik households	121	75	162
Percentage of all Ninilchik households ²	21%	13%	28%
Percentage of users with “frequent use” ³	60%	75%	62%
Total number of Ninilchik households	73	56	100
Percentage of all Ninilchik households ²	13%	10%	17%
Percentage of users with “intermittent use” ⁴	20%	8%	15%
Total number of Ninilchik households	24	1	24
Percentage of all Ninilchik households ²	4%	<1%	4%
Percentage of users with “infrequent use” ⁵	20%	17%	23%
Total number of Ninilchik households	24	2	37
Percentage of all Ninilchik households ²	4%	<1%	<6%

Source: Adapted from Fall et al. 2006:6.

¹ Of the 100 households interviewed. This is 17.3% of the study area’s population in 2003; weighting factor=5.77.² Total number of Ninilchik households = 577.³ Frequent = “about every year.”⁴ Intermittent = “on and off over the years.”⁵ Infrequent = “1 or 2 years.”

Contemporary fish harvests

The history summarized above, ethnographic reports, NTC (1994 and 1999) and Fall et al.’s (2006) lifetime use information all indicate that fish have been consistently used by Ninilchik residents from subsistence, personal use, commercial, or sport fisheries. Their use of fish is based on three traditions, the uses of fish by the Dena’ina, the Sugpiaq (Alutiiq), and the early settlers and homesteaders. In a 1980 study of the Cook Inlet subsistence salmon fishery, Braund (1980:79) noted a diversity of users with a core group with a history of significant use in all Cook Inlet communities.

In 2002–03, ADF&G Division of Subsistence conducted a subsistence use study, *The Cook Inlet Customary and Traditional Subsistence Fisheries Assessment* (Fall et al. 2004), which provided a thorough review and assessment of Cook Inlet’s subsistence fisheries, both past and present for a number

of communities including Ninilchik. This study documented household use, harvest, harvest locations, and other information pertinent to subsistence fishing in Cook Inlet. As in the 1998 study, this 2002–03 study combined Ninilchik’s uses with Happy Valley CDP uses. The household surveys show that salmon is the primary fish resource. Of the resident fish species, Dolly Varden, rainbow, lake trout, and steelhead trout are harvested by the residents of Ninilchik. Lake trout are only found in Federal public waters. The pattern of use of resident fish species reflects the distribution of the resources in the Cook Inlet Area. A few isolated populations of Arctic char and Dolly Varden occur in lakes in the Swanson River area and Cooper Lake. Burbot also has a limited presence in Juneau Lake (near Cooper Landing) (Nelson 2001, pers. comm.). Ninilchik households did not report any harvest of burbot in 2002 to 2003 (Fall et al. 2004:66–70), nor from 1994 to 1999, as documented by NTC in their study (NTC 1999).

In ADF&G’s 2002–03 study, in all of Cook Inlet 21% of Ninilchik households fished for resident species in freshwater (an estimated 2,368 pounds). This harvest was comprised of Dolly Varden (897 pounds), lake trout (444 pounds), rainbow trout (1,101 pounds), and pike (17 pounds) (pike were introduced illegally in the early 1970s in the Soldotna Creek drainage [Nelson 2005, pers. comm.]). In the one year of study, none of Ninilchik’s residents who were surveyed harvested Arctic grayling (also introduced to the Kenai Peninsula), whitefish, steelhead, or burbot (Fall et al. 2004:66–70; **Table 2**). NTC also found no harvest of whitefish, steelhead, or burbot from 1994 to 1999, and an average Arctic grayling harvest per household of only 6 pounds (NTC 1999).

The Southcentral Council met in September 2008 to make their recommendation on Proposal FP09-07. During the discussion, staff prompted Council members to list the species of the most importance (SCRAC 2008) and consequently the Council recommended modifying the proposed regulation by making the customary and traditional use determination species specific by replacing “all fish” with Dolly Varden, Arctic char, lake trout, rainbow and steelhead trout. Other fish that may occur in the Kenai River Area are Arctic grayling and burbot (as well as pike, which were illegally introduced). It should be noted that in the 1994 NTC study conducted of lifetime uses, Ninilchik residents reported harvesting in their lifetimes an annual average of 6 pounds of Arctic grayling, 18 pounds of burbot, and 81 pounds of pike (Table 3). Arctic grayling and pike were harvested in Units 13A, 14A, and Units 15A, 15B, and 15C and burbot was harvested in Units 15B and 15C (Table 3). It is unknown if any of these harvests were on Federal public lands. Under current Federal regulations, there is no Federal open season for Arctic grayling and burbot. Pike can be harvested with no limits under State regulations.

The historic pattern of use of fish resources continues today by Ninilchik residents. An ADF&G study documenting resource uses in 1998 in Ninilchik (and Happy Valley CDP) found that 96% of households harvested subsistence resources, with a per capita harvest of 164 pounds (Fall et al. 2000:137). Resident fish species each made up anywhere from 2% to 30% of the per capita pounds of fish harvested. The highest harvest was Dolly Varden (estimated at 665 pounds). Lake trout were also harvested (estimated at 33 pounds) (ADF&G 2001). Marine fish, primarily halibut, provided the remainder of the fish harvests (Fall et al. 2004:44–45). Georgette (1983:185) noted that Ninilchik residents have found that competing with crowds of sport fishermen has made harvesting fish difficult.

Fall et al. (2004) compared the estimated harvests of all fish, as measured in pounds per capita to other recent years for which survey data were available. Estimated harvests by Ninilchik residents in 2002/2003 were similar to 1998, the other most recent study year (Ninilchik: 80.8 pounds in 1998, 81.7 pounds in 2002/2003) (Fall et al. 2004:54). Although there are limitations to using single years’ harvest data, these comparisons clearly indicate that the community of Ninilchik has a pattern of use of harvesting fish.

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Table 2. Estimated Harvest and Use of Fish, Nimitlchik, 2002.

Resource Name	Percentage of Households				Pounds Harvested			Amount Harvested			95% Cont Limit (+/-)	
	Use	Att	Harv	Recv	Give	Total	Mean HH	Percapita	Total	Mean HH	Harvest	Percapita
All Resources	96.0	75.0	73.0	76.0	58.0	132,562	229.7	81.8	132,562 lbs	229.7	27%	24%
Fish	96.0	75.0	73.0	76.0	58.0	132,562	229.7	81.8	132,562 lbs	229.7	27%	24%
Salmon	92.0	72.0	69.0	58.0	46.0	75,958	131.6	46.8	16,589 ea.	28.8	31%	24%
Chum Salmon	7.0	6.0	6.0	1.0	1.0	3,677	6.4	2.3	681 ea.	1.2	154%	153%
Coho Salmon	55.0	44.0	41.0	25.0	18.0	18,062	31.3	11.1	3,474 ea.	6.0	32%	32%
Chinook Salmon	59.0	50.0	38.0	32.0	19.0	13,594	23.6	8.4	877 ea.	1.5	34%	31%
Pink Salmon	20.0	12.0	12.0	10.0	6.0	7,118	12.3	4.4	2,966 ea.	5.1	111%	110%
Sockeye Salmon	80.0	56.0	54.0	38.0	35.0	33,507	58.1	20.7	8,592 ea.	14.9	27%	24%
Non-Salmon Fish	87.0	64.0	60.0	58.0	43.0	56,604	98.1	34.9	56,604 lbs	98.1	36%	32%
Herring	2.0	1.0	1.0	1.0	0.0	519	0.9	0.3	87 gal	0.2	180%	175%
Herring Roe	1.0	0.0	0.0	1.0	0.0	0	0.0	0.0	0 gal	0.0	0%	0%
Herring Sac Roe	1.0	0.0	0.0	1.0	0.0	0	0.0	0.0	0 gal	0.0	0%	0%
Herring Spawn on Kelp	0.0	0.0	0.0	0.0	0.0	0	0.0	0.0	0 gal	0.0	0%	0%
Smeit	17.0	5.0	5.0	12.0	2.0	769	1.3	0.5	237 gal	0.4	97%	98%
Eulachon (hoolligan, candlefish)	17.0	5.0	5.0	12.0	2.0	769	1.3	0.5	237 gal	0.4	97%	98%
Cod	11.0	10.0	9.0	3.0	2.0	2,561	4.4	1.6	854 ea.	1.5	79%	82%
Pacific Cod (gray)	10.0	9.0	8.0	3.0	2.0	2,530	4.4	1.6	790 ea.	1.4	84%	83%
Pacific Tom Cod	3.0	4.0	3.0	0.0	0.0	32	0.1	0.0	63 ea.	0.1	114%	115%
Walleye Pollock (whiting)	1.0	0.0	0.0	1.0	0.0	0	0.0	0.0	0 ea.	0.0	0%	0%
Flounder	1.0	1.0	1.0	0.0	0.0	692	1.2	0.4	231 ea.	0.4	180%	181%
Starry Flounder	1.0	1.0	1.0	0.0	0.0	692	1.2	0.4	231 ea.	0.4	180%	181%
Greenling	8.0	8.0	7.0	4.0	0.0	842	1.5	0.5	237 ea.	0.4	113%	120%
Lingcod	6.0	5.0	5.0	2.0	0.0	808	1.4	0.5	202 ea.	0.4	130%	125%
Unknown Greenling	2.0	3.0	2.0	2.0	0.0	35	0.1	0.0	35 ea.	0.1	153%	152%
Haiabut	84.0	56.0	53.0	50.0	42.0	46,766	81.1	28.8	46,766 lbs	81.1	37%	33%
Rockfish	12.0	8.0	8.0	4.0	2.0	1,944	3.4	1.2	998 ea.	1.7	109%	94%
Black Rockfish	8.0	7.0	7.0	1.0	2.0	1,229	2.1	0.8	819 ea.	1.4	129%	129%
Red Rockfish	6.0	3.0	3.0	3.0	1.0	715	1.2	0.4	179 ea.	0.3	136%	130%
Unknown Rockfish	0.0	0.0	0.0	0.0	0.0	88	0.2	0.1	0 ea.	0.0	0%	0%
Sablefish (black cod)	2.0	1.0	1.0	1.0	0.0	52	0.1	0.0	29 ea.	0.1	180%	182%
Shark	1.0	1.0	1.0	0.0	0.0	52	0.1	0.0	6 ea.	0.0	180%	175%
Unknown Shark	0.0	0.0	0.0	0.0	0.0	0	0.0	0.0	0 ea.	0.0	0%	0%
Burbot	0.0	0.0	0.0	0.0	0.0	0	0.0	0.0	0 ea.	0.0	0%	0%
Char	16.0	19.0	15.0	3.0	5.0	1,341	2.3	0.8	958 ea.	1.7	51%	52%
Dolly Varden	13.0	15.0	12.0	2.0	4.0	897	1.6	0.6	640 ea.	1.1	56%	57%
Lake Trout	7.0	9.0	6.0	2.0	3.0	444	0.8	0.3	317 ea.	0.6	94%	95%
Grayling	0.0	0.0	0.0	0.0	0.0	0	0.0	0.0	0 ea.	0.0	0%	0%
Pike	1.0	1.0	1.0	0.0	0.0	17	0.0	0.0	6 ea.	0.0	180%	181%
Unknown Pike	1.0	1.0	1.0	0.0	0.0	17	0.0	0.0	6 ea.	0.0	180%	181%
Trout	9.0	8.0	6.0	4.0	2.0	1,010	1.8	0.6	721 ea.	1.3	88%	88%
Rainbow Trout	8.0	8.0	6.0	3.0	2.0	1,010	1.8	0.6	721 ea.	1.3	88%	88%
Steelhead	1.0	0.0	0.0	1.0	0.0	0	0.0	0.0	0 ea.	0.0	0%	0%
Whitefish	2.0	0.0	0.0	2.0	0.0	0	0.0	0.0	0 ea.	0.0	0%	0%
Unknown Whitefish	2.0	0.0	0.0	2.0	0.0	0	0.0	0.0	0 ea.	0.0	0%	0%

SOURCE: Fall et al. 2004.

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In 1999, NTC conducted another survey to assess Ninilchik's harvests and use areas from 1994 to 1999. Rather than designating the use by drainage, unit and subunits were used. Harvest use patterns including location of harvests, species harvested, and amounts harvested have changed significantly over the lifetime of Ninilchik residents. NTC's 1994 study of lifetime uses indicated large use areas for nonsalmon fish species throughout the entire Kenai Peninsula, however, resident species were not distinguished from other nonsalmon. In the NTC study conducted of uses from 1994 to 1999, respondents were harvesting significantly less fish and their use area had narrowed to predominantly Unit 15C (which predominantly focuses on Kenai Refuge lands in the Kasilof River drainage). For example, the average number of Dolly Varden harvested per household dropped from 22 in the lifetime use study to 12 in the 1994 to 1999 study (**Table 3**).

In 2002, the Board adopted subsistence fishing regulations for the Cook Inlet Area that mirrored sport fishing regulations. Permits were issued to Ninilchik residents beginning in 2007 and 30 Ninilchik residents were issued Kenai River salmon permits. In the Kenai River Area, Ninilchik only has a positive customary and traditional use determination for salmon, thus only salmon permits were issued. The remainder of the permits issued to Ninilchik residents were for the Kasilof River drainage. Five permits were issued in the 2006/2007 Tustemena winter ice fishery. Reported harvests were 20 lake trout and 6

Table 3. Ninilchik Tribal Council households' harvests of resident species of fish: lifetime (pre-1994) and 1994 to 1999^{1,2} (NTC 2006).

Species	Study Period	Percentage of Households				Resident Species Harvested	
		Using (%)	Trying (%)	Receiving (%)	Sharing (%)	Av. Lbs. Harvest Per HH Per Year	Unit Harvested
Grayling	Lifetime to 1994	24	20	8	12	6	13A, 14A, 15A, B, & C
	1994–1999	10	14	0	5	11	15B & C
Burbot	Lifetime to 1994	12	8	12	12	18	15B & C
	1994–1999	0	0	0	0	0	—
Pike	Lifetime to 1994	20	16	20	16	81	13A, 14A, 15A, B, & C
	1994–1999	0	0	0	0	0	—
Dolly Varden	Lifetime to 1994	52	48	44	44	31	7,8,13A, 14A C, 15 B, & C
	1994–1999	43	48	19	14	17	15C
Lake Trout	Lifetime to 1994	52	44	40	32	28	7,8,13A, 14A & C, 15A, B, & C
	1994–1999	10	14	0	0	8	15C
Cutthroat Trout	Lifetime to 1994	4	4	4	4	63	14A & C, 15A, B, & C
	1994–1999	5	5	5	4	14	15C
Rainbow Trout	Lifetime to 1994	64	60	32	48	27	7,13A, 14A, B & C, 15A, B, & C
	1994–1999	38	43	19	10	20	15C

¹ The methods used in this study were consistent with the standard methods used by the Alaska Department of Fish and Game, Division of Subsistence for mapping use areas (Wolfe 2006a and 2006b).

² These results cannot be expanded to the entire community because the sample was nonrandom.

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Dolly Varden (Palmer 2008, pers. comm.). It is unknown if the majority of subsistence users in Ninilchik were aware that beginning in 2002 they could harvest fish under Federal subsistence regulations. Since the Federal regulations mirrored sport fishing regulations until 2008 in seasons, methods and means, and harvest limits, there were few advantages in having a Federal permit prior to 2008.

Seasons of use

Since statehood, salmon season openings have been regulated (see Proposal FP06-09 staff analysis, Appendix B, Tables 2–5 for the regulatory history of the Cook Inlet Area affecting subsistence fisheries).

For resident fish, harvests occurred throughout the year according to availability and associated activities, with some species targeted for ice fishing activities in the winter. Three harvest patterns of rainbow trout and Dolly Varden occur: the harvest in the winter months through the ice with rod and reel, the harvest in the summer months in local creeks and lakes, and the occasional harvest such as rod and reel salmon fishing associated with moose hunting and other activities. The preference is to take Dolly Varden and rainbow trout in June and September (Fall et al. 2004:52; NTC 2006).

Methods and means

Subsistence fishing is typically characterized by the use of efficient gear, such as set gillnets, operated by family groups in traditional use areas accessible to families (Wolfe 2006b). Traditional methods used to harvest freshwater fish were with bone fishhooks, later replaced by metal hooks and nets set in ponds and lakes, often under the ice (Townsend 1981:626). The traditional Sugpiaq (Alutiiq) methods included “traps, weirs, spears, hooks, and hook and line, and all were used in streams” (ADF&G 1992a:18). Russell (1994:14) notes that Ninilchik residents used dry spruce as poles in fish traps.

In the historic period, fish were taken in the spring with basket traps or in the winter through the ice with hook and line. Ninilchik residents also remember using fish spears made from straight pieces of wood to harvest fish upstream—but not at the mouth of the stream (Russell 1994:21). Rod and reel and dip net were also used (Fall et al. 2000 and 2004).

Rod and reel and hook and line ice fishing are the current methods used (and the only methods allowed) for harvesting resident fish. Lake trout and rainbow trout are harvested by ice fishing; all of the resident species are harvested by rod and reel (Fall et al. 2004:108).

Areas of use

Regulatory actions in 1952 prohibited subsistence fishing except by rod and reel in waters of the Kenai Refuge and the Chugach National Forest. Until the Federal subsistence fishery was established, Ninilchik residents have only been able to harvest fish through freshwater sport fisheries, in marine waters subsistence net fisheries for late coho salmon until 1978, homepack from commercial harvests, personal use fishing with dip nets at the mouths of some rivers since 1981 and with gillnets since 1985, and educational fisheries since 1993. The rapid growth of the Kenai Peninsula, increased infrastructure, influx of Euro-Americans, construction of roads, as well as regulatory restrictions on subsistence uses have had a profound effect on the subsistence use patterns of Kenai Peninsula communities.

In the lifetimes of Ninilchik residents, much of the population on the Kenai Peninsula has changed from a large percentage of indigenous people, homesteaders, and commercial fishers, to a population dominated by newcomers who have full-time jobs and are interested in recreational fishing and hunting. Not surprisingly, hunting and fishing subsistence use patterns have changed as well. Long-term Ninilchik

residents and their families now live in permanent homes and no longer move seasonally to hunt and fish. Their fish harvests are now generally concentrated close to their homes, particularly when fish are abundant.

Research conducted by Fall et al. (2004) documented fish harvest locations in 2002/2003 for Ninilchik (and other communities not under consideration in this analysis), including specific information regarding fish harvests from Federal public waters (Fall et al. 2004:58–59; 113). Fall et al. (2000) also documented fish harvest areas in an earlier 1998 study, but not whether or not the harvest occurred in Federal public waters. It should be noted that these two years of data provided similar results, and are likely indicative of recent use patterns of the studied communities (Fall et al. 2004). This information supplements historical information and public testimony. NTC (1999) also provided maps of each of Ninilchik's respondent's fish harvest areas, but these areas were not broken down by species.

Harvest of resident fish species by Ninilchik residents generally occurs in the lakes, creeks, and rivers near the community, unless associated with hunting or other harvesting activities. This pattern of use where multiple activities occur at the same time—berry picking, fishing for Dolly Varden and rainbow trout while hunting—is common among subsistence users in Alaska. By their very nature, subsistence users are opportunistic and harvest what is available, unlike sport users who generally target single resources. In addition, subsistence fishing is opportunistic and fishing is not limited to a specific species. If a Ninilchik resident is fishing for salmon (for which they have a positive customary and traditional use determination) either by net or any other method, and a resident species such as rainbow trout is harvested, it will be harvested. In all waters in the Kenai River Area where salmon are available, resident species of fish are also available, thus it is quite likely that an incidental take of a resident species will occur when fishing for salmon.

Fall et al. (2000:121) conducted a survey in 1998 in Ninilchik that documented general use areas for fish harvests. For the 1998 study, surveys were conducted with 100 households selected at random, constituting a 19% sample of the 527 known permanent households in that community. In 1998, an estimated 2% of Ninilchik households (an estimated 11 households) harvested salmon in wildlife Unit 15A on the Kenai Refuge, 3% (an estimated 16 households) in Unit 15B on the Kenai Refuge, and 2% (an estimated 11 households) in Unit 7 on the Kenai Refuge and the Chugach National Forest (Fall et al. 2000). These findings were not specific to drainages, but rather specific to wildlife management units. Findings of Fall et al.'s study (2004) done in Ninilchik 2002/2003 were consistent with the 1998 study findings. In the more recent study, 100 randomly selected households represented a 17% sample of the total community of 577 households (Fall et al. 2004:11). These 100 surveys provided the data from which community estimates were made. In 2002/2003, 4% (an estimated 23 households) of Ninilchik households harvested sockeye salmon in the Russian River. An estimated 1% (an estimated 6 households) harvested rainbow trout and lake trout in Kenai Lake or Kenai Mountain streams on the Kenai Refuge (Fall et al. 2004:113). These were the only documented uses of fishery resources by the community of Ninilchik in the Kenai River Area in 2002/2003 (**Table 4** [Fall et al. 2004]).

The NTC compared the results of two studies they conducted, one in 1994 of lifetime use areas and a follow-up study in 1999 of uses between 1994 and 1999. NTC's analysis found that during their lifetimes, NTC residents harvested Dolly Varden, lake trout and rainbow trout were harvested in Units 7, 8, 13A, 14A, 15A, 15B, and 15C, but from 1994 to 1999 these species were only harvested in Unit 15C. The use and average pounds harvested dropped significantly (see **Table 3**). There are many reasons why the per household harvest of resident fish may have decreased, including the prohibition of subsistence fishing in 1952, restrictions to the use of traditional, efficient, subsistence fishing gear types, increasing human population, influx of sport fishermen, increasing participation in a cash economy, and commercial

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Table 4. Locations Used to Harvest Fish, Nimitchik, 2002/2003

Area Fished	Percentage of Households									
	Chinook	Sockeye	Coho	Chum	Pink	Dolly Varden	Rainbow Trout	Steelhead	Lake Trout	Hooligan
<u>Federal Public Lands and Waters:</u>										
Kenai Lake and Kenai Lake Streams	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	1.00%	0.00%	1.00%	0.00%
Kenai Mountain Streams	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	1.00%	0.00%	0.00%	0.00%
Russian River	0.00%	4.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
<u>Other Lands and Waters:</u>										
Anchor River, Stariski Creek	4.00%	0.00%	5.00%	0.00%	1.00%	1.00%	0.00%	0.00%	0.00%	0.00%
Cook Inlet, Anchor Point	4.00%	0.00%	1.00%	0.00%	1.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Cook Inlet, Coho	0.00%	4.00%	1.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Cook Inlet, Deep Creek	12.00%	4.00%	6.00%	0.00%	2.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Cook Inlet, Kenai	3.00%	5.00%	0.00%	0.00%	1.00%	0.00%	0.00%	0.00%	0.00%	1.00%
Cook Inlet, West	1.00%	1.00%	1.00%	0.00%	1.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Gulf of Alaska	0.00%	0.00%	4.00%	0.00%	1.00%	1.00%	0.00%	0.00%	0.00%	0.00%
Kachemak Bay	9.00%	1.00%	7.00%	1.00%	1.00%	1.00%	0.00%	0.00%	0.00%	0.00%
Kasilof River, Crooked Creek	4.00%	8.00%	0.00%	0.00%	0.00%	1.00%	4.00%	0.00%	4.00%	0.00%
Lower Kenai River	4.00%	22.00%	2.00%	0.00%	0.00%	1.00%	0.00%	0.00%	0.00%	3.00%
Nimitchik River, Deep Creek	19.00%	8.00%	20.00%	1.00%	2.00%	8.00%	1.00%	0.00%	1.00%	0.00%
Resurrection Bay	0.00%	0.00%	4.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Other Alaska	1.00%	2.00%	2.00%	0.00%	1.00%	0.00%	0.00%	0.00%	2.00%	0.00%
Missing	7.00%	1.00%	2.00%	0.00%	0.00%	3.00%	2.00%	0.00%	2.00%	1.00%

SOURCE: Fall et al. 2004.

fishing. ADF&G, Division of Subsistence, conducted studies in the 1980s of Ninilchik families, which documented the efforts made by families to procure fish in the absence of stable subsistence fisheries and their difficulties harvesting adequate supplies of fish. The case studies showed shifting harvest techniques from year to year, responding to changing restrictive regulations while at the same time competing with thousands of recreational visitors to the Kenai Peninsula (Georgette 1983).

The 2002/2003 survey also asked respondents to name places that might be a “potential site for Federal subsistence fisheries.” Ninilchik households said they would like to see a Federal subsistence fishery in the following locations: 8% (an estimated 46 households) in the Kenai Refuge, 4% (an estimated 24 households) in the Kenai Fjords National Park (which is closed to subsistence fishing), 4% (24 households) in the upper Kenai River, 3% (an estimated 17 households) in Skilak Lake, 2% (an estimated 12 households) in the Chugach National Forest, 2% (12 households) in Kenai Lake, 2% (12 households) in the lower/middle Kenai River, 2% (an estimated 12 households) in the Swanson Lakes, and 1% (an estimated 6 households) each in Johnson Lake and the Russian River (Fall et al. 2004:140).

As noted, NTC conducted research of select NTC members’ subsistence uses of fish and wildlife in 1999. NTC conducted face-to-face household surveys in 1999 to collect information on wildlife use patterns of 20 randomly selected Ninilchik tribal member households out of an estimated 61 households². Respondents were asked to draw areas used for subsistence harvests for species such as Chinook salmon, other salmon and nonsalmon fish during the last five years (1995 through 1999). It should be noted that Dr. Robert Wolfe has documented that the methods used by NTC for mapping subsistence uses were consistent with ADF&G subsistence research (Wolfe 2006a, b). NTC’s research showed that the Upper Kenai River/Kenai Lakes were used by 28% of Ninilchik residents to harvest nonsalmon fish and that Skilak Lake/Other were used by 16% to harvest nonsalmon fish (Dyrdahl 2005).

Based on information from NTC presented at the Southcentral Council meeting in October 2005, respondents of their survey harvested char and trout from Federal public waters, but specific drainages and levels of use were not provided (SCRAC 2005). Public testimony at the Southcentral Council meeting noted that fishing occurred in Skilak and Tustumena lakes and the Swanson River lake system. Trout was the only fish specifically mentioned in the testimony (SCRAC 2005). BIA staff met with NTC in September 2005, to see if additional information could be elicited from the survey regarding specific locations of fish harvests from Federal public waters on the Kenai Peninsula. Fish harvest locations in Russian, Summit and Hidden lakes, Swanson and Kenai rivers in the Kenai Refuge, and trout fishing through the ice were noted (Chen 2005).

Fall et al.’s reports in 2000 and 2004 and NTC 1999 each surveyed the harvests from one year and as such have limitations in determining a consistent pattern of use. However, there was consistency between the amounts reported harvested in Fall et al.’s 2000 and 2004 studies. Testimony presented at the October 2006 Southcentral Council meeting in Homer noted that the Kenai River was preferred over the Kasilof River prior to the prohibition of subsistence fishing in 1952 because the Kenai River is slower moving than the Kasilof River and therefore easier to pole up (SCRAC 2006). Fall et al.’s research, NTC’s research, and public testimony (SCRAC 2005, 2006 and FSB 2006a,b), combined with the lifetime use data from Fall et al. 2006 all indicate some level of use by Ninilchik residents for harvesting fish in the Kenai River Area. The data indicate that the Kenai River Area has been used by Ninilchik residents both in the past and currently.

²The estimate of NTC households with NTC members is based on the number of households with an Alaska Native member cited in the U.S. Census in 2000. The census was conducted the year after the NTC research and could be slightly greater or less.

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While Ninilchik’s harvests are lower in the Kenai River Area than in other areas closer to their community, it has been noted (in a legal opinion stated in a letter to the State of Alaska from the Secretary of the Department of the Interior) that there are no “unimportant” subsistence uses (USDOI 1986: 6–7):

Section 803 [of ANILCA] defines ‘subsistence uses’ to mean ‘customary and traditional uses ...of wild, renewable resources,’ and Section 804 requires that ‘nonwasteful subsistence uses’ be given a preference over other uses. The plain meaning of these provisions dictates that 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. Yet, however low the customary and traditional use might be (i.e., however ‘unimportant’ it might be), Section 804 requires that the opportunity to make the use be given an absolute priority over nonsubsistence uses.

Handling, preparing, preserving, and storing

Traditional fisheries provide the opportunity for the efficient harvest of a sizeable volume of fish as well as small, incidental harvests while traveling that may be cut, dried, and smoked by the family (Wolfe 2006b). In the Kenai Peninsula, large quantities of fish harvested are salmon. Traditional methods of processing and handling fish included drying, smoking, fermenting, and storing in oil. All fish also may be either broiled, baked, broiled, or roasted (Osgood 1937:42). The pattern of harvesting resident fish species also is quite different from the pattern of harvesting salmon. Resident species such as trout are usually harvested in much smaller quantities, partially because resident species of fish often do not preserve as well as salmon. The harvest of resident fish species in the Kenai River Area are more likely to occur when associated with hunting or other harvesting activities, such as berry picking. This pattern of use where multiple activities occur—berry picking, fishing for Dolly Varden and rainbow trout while hunting—is common among subsistence users. Women gathered driftwood from the beach for smoking fish (Russell 1994:13). Ninilchik residents use rotten spruce wood to smoke fish because rotten wood loses the strong flavor found in living trees. Drift cottonwood also is commonly used to smoke fish because cottonwood found on the beach is “clean,” without sap, and contains salt, making it a preferred wood for smoking (Russell 1994:14–18). Osgood (1937:42) also noted that cottonwood is used at night because it requires less attention to keep burning. Mountain alder also is used for smoking fish (Russell 1994:14–18) and is sometimes preferred because it has a nice flavor (Osgood 1937:42). Spruce poles with their bark removed are used as racks for drying fish (Russell 1994:14–18). Other uses described are salting, pickling, canning, freezing, and eating the fish fresh (Stanek 1980:11).

Some resident species of fish do not dry or preserve as well as salmon (Williams, 2008, pers. comm.) and are more likely to be eaten shortly after harvesting or frozen. Some Dolly Varden found in lakes have a low fat content and the fat tends to spoil easily, regardless of how the fish is processed (BBNA and ADF&G 1996:47), thus making it more desirable as a fish that is eaten fresh.

Handing down of knowledge of fishing

Subsistence users in Alaska pass information from generation to generation about how to subsistence hunt and fish. Ninilchik is no exception. Testimony at Council and Board meetings provided information regarding how elders teach the young people how to fish. Because of the prohibitions against subsistence fishing established in 1952, traditional practices have been more difficult to pass on from generation to generation. The Alaska Board of Fisheries, in compliance with an Alaska Superior Court order, established educational fisheries in the communities of Kenai in 1989 and in Ninilchik in 1993 (Fall et al. 2004:30). This permit allows Alaska residents accompanied by an NTC member to participate in this

fishery (Brannian and Fox 1996:10). This educational fishery allows participation of some subsistence users in the Chinook and coho salmon harvests (Nelson et al. 1999:160). One purpose of the educational fisheries is to allow the handing down of traditional knowledge, as well as a way for obtaining subsistence fish.

Sharing

In a broad study of subsistence uses in the Kenai Peninsula, Reed (1980:3) notes that subsistence fish are used to satisfy social obligations and gifts of fish are made to family, friends, and neighbors. Data collected by ADF&G (Fall et al. 2000) indicates that 55% received nonsalmon and 49% gave nonsalmon away. Subsistence foods harvested within a household are commonly shared with other households in the extended family, according to local customs and traditions. Alaska Native groups like the NTC expect parents to provide subsistence resources to the young children. In turn, when the children are old enough, they are expected to work with parents harvesting and processing subsistence foods. Children grow up, marry, and continue these relationships with their families. As the parents age, the children then care for them and share the resources they harvest. Subsistence roles and social responsibilities evolve over time. The traditional system of harvesting and then distributing subsistence resources helps support the network of families that make up the larger community. Networks of giving and receiving bind the family members together as well as bind the larger community (Wolfe 2006b:8).

Distribution and sharing of fish and wildlife resources among households occurs often in Ninilchik, though not in large quantities because of the scarcity of resources (especially large mammals). Georgette (1983:186) noted that several households surveyed in her research said they share subsistence resources with friends or neighbors who do not have time or equipment to harvest it themselves. Fish are shared more frequently than large mammals because of the scarcity of large mammals, which are only shared among close relatives. Subsistence resources are shared with others if they are in need.

Reliance upon a wide diversity of fish and wildlife resources

Ninilchik residents rely on a wide diversity of fish and wildlife resources. The average number of wild resources used by Ninilchik households was 8.6 in 1998. This is greater than in Kenai (6.1 in 1991 and 7.1 in 1993) and Cooper Landing (8.3). These uses are reflective of a heterogeneous community that is comprised of long-term residents and newcomers and a community that does not harvest marine mammals. In 1998, Ninilchik residents harvested 164 pounds per person of subsistence wild resources for home use (Fall et al. 2000:242–245).

Effect of the Proposal

A positive customary and traditional use determination for the residents of Ninilchik for all fish in the Federal public waters of the Kenai River Area would provide them with a subsistence priority for harvesting resident fish species. Ninilchik residents already have a positive customary and traditional use determination for salmon in the Kenai River Area. A positive customary and traditional use determination for all fish in the Kenai River Area would allow Ninilchik residents to harvest resident species under Federal subsistence regulations as well as retain resident species when harvested incidentally while salmon fishing. This would provide Ninilchik with the same customary and traditional use determination—all fish—as the communities of Hope and Cooper Landing.

Effects on nonsubsistence users and conservation concerns are addressed through the implementation of seasons, harvest limits, and methods and means of the harvest and are not part of the consideration in making customary and traditional use determinations. However, effects on nonsubsistence users are not

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expected to be significant because recent studies (Fall et al. 2000 and 2004 and NTC 1999) have indicated low levels of resident fish species harvests and use in the Kenai River Area by Ninilchik residents.

The Southcentral Council's recommended modification to the proposed regulation for a customary and traditional use determination for resident species of fish for the community of Ninilchik would exclude burbot, Arctic grayling, and pike. The recommendation is not anticipated to have any effect on the community of Ninilchik's use of resident species in the Kenai River Area. There is no open Federal season for burbot and Arctic grayling, and no Federal regulations for pike. There are no limits for harvesting pike under State regulations. Adopting the Southcentral Council recommendation would result in a regulation broken out by species for Ninilchik and for all fish for Hope and Cooper Landing, although the net effect would be the same for all communities.

OSM CONCLUSION

Support Proposal FP09-07.

Justification

Until 1952, freshwater streams in the Kenai Peninsula were open to subsistence fishing. In 1952, all streams and lakes of the Kenai Peninsula were closed to subsistence fishing under Territory of Alaska regulations. Only rod and reel or hook or line were allowed for "personal use." From 1952 until 2002 and from 2006 until the present, Ninilchik residents were not allowed to subsistence fish for resident fish species in the Kenai River Area. Because such a prohibition constitutes an interruption beyond the control of Ninilchik residents, the Board necessarily makes its decision on the best available information concerning historical patterns of use prior to the imposition of the prohibition or contemporary patterns of use under existing regulations. Residents of Ninilchik have consistently harvested all fish on the Kenai Peninsula since the community was settled in the mid-1800s. Information regarding Ninilchik's harvests of resident fish species in the Kenai River Area was provided by Fall et al. (2000, 2004, and 2006), NTC (1994 and 1999), Chen (2005, pers. comm.), Wolfe (2006a and b) and during public testimony at Southcentral Council (SCRAC 2005, 2006, and 2007) and Board (FSB 2006a and b, and 2007a, b and c) meetings.

Information provided by Fall et al. (2006) and NTC (1994 and Wolfe 2006a and 2006b) documented the lifetime uses of fish species by Ninilchik residents of the Kenai River Area. Fall et al. (2006) found that 28% of Ninilchik households had fished for either salmon or resident fish species in the Federal public waters of the Kenai River or the Swanson River areas in their lifetime (17% frequently, 4% intermittently, and less than 6% infrequently). Kenai River use has decreased in recent years due to changes in regulations, competition with other users, and population changes. Fall et al. (2000 and 2004) documented Ninilchik residents' subsistence harvest and use of resident fish in the Kenai River Area. Fall et al. (2004) reported that less than 1% of households harvested rainbow trout and lake trout in Kenai Lake or Kenai Mountain streams on the Kenai Refuge. Fall et al.'s research in 1998 and 2002-03, indicates that while harvests were low, there was a consistent pattern of use by Ninilchik residents in the Kenai River Area for harvesting resident fish. Additionally, while Ninilchik's uses of the Kenai River Area were not substantial during the study years, there are no "unimportant" subsistence uses in ANILCA (USDOI 1986: 6-7).

The opportunistic nature and associated values of subsistence hunting and fishing is that it does not limit harvest to a specific species—specifically, if a Ninilchik resident were fishing in the Kenai River Area for salmon (for which they have a positive customary and traditional use determination), and a rainbow trout is harvested instead, it is the nature of the subsistence user to use what is harvested. This is the pattern throughout Alaska of subsistence hunting and fishing.

The pattern of harvesting resident fish species also is distinct from the pattern of harvesting salmon. Resident species such as trout are usually harvested in smaller quantities, partially because resident species of fish often do not preserve as well as salmon. The harvest of resident fish species in the Kenai River Area is likely to occur when associated with hunting or other harvesting activities, such as berry picking. This pattern of use where multiple activities occur—berry picking, fishing for Dolly Varden and rainbow trout while hunting—is common among subsistence users.

Based on the available history of the pattern of Ninilchik's use of resident fish species in the Kenai River Area, the opportunistic nature of subsistence uses, and the demonstrated history of fishing activities by Ninilchik residents, it is reasonable to conclude that Ninilchik residents have customarily and traditionally used resident fish species in the Kenai River Area. Thus, there is a reasonable basis for a positive customary and traditional use determination for the community of Ninilchik in the Kenai River Area for all fish, with no distinction between salmon and resident fish species.

The Southcentral Council's recommended modification to the proposed regulation for a customary and traditional use determination for resident species of fish for the community of Ninilchik would exclude burbot, Arctic grayling, and pike. The recommendation is not anticipated to have any effect on the community of Ninilchik's use of resident species in the Kenai River Area. There is no open Federal season for burbot and Arctic grayling, and no Federal regulations for pike. There are no limits for harvesting pike under State regulations. Adopting the Southcentral Council recommendation would result in a regulation broken out by species for Ninilchik and for all fish for Hope and Cooper Landing, although the net effect would be the same for all communities.

Finally, conservation concerns are not part of the decision process for making customary and traditional use determinations. Such concerns are properly addressed through the implementation of seasons, harvest limits, and methods and means of the harvest.

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FP09-07 Interagency Staff Committee Comments

INTERAGENCY STAFF COMMITTEE COMMENTS

FP09-07

The Interagency Staff Committee (ISC) found the staff analysis for Proposal FP09-07 to be a thorough and accurate evaluation of the proposal.

The majority of the ISC noted that a holistic application of the eight factors demonstrates that residents of Ninilchik have a customary and traditional pattern of use of resident fish in the Federal public waters of the Kenai Peninsula District, while a minority of the ISC noted that there is not a pattern of use by the community of Ninilchik for resident fish species in these same waters. The majority also believe that there is insufficient information to distinguish between individual species and that use of a species cutoff-date prior to 1952 could be detrimental to Federally qualified subsistence users. In reaching its conclusion, the minority believes a customary and traditional use determination for residents of Ninilchik for any resident fish species in this area is not supported by substantial evidence.

FP09-07 ADF&G Comments

ADF&G Comments FP09-07
December 1, 2008, Page 1 of 2

Alaska Department of Fish and Game
Comments to the Federal Subsistence Board

FP09-07 Ninilchik Customary and Traditional Use Determination for Resident Species in the Kenai River Area

Introduction: Proposal FP09-07 requests that recent customary and traditional use (C&T) findings by the Federal Subsistence Board (Federal Board) for the communities of Ninilchik and Happy Valley be changed to allow those residents to harvest resident fish stocks under federal subsistence regulations from federal lands within and north of the Kenai River drainage (“Kenai River area”). Proposal FP09-07 is identical in intent to the portion of Proposal FP06-09 which the Federal Board rejected on September 13, 2007, based on insufficient evidence to support a determination of customary and traditional use of resident species within the Kenai River area by residents of Ninilchik and Happy Valley after a lengthy public process and intense examination lasting over a year. The federal staff analysis of this proposal mirrors its analysis of that portion of the previous proposal that the Federal Board rejected. The proposal and federal staff provide no new or substantial evidence of Ninilchik or Happy Valley customary and traditional taking of discrete resident fish stocks of the upper Kenai River area within federal public lands.

Background: Application of the September 23, 2008, Ninth Circuit Court opinion in *State of Alaska v. Federal Subsistence Board*, 544 F.3d 1089, reinforces the correctness of the Federal Board’s prior C&T determination regarding nonuse of the resident fish stocks within federal lands in the Kenai River area by Ninilchik and Happy Valley residents. The Court held that Federal Board C&T determinations must be supported by substantial evidence of a specific rural community or area’s demonstrated customary and traditional taking of a specific fish stock or wildlife population, not general species, within specific geographic locations. *Alaska v. Federal Subsistence Board* at 1094-99. The Federal Board’s determination must have a “substantial basis in fact.” *Id.* at 1094. The Court held: “Under 50 C.F.R. §100.16, C & T determinations should ‘identify the specific community’s or area’s use of specific fish stocks and wildlife populations,’ . . . and not Chistochina’s use of moose in general.” *Id.* at 1096. The Court added that the Federal Board’s “regulations clearly tie C & T determinations to the specific locations in which wildlife populations have been taken” and “each C & T **determination** must be tied to a specific community or area and a specific wildlife population.” *Id.* at 1097 (emphasis in original). The Court further emphasized: “Specific communities and areas and specific fish stocks and wildlife populations are, by definition, limited to specific geographic areas” and “a C & T determination is a determination that a community or area has taken a species for subsistence use **within a specific area.**” *Id.* at 1097-98 (emphasis in original).

As previously determined by the Federal Board, resident species fish stocks found within federal boundaries in the Kenai River area constitute distinct stocks, and residents of Ninilchik and Happy Valley have not “customarily and traditionally” taken significant numbers of those distinct stocks from that area. Any evidence of those communities’ take of the same general species of fish in other waters closer to Ninilchik and Happy Valley cannot be used to grant Ninilchik or Happy Valley C&T determinations to the specific fish stocks in the upper Kenai River area at issue. Ninilchik and Happy Valley are located far away from the upper Kenai River area. They have not historically relied on those discrete resident fish stocks for their

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subsistence needs. Given the Federal Board's prior analysis and recent pronouncements by the Ninth Circuit Court in *Alaska v. Federal Subsistence Board*, a C&T determination for the communities of Ninilchik and Happy Valley to take the specific resident fish stocks of the upper Kenai River area cannot be supported. No new information has been provided that would support reversing the Federal Board's recent determination that insufficient evidence exists to support a determination of customary and traditional use of the specific resident fish stocks within the Kenai River area by residents of Ninilchik and Happy Valley.

Opportunity Provided by State: The Kenai River area is located in the Anchorage-MatSu-Kenai Nonsubsistence area designation under State law. The State provides a broad array of personal use, recreational, and educational fisheries to meet needs for personal and family consumption as well as cultural purposes. In addition to personal use and educational fisheries for salmon, State sport fishing regulations provide adequate opportunities for harvest of rainbow/steelhead trout, lake trout, and Arctic char/Dolly Varden in addition to salmon.

Conservation Issues: No separate harvest proposal was submitted by the proponent, but, if this proposal is adopted, presumably Ninilchik and Happy Valley residents would become eligible to harvest resident species under existing federal subsistence harvest regulations which apply to residents of Hope and Cooper Landing for taking resident species in the Kenai River area. The State previously documented that resident species are easily over-harvested, and a conservative management approach has been developed by the State over time to assure harvest opportunity while sustaining these distinct, vulnerable resident stocks in the Kenai River area. Most trout fishermen in that area practice catch-and-release fishing, and the proportion of rainbow trout that are harvested in the State fishery is only about 2.4 percent. Current federal regulations providing for use of dip nets and multiple baited treble hooks and for high daily harvest and possession limits for these Kenai River area resident stocks already raise serious conservation issues that are amplified by inadequate reporting requirements. Adding a new subsistence harvest of these resident fish by Ninilchik and Happy Valley to existing federal subsistence harvests of these fish by Hope and Cooper Landing residents would significantly increase these concerns.

Department Recommendation: Oppose.¹ No new information is presented in the proposal or in the federal staff analysis which justifies reversing the 2007 Federal Board C&T determination. Granting a customary and traditional finding without substantial evidence of a prior pattern of take of specific fish stocks in a specific geographic area by a specific community would be in direct conflict with the September 23, 2008, opinion in *Alaska v. Federal Subsistence Board*. The recent federal staff analysis contains the same information, taken from the same surveys and data compilations reported in 2003-2006, that the federal staff reported before. No substantial evidence that use of the specific resident stocks in the Kenai River area by Ninilchik and Happy Valley residents satisfies the Federal Board's regulatory definition of customary and traditional use, *see* 50 C.F.R. 100.4, or the Board's regulatory factors for making a positive C&T determination for any specific resident fish stock. *See* 50 C.F.R. 100.16(b). The Federal Board previously carefully considered the relevant information and properly concluded those communities had rarely harvested or fished from those specific fish stocks in those Kenai waters.

¹ ADF&G incorporates its previous detailed submittals on this subject to the Federal Board, including those dated April 30 and May 7, 2007, and its prior RFRs in opposition to that portion of FP06-09 which the Board eventually denied.

FP09-07 Written Public Comments

WRITTEN PUBLIC COMMENTS

Oppose. Based on the prior analysis of the historic pattern of use and the eight criteria that are required under ANILCA and the decision to not grant C and T for freshwater water species to residents of Ninilchik, Kenai River Sportfishing Association strongly opposes this expansion of subsistence opportunity. As is the case in this situation, we cannot simply afford additional opportunity to a community that cannot demonstrate a pattern of use of those resources present within the Federally managed waters. Adoption of this proposal will detrimentally impact other users and other uses of these resources.

Subsistence opportunities for residents of Ninilchik exist under State regulations. This proposal revisits decisions already made by the Federal Board in November, 2006, and would grant residents of Ninilchik a Federal subsistence priority for freshwater species occurring in the Kenai River within the Kenai National Wildlife Refuge and the Chugach National Forest. Central to those earlier decisions was the fact that C&T could not be demonstrated for freshwater species within the Federally managed waters.

The justification provided for this proposal recognizes this activity did not occur on the allowable Federal property but asks it be allowed anyway because the Federal boundaries are not consistent with their historic patterns (areas) of use.

Kenai River Sportfishing Association

October 9, 2009

Note: The draft threshold analysis was reviewed by the Federal Subsistence Board on November 12, 2009.

DRAFT THRESHOLD ANALYSIS REQUEST FOR RECONSIDERATION FRFR09-01

ISSUE

The Ninilchik Traditional Council (NTC) submitted a request dated May 29, 2009 (**Appendix A**) asking that the Federal Subsistence Board (Board) reconsider its decision of January 14, 2009 on Fisheries Proposal FP09-07 (**Appendix B**). Proposal FP09-07 requested that the community of Ninilchik be added to the communities with a positive customary and traditional use determination for all fish in the waters north of and including the Kenai River drainage, within the Kenai National Wildlife Refuge and Chugach National Forest within the Kenai Peninsula district (referred to from here forward as the Kenai River Area). The NTC maintains that reconsideration of the Board's action on FP09-07 is required because the Board's interpretation of information, applicable law, or regulation was in error or contrary to existing law.

BACKGROUND

Regulatory History

Proposal FP09-07 was submitted by NTC in response to the Board's decision to recognize Ninilchik's customary and traditional uses of salmon, but not non-salmon, in the Kenai River Area. The Board has considered the issue of Ninilchik's customary and traditional uses of fish many times since 2001.

On December 11, 2001, the Board deferred three proposals¹ that addressed the use of fish in the Cook Inlet Area pending completion of a FWS funded study, *Cook Inlet Customary and*

¹ The deferred proposals were: 1) Proposal FP02-11a, an administratively combined set of submissions from NTC, Stephen Vanek and Fred H. Bahr, requested a positive customary and traditional use determination for all fish and all shellfish in the Cook Inlet Area for residents of the Kenai Peninsula District; 2) FP02-12a, submitted by Henry Kroll, requested a positive customary and traditional use determination for herring, crab, smelt, whitefish, razor clams, and salmon in Tuxedni Bay for residents of Tuxedni Bay; and 3) FP02-13a, submitted by Steve Vanek of Ninilchik, requested a subsistence season for salmon and halibut for the Cook Inlet Area. The first two of the three (FP02-11a and FP02-12a) had been initially assigned to the 2001 regulatory cycle as proposals FP01-13 and FP01-33, respectively, but were deferred by the Board in December 2000 pending a discussion on the Kenai Peninsula rural Request for Reconsideration.

Traditional Subsistence Fisheries Assessment (Fall et al. 2004). The Board had concluded that historical, contemporary, community, and area-specific harvest use information was needed to address these proposals in the Cook Inlet Area (FSB 2001:97).

On January 6, 2006, the Board considered and deliberated on Proposal FP06-09 (FSB 2006a:507-508), which combined proposals (FP02-11a, FP012a, FP02-13a) from the 2001 fisheries regulatory cycle that had been deferred by the Board (FSB 2001:70-97).

Proposal FP06-09, requested the following:

- 1) a positive customary and traditional use determination for all rural residents of the Cook Inlet Area for salmon, Dolly Varden, trout, char, grayling, and burbot taken in the Cook Inlet Area; and
- 2) a positive customary and traditional use determination for all rural residents west of a line due southeast of the Crescent River mouth and intersecting another line drawn northeast of the south side of Tuxedni Bay for herring, smelt, whitefish, and salmon taken in Tuxedni Bay.

The Board acted on Proposal FP06-09 by making a positive customary and traditional use determination for Hope and Cooper Landing for all fish in the Kenai River Area and for Ninilchik for all fish for waters within the Kasilof River drainage within the Kenai National Wildlife Refuge. These were described as “interim” determinations, to “signal to everybody that we’re not done yet, we’re just starting, and that’s all it was meant to do” (FSB 2006a:507-508). The Board’s decision provided an opportunity:

“...to gather information that may provide a more definitive picture of historic and current use patterns on Federal lands throughout the various drainages on the Peninsula....to better integrate the information from the two BIA funded studies that were not fully available when Dr. Fall’s study was completed” (FSB 2006a:500-501).

In May 2006, the Board received two requests for reconsideration from the Alaska Department of Fish and Game (ADF&G) and one from NTC. ADF&G requested reconsideration of the Board’s findings of positive customary and traditional use determinations for Ninilchik (FRFR06-02) and Hope and Cooper Landing (FRFR06-03). NTC requested reconsideration of the Board’s decision to limit Ninilchik’s positive customary and traditional finding for all fish to the Kasilof River drainage (FRFR06-08).

On November 17, 2006, during a public work session, the Board deliberated on the claims that were accepted in FRFR06-02/-03/-08. Board action expanded the customary and traditional use determination for Ninilchik to include all fish in the Kenai River Area.

In January 2007, the Board received request for reconsideration FRFR06-09 from ADF&G challenging how the Board addressed FRFR06-02/03/08. The Board addressed the one accepted claim in FRFR06-09 on May 2, 2007, although in so doing raised some process concerns which the State questioned in a subsequent Request for Reconsideration, RFR07-05. To address these concerns, the Board re-deliberated and held a vote at a September 13, 2007 public work session. This action resulted in a positive customary and traditional use determination for residents of Ninilchik for salmon only in the Kenai River Area.

In the meantime, the Board had also addressed Proposal FP07-28, which was submitted by the Kenai River Sportfishing Association. FP07-28 had requested that the positive customary and traditional use determinations for fish for Hope, Cooper Landing, and Ninilchik residents be rescinded in the Kenai Peninsula District and that there be no Federal subsistence priority for all fish in the Kenai River Area. On May 8, 2007 the Board rejected that proposal. In its RFR 07-05, the ADFG also requested that the Board reconsider its action on FP07-28, but their request was denied.

Following the Board's action on FRFR06-09, NTC submitted Proposal FP09-07, requesting a positive customary and traditional use determination for Ninilchik for all fish in the Kenai River Area. The Board rejected Proposal FP09-07, which resulted in no change to Ninilchik's positive customary and traditional use determination for salmon only in the Kenai River Area. NTC is now requesting that the Board's reconsider its action on Proposal FP09-07 through RFR09-01.

Regulatory Language Regarding Requests for Reconsideration

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

PRELIMINARY ASSESSMENT OF REQUESTOR'S CLAIMS

To assess whether or not a request for reconsideration meets the threshold for further consideration, the Board evaluates a request for reconsideration using three criteria.

Criterion 1. Information previously not considered by the Board.

There were no claims by NTC of new information that were not previously considered by the Board.

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

There were no claims by NTC that the existing information used by the Board was incorrect.

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

NTC presented nine claims related to Criterion 3. The claims are summarized below, however, the full claims can be found in Appendix A. The summary of the nine claims and the preliminary assessment of each are as follows:

Claim 3.1

Requiring a rural community to demonstrate customary and traditional use of each specific fish stock in an area before allowing it the opportunity for subsistence uses of that stock is inconsistent with Title VIII of ANILCA.

Preliminary assessment of Claim 3.1

Subsistence Management Regulations governing customary and traditional use determinations (36 CFR 242.16(a) and 50 CFR 100.16(a)) state that "the Board shall determine which 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." Regardless of one's opinion of the regulations with regard to their ability to capture the nature of subsistence practices, the Board is required to follow applicable regulations when taking action. Finally, the courts have affirmed the Board's general approach to doing customary and traditional use determinations, as recently evidenced by the Ninth Circuit's decision in *State of Alaska v. Federal Subsistence Board, Cheesh-na Tribal Council, et al.*, 544 F.3d 1089 (9th Cir. 2008)."

Conclusion: There does not appear to be merit to this claim.

Claim 3.2

The Board's application of its customary and traditional use determinations regulations frustrates the clear purpose of Title VIII, to provide rural residents an opportunity for subsistence on the public lands, and is thus a violation of the law. Further, the Board's actions appear to be more deferential to the policies, preferences and position of the State of Alaska than to the Regional Advisory Councils and the federal subsistence protections the Board was entrusted to administer.

Preliminary assessment of Claim 3.2

As described above in reference to claim 3.1, regardless of one's opinion of the regulations with regard to their ability to capture the nature of subsistence practices, the Board is required to follow applicable regulations and did so when considering Ninilchik's customary and traditional use of fish.

The Board's recognition of Ninilchik's customary and traditional uses of salmon in the Kenai River Area and all fish in the Kasilof River drainage is contrary to the position taken by the State, which classifies all of the lands and waters around Ninilchik as a nonsubsistence use area.

As noted above, the Board is required to follow applicable regulations. Further, as required by ANILCA §805(c), the Board must accept a Regional Advisory Council's recommendation concerning the taking of fish and wildlife on public lands, unless it is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. Because customary and traditional use determinations are not considered "taking" regulations, the Board is not required to give deference to the Councils when making customary and traditional use determinations, although as specified under 50CFR 100.16(c), it must "take into consideration the reports and recommendation of any appropriate Regional Advisory Council regarding customary and traditional uses of subsistence resources." The Board considered but did not adopt the recommendation of the Southcentral Regional Advisory Council to support the proposal believing that the evidence for customary and traditional use was not sufficient.

Conclusion: There does not appear to be merit to this claim.

Claim 3.3

The Board required a statistical minimum percentage of the Ninilchik population to demonstrate participation in the subsistence uses of specific fish stocks in the Kenai River Area in order to demonstrate customary and traditional use. This is contrary to existing regulations.

Preliminary assessment of Claim 3.3

The Board clearly engaged in discussion regarding percentages when it discussed patterns of use. This discussion was prompted by various studies that indicated the different percentages of a community that used a resource in an area in the analysis. However, the Board was reminded by the Chair that tying patterns of use to percentages (whatever they may be) is problematic:

I heard percentages thrown out, we're discussing one percent. I think that we need to maintain the discretion that the Board has used, that we use common sense when we're applying these C&T decisions and determinations and that if we tie ourselves to a percentage that may work in one area and we're stuck with it in another area that just has no bearing. . . . I think that it was said before, we could find ourselves to a point to where all rural residents qualify for all species everywhere based on some of the rationale that I've heard presented on this case. And if that's the case then we don't need to do C&Ts anymore; we just need to open it wide up. And I don't think that that's the right track to go on either" (FSB 2009:205-206).

In making its decision, the Board did not require a statistical minimum percentage of the Ninilchik population to demonstrate customary and traditional use of specific fish stocks in the Kenai River Area.

Conclusion: There does not appear to be merit to this claim.

Claim 3.4

Happy Valley and Ninilchik are separate communities and combining them for the purpose of evaluating customary and traditional use is inconsistent with the law and is arbitrary and capricious. Further, including Happy Valley residents dilutes the tribal community subsistence uses that are the foundation of the subsistence way of life for the community of Ninilchik.

Preliminary assessment of Claim 3.4

Ninilchik and Happy Valley are considered collectively by the Federal Subsistence Management Program for the purposes of customary and traditional use determinations and issuance of harvest permits. It has been our practice to provide moose and fishing permits that Ninilchik residents qualify for to anyone living south of Falls Creek Road and north of the radio tower at Cape Starichkof, an area that includes Happy Valley, a census designated place. Additionally, in Fall et al.'s 2004 study, *Cook Inlet Customary and Traditional Subsistence Fisheries*, Happy Valley was combined with Ninilchik for the purposes of the study. Happy Valley is considered a "roadside geographic location" in the State of Alaska community profiles and not a community

(ADCRA 2009). Because it is the closest school, children from Happy Valley attend school in Ninilchik. While there is one small convenience store in Happy Valley, there are no community buildings, government buildings, health care facilities, no organizations of any type, and no schools. For these reasons, and due to its geographic proximity, Happy Valley was included with Ninilchik in the staff analysis and consequently in the Board deliberation of customary and traditional use. There is nothing in the record to suggest that the inclusion of Happy Valley with Ninilchik “diluted” the subsistence uses in a manner that would have caused the Board to reach a different decision.

Conclusion: There does not appear to be merit to this claim.

Claim 3.5

The Board violated its own regulations when it did not consider “interruptions beyond the control of the community” in assessing Ninilchik’s long-term pattern of use (50 CFR 100.16[b][1]) of all fish in the Kenai River Area.

Preliminary assessment of Claim 3.5

The information considered by the Board during its consideration of customary and traditional uses by Ninilchik includes the staff analysis for Proposal FP09-07, which included a discussion of “long-term, consistent pattern of use, excluding interruptions beyond the control of the community” (FWS 2009:177). The staff presentation to the Board on January 14, 2009 on Proposal FP09-07 also included a discussion about “long-term, consistent pattern of use, excluding interruptions beyond the control of the community.” Thus, the administrative record clearly shows that this issue of long-term use with interruptions beyond the control of the community was presented to the Board.

Conclusion: There does not appear to be merit to this claim.

Claim 3.6

The Board violated §805 of ANILCA by not deferring to the Council recommendation on Proposal FP09-07.

Preliminary assessment of Claim 3.6

As required by ANILCA §805(c), the Board must accept a Regional Advisory Council’s recommendation on “taking” regulations, unless it is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. Because customary and traditional use determinations are not

considered “taking” regulations, the Board is not required to give deference to the Councils when making customary and traditional use determinations, although as specified under 50CFR 100.16(c), it must “take into consideration the reports and recommendation of any appropriate Regional advisory council regarding customary and traditional uses of subsistence resources.” The Board considered but did not adopt the recommendation of the Southcentral Regional Advisory Council to support the proposal believing that the evidence for customary and traditional use was not sufficient.

Conclusion: There does not appear to be merit to this claim.

Claim 3.7

The Board’s decision was not supported by substantial evidence and the Board’s action was arbitrary and capricious in that it ignored the Council’s recommendation, Office of Subsistence Management (OSM) staff support for the proposal and the information presented in the staff analysis, the Interagency Staff Committee’s majority recommendation in support of the proposal, several studies demonstrating support of the proposal and public testimony in support of the proposal.

The NTC also questioned the Board’s reversal of its decision on November 17, 2006 when it made a positive customary and traditional use determination for Ninilchik for all fish in the Kenai River Area. The NTC claims that nothing in the administrative record provides a reasonable basis for the two Board members to reverse their votes.

Preliminary assessment of Claim 3.7

The Board reviewed a substantial administrative record (including the staff analysis, the Council’s recommendation, OSM’s staff recommendation, the Interagency Staff Committee’s recommendation, and public testimony) and the Board did not support recognition of a positive customary and traditional use determination for Ninilchik for all fish in the Kenai River Area. As discussed in the preliminary assessment of Claims 3.2 and 3.6, while the Board is required to consider the recommendation of the Regional Advisory Councils on customary and traditional use determinations, it is not required to give deference. In this instance, the Board considered but did not adopt the recommendation of the Southcentral Regional Advisory Council to support the proposal believing that the evidence for customary and traditional use was not sufficient. The Board also is not required to give ANILCA §805(c) deference to Interagency Staff Committee or staff recommendations. In making its decision to decline Ninilchik’s request for a positive determination, the Board maintained the status quo. The Administrative Procedures Act (APA) does not require substantial evidence for a rulemaking body to maintain the status quo.

The Board considered all available information, including comments and recommendations from all available sources, in the course of its deliberations in the rule making and reconsideration processes. Board determinations may change over time on a particular consideration, as decisions are made in each case applying the judgment of the Board and drawing upon the best available information.

Conclusion: There does not appear to be merit to this claim.

Claim 3.8

The Board's decision was arbitrary and capricious, in violation of its own regulations, process and policy, and in violation of the Administrative Procedure Act and other applicable laws governing decision-making and regulation promulgation by federal administrative agencies. Specifically, the Board's positive customary and traditional use determination for all fish for Ninilchik was adopted November 17, 2006 as published in the Federal Register and Code of Federal Regulations. A vote by the majority of the Board (4 members) is required to repeal any duly adopted regulation. This action by the Board was not repealed in a manner consistent with the law because it was a vote of 3-3 on May 2, 2007.

Preliminary assessment of Claim 3.8

As outlined in the Board's *Meeting Guidelines* (revised and adopted by the Board April 29, 2008), the Board uses the most current edition of *Robert's Rules of Order, Newly Revised* and a majority vote (4 members) is required to repeal any duly adopted regulation. However, in this case, the vote on November 17, 2006 was not a "duly" adopted regulation, because there were procedural errors.

To explain: at its May 2007 meeting, the Board incorrectly began with a new motion for a positive customary and traditional use determination for Ninilchik in the Kenai River Area for salmon only. When that motion failed on a tie vote, the Board was left with the existing customary and traditional use determination in regulation, but an apparent lack of majority Board support for the resident fish component embedded within that determination, which could not be resolved within the motion making context.

To correct this, the Board correctly returned to the issue by returning to the original motion that was before it and that it voted on in November 2006 in the context of Fisheries RFR 06-09. Thus, on September 13, 2007, the Board began with the original motion for FRFR06-02/-03/-08 made on November 17, 2006 and deliberated again on the original motion, thereby correcting the

procedural errors. Board action resulted in a positive customary and traditional use determination for Ninilchik for salmon in the Kenai River Area.

Conclusion: There does not appear to be merit to this claim.

Claim 3.9

The Board's action on Proposal FP09-07 is illegal because executive sessions where the proposal was discussed were in violation of ANILCA, the Administrative Procedure Act, 5 U.S.C. §701-6, and other applicable laws and regulations.

Preliminary assessment of Claim 3.9

The Board's *Meeting Guidelines* (revised and adopted by the Board April 29, 2008) allow executive sessions to be held at the discretion of the Chair for a variety of purposes, however, the *Guidelines* specifically state that, "The Board will not engage in regulatory rulemaking or act on regulatory proposals during an executive session." The Board held public meetings when making rulemaking decisions on all of the Ninilchik customary and traditional use determination proposals and thus was in compliance with its guidelines and other legal requirements. No regulatory decisions were made during executive sessions.

Conclusion: There does not appear to be merit to this claim.

SUMMARY

NTC submitted a request that the Board reconsider its decision of January 14, 2009 on Proposal FP09-07, which requested that the community of Ninilchik be added to the communities with a positive customary and traditional use determination for all fish in the waters north of and including the Kenai River drainage, within the Kenai National Wildlife Refuge and Chugach National Forest within the Kenai Peninsula district. The Board did not support Proposal FP09-07. The NTC maintains that reconsideration is required because the Board's interpretation of information, applicable law, or regulation was in error or contrary to existing law on nine different counts.

In claims 3.1 and 3.2, Ninilchik states that the Board's application of its customary and traditional use determinations regulations is inconsistent with the intent of Title VIII of ANILCA, which is to provide rural residents an opportunity for subsistence on the public lands. However, the Subsistence Management Regulations governing customary and traditional use determinations (36 CFR 242.16(a) and 50 CFR 100.16(a)) state that "the Board shall determine

which 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." Regardless of one's opinion of the regulations with regard to their ability to capture the nature of subsistence practices, the Board is required to follow applicable regulations, and did so in this instance. The other issues raised in Claims 3.2 through 3.9 were discussed thoroughly in the administrative record during the regulatory process and are clearly documented.

There does not appear to be merit to any of Ninilchik's claims.

PRELIMINARY CONCLUSION

Do not Support reconsideration of any of the nine claims in request for reconsideration RFR09-01.

Justification

The NTC made no claims under the first and second criterion and nine claims under the third criterion, stating that the Board's interpretation of information, applicable law, or regulation is in error or contrary to existing law. As discussed in the analysis, the Board is required to follow applicable regulations when taking action, and did so when deliberating Proposal FP09-07, thus neither Claim 3.1 nor 3.2 have merit. The other issues raised in Claims 3.2 through 3.9 were discussed thoroughly in the administrative record during the regulatory process and are clearly documented. None of the nine claims appear to meet the threshold for reconsideration.

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APPENDIX A: Request for Reconsideration FRFR09-01

REQUEST FOR RECONSIDERATION
 FEDERAL SUBSISTENCE BOARD
 PROPOSAL FP09-07

By the
 Ninilchik Traditional Council

The Ninilchik Traditional Council, the governing body of Ninilchik Village, a federally recognized tribe of Alaska Natives, hereby respectfully requests the Federal Subsistence Board (FSB) to reconsider its 14 January 2009 decision related to Proposal FP09-07 as specified below and published in the Federal Register of March 30, 2009 (74 FR 14051). The request for reconsideration is timely submitted pursuant to 50 CFR Part 100.20.

In requesting reconsideration, the tribe does not waive any rights it may have to pursue a legal remedy under section 807 of the Alaska National Interest Lands Conservation Act (ANILCA)(16 USC 3117) or other applicable law. The tribe takes the position that, under the circumstance here, it is not necessary to file a request for reconsideration in order to exhaust administrative remedies. This RFR will, however, provide the FSB with an opportunity to address the tribe's position and may thereby resolve the issues and eliminate the tribe's need to seek relief in another forum.

Ninilchik incorporates herein all parts of the long and convoluted administrative record and history of the tribe's efforts to have its subsistence fishing rights on the Kenai Peninsula recognized and implemented through the FSB. Much of this history is summarized in the written report prepared by the Office of Subsistence Management for the Board's deliberations on FP09-07.

The basis for Ninilchik's RFR is the Board's failure to conform to existing law as explained below

1. Applying regulations and policy that require a rural community to demonstrate C&T use of each specific fish stock in an area before allowing the opportunity for subsistence uses of that stock is inconsistent with Title VIII of ANILCA. It may be that a community's subsistence uses are uses in specific areas of Alaska. However, once a community has established C&T use of an area for subsistence uses, and in particular for a fish stock in a particular area like Ninilchik has here for salmon, the community does not need to jump through the same administrative hoops for every other fish stock historically present in those same waters. A review of reputable sources published on C&T subsistence uses will confirm that subsistence uses are opportunistic. Subsistence users take what is available and as needed. They use all available resources as those resources are "offered". They do not discriminate between one fish as intrinsically more or less "valuable" such that they would throw back or waste one fish while keeping others. For many Alaska Native peoples and tribes, the practice of catch and release or throwing back by-catch violates cultural values and is highly repulsive. In

other words, subsistence users do not throw back a trout caught when they are fishing during a salmon run. The Board's failure to provide a subsistence opportunity consistent with these indisputable C&T subsistence patterns and practices is inconsistent with the letter and intent of ANILCA. The purpose of Title VIII of ANILCA "is to provide the opportunity for rural residents engaged in a subsistence way of life to do so." 16 USC 3112(1). The FSB may have discretion in implementing ANILCA, but that discretion does not stretch so far as to frustrate the very purpose of the law.

2. The FSB application of C&T use determinations also violates ANILCA in that it denies the rural residents of Ninilchik subsistence opportunity on "public lands". The structure of ANILCA is designed to ensure the continuation of the subsistence way of life even if the state chooses to close its lands to subsistence uses. Subsistence opportunity is to be provided on the public lands. Due to the state's classification of all the lands and waters around Ninilchik as within a non-subsistence use area, a meaningful opportunity for subsistence uses is only available to the tribe on the public lands. The FSB's restrictive view of C&T use determinations as applied here works in harmony with the State's non-subsistence use area determination to deny Ninilchik all opportunity for subsistence uses of fish other than salmon throughout the tribe's traditional fishing area. As such, the FSB's application of its C&T regulation to Ninilchik frustrates the clear purpose of Title VIII, to provide rural residents an opportunity for subsistence on the public lands, and is thus a violation of the law. Moreover, it is decisions like the one at issue here that has left many subsistence users throughout rural Alaska frustrated and highly dissatisfied with the structure and process of the FSB. The Board's actions appear to be more deferential to the policies, preferences and position of the State of Alaska than to the RACs and the federal subsistence protections the Board was entrusted to administer.

3. The Board's action was inconsistent with Title VIII and arbitrary and capricious. The FSB required an undefined statistical minimum percentage of the current population of Ninilchik to demonstrate participation in the subsistence uses of specific fish stocks in the Kenai drainage in order to show C&T use. It is clear from the transcript of the Board's deliberations on FP09-07 (Excerpt of Transcript and 19-27) that some members voted down the proposal because they believed that the segment of the population that had recently harvested the fish stocks at issue was too small to qualify as C&T subsistence uses.² This is analogous to the argument the Ninth Circuit rejected over 20 years ago that subsistence must be "a principal characteristic" of an area or community in order for it to qualify as "rural." *Kenaitze Indian Tribe v. State of Alaska*, 860 F.2d 312 (9th Cir. 1988), cert. den. 491 U.S. 905. There the Ninth Circuit rejected an Alaska State statute that redefined "rural" to mean: "a community or area of the state in which the noncommercial, customary and traditional use of fish and game . . . is a principal characteristic of the economy of the community or area." *Kenaitze* at 314. The *Kenaitze* court concluded that:

[In ANILCA] Congress did not limit the benefits of the statute to residents of areas dominated by a subsistence economy. Instead, it wrote broadly, giving the

² The Board's application of the "statistical minimum" test to Ninilchik's C&T use determination is apparent in the administrative record of the related proposals, Board decisions and RFRs.

statutory priority to all subsistence users residing in rural areas. To accept the state's contorted definition of rural would materially change the sweep of the statute, second-guessing the congressional policy judgment embodied in ANILCA. This we may not do.

The state's definition of rural would also lead to an inconsistency within the statute. ANILCA establishes not one but two levels of priority. . . . Congress quite clearly intended that section 3113 encompass a larger class of beneficiaries than section 3114(1). Giving the term rural its conventional meaning accomplishes this while the state's interpretation does not. (Emphasis added)

Kenaitze, 860 F.2d, *supra* at 317.

For the same reasons that the Ninth Circuit found the state's definition of "rural" illegal, it was also illegal for the FSB to apply an arbitrary *ad hoc* requirement that some minimum number of current residents must take part in the use of a specific fish stock in a specific area before finding C&T use of that particular stock. As was the case with *Kenaitze*, ANILCA sweeps broadly to give the "statutory preference to all subsistence users residing in rural areas." Requiring a statistical minimum number of subsistence users to support a finding of C&T uses is just another "contorted definition" of what qualifies as customary and traditional use.

4. Including Happy Valley with Ninilchik in applying the C&T criteria is arbitrary.

Lumping Happy Valley in with Ninilchik matters if the FSB insists on reading some statistical minimum community use standard into its C&T use determination process (*see* claim 3 above). Including Happy Valley residents in a survey, and in a C&T analysis for Ninilchik, dilutes the tribal community subsistence uses that are the foundation of the subsistence way of life for the community of Ninilchik. Happy valley and Ninilchik are separate communities by all reasonable measurements. Lumping them together in order to defeat a finding of C&T use is inconsistent with the law and is arbitrary and capricious.

5. The FSB violated the law in that it failed to abide by its own regulation requiring consideration of "interruptions beyond the control of the community" in assessing Ninilchik's long-term pattern of use. 50 CFR Part 100.16(b)(1). It would be difficult to find any tribe in Alaska (except the *Kenaitze*) that has had its subsistence way of life more disrupted by the government and other circumstances beyond the tribe's control than Ninilchik. The Board failed to consider, as required by the regulation, that current patterns and practices regarding taking of fish within the community may not be as strong as in the past because such patterns and practices have been illegal for decades. The FSB's action is thus arbitrary and inconsistent with the law.

6. The FSB violated the law in not deferring to the RAC recommendation. The Board's regulation, and practice in this case, of not deferring to the RAC recommendations on C&T use determinations violates section 805 of ANILCA. RAC's are uniquely qualified to provide recommendations on the C&T uses in their respective areas of the State. The hyper-technical and narrow reading of RAC authority employed by the FSB (that the FSB need only defer to recommendations on "takings"), bears no weight. C&T use determinations are

recommendations on takings because without a C&T use determination no opportunity for takings is provided. It is this kind of stingy interpretation of the RAC's role in the FSB process that has left many subsistence users discouraged by the process and unwilling to participate. It is a far cry from the meaningful participation promised in ANICLA. It is also a violation of the trust many subsistence users invested in the Secretaries to implement a process that empowered and incorporated local subsistence users into the management and decision-making process. The FSB process has so deteriorated that the Board entered into a MOU with the State of Alaska in the last days of the Bush administration that recognizes greater involvement by the State than the RACs for important decisions like special action requests and emergency actions. MOU at section IV(10). A month after entering into the MOU, the FSB dismissed without any serious consideration the RAC recommendation at issue here. The FSB is seriously off-track as a matter of law and policy, and its decision here should be reconsidered as should its regulation diminishing the deference owed RACs on C&T use determinations.

7. The Board's action was arbitrary and capricious in that it ignored: 1) the RAC's recommendation; 2) OSM's support for the proposal and the information presented in the staff analysis; 3) the FSB staff committee majority recommendation in support of the proposal; 4) several studies demonstrating Ninilchik's C&T use of fish in the Kenai River drainage; and 5) public testimony in support of the proposal. The Board's decision was not supported by substantial evidence. The evidence in support of Ninilchik's C&T uses far surpasses the evidence of C&T uses by Hope and Cooper landing relied upon by the Board to make a positive C&T use determination. Also, on November 17, 2006 the FSB voted 5-1 in favor of a positive C&T determination for Ninilchik for all fish in the Kenai River drainage. The rationale of the five FSB members voting in favor of the C&T determination was expressed on the record. FSB transcript of November 16-17 meeting at 166-169. The State among others asked the FSB to reconsider its positive C&T use determination. Two members of the five who originally voted in favor of the C&T determination changed their vote resulting in a 3-3 deadlock on the RFRs seeking a reversal of the C&T use determination. Nothing in the administrative record provides a reasonable basis for the two FSB members to reverse their votes.

8. The Board's decision was arbitrary and capricious, in violation of its own regulations, process and policy, and in violation of the Administrative Procedure Act and other applicable laws governing decision-making and regulation promulgation by federal administrative agencies. On November 17, 2006 the Board made a positive C&T use determination for Ninilchik for all fish in the Kenai River drainage and the waters north thereof. This positive determination was made pursuant to a proposal and subsequent RFR submitted by Ninilchik. The Board adopted the proposal by a 5-1 vote during its November 2006 meeting. The positive C&T use determination adopted by the Board was duly noticed and published in the Federal Register and Code of Federal Regulations. 72 Fed. Reg 12680 (March 16, 2007); 50 CFR part 100, §§ __.24(a)(2). The Board's positive C&T use determination and the subsequently enacted regulation have never been repealed in a manner consistent with the law. The Board alleges to have repealed this duly adopted regulation pursuant to a 3-3 vote of the Board on September 13, 2007 (after failing to repeal the action at a meeting on May 2, 2007). A vote by a majority of the Board (4 members) is required to repeal an earlier duly adopted Board action. A majority of the Board has never voted to repeal the positive C&T use determination.

Thus the positive C&T use determination remains in full force pursuant to applicable law. The Board's actions to repeal the C&T use determination have no legal affect. Regulations reflecting the Board's illegal action purporting to repeal the C&T determination are invalid and inconsistent with the law.

9. The FSB has employed the use of executive sessions to make the regulatory, policy and other decisions related to the actions challenged herein. The Board policy allowing the Chair, at his sole discretion, to call an executive session for virtually no reason, and without notice and with record-keeping, violates the rights of subsistence users and members of the public as provided in section 805 of ANILCA, the Administrative Procedure Act, 5 U.S.C. §§ 701-6, the National Environmental Policy Act, 42 U.S.C. §4321 et seq., the Federal Government in the Sunshine Act, 5 U.S.C. §552b and the Freedom of Information Act, 5 U.S.C. §552 and other applicable laws and regulations. These laws ensure that the decisions and actions of the FSB are developed and made through an open, recorded, public process. The Board's action on FP09-07 is illegal because of all the related actions it has taken through illegal executive sessions.

For the reasons given above, Ninilchik requests that the FSB reconsider the decisions and actions challenged herein, and reinstate its only validly adopted decision, that made on November 17, 2006, finding a positive C&T use determination for Ninilchik for all fish on the Kenai River drainage and waters north thereof on the Kenai Peninsula.

Respectfully submitted this 29th day of May 2009 by:

s/Sky Starkey

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APPENDIX B: Staff Analysis of Proposal FP09-07

See Appendix 1 of RFR09-01

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

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

§ _____.20 *Request for reconsideration.*

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

UPDATE ON THE BROWN BEAR CLAW HANDICRAFT WORKING GROUP

The Brown Bear Claw Handicraft Working Group met on July 29, 2010 in Anchorage. Representatives of seven of the ten Regional Advisory Councils participated in person, and representatives of Eastern and Southcentral Regional Advisory Councils participated by teleconference. Staff from Alaska Department of Fish and Game and Federal agencies also attended. The meeting, chaired by Larry VanDaele with ADF&G and Helen Armstrong, OSM, was held in the OSM Board Room and lasted most of the day.

To begin with, discussion focused on a central question, namely, whether or not there is a need for changes to regulations that allow the sale of handicrafts that incorporate brown bear claws; and if so, can a regulation or regulations be developed that would be non-burdensome for subsistence users.

Other related questions had to do with existing laws or requirements that may affect subsistence users wanting to sell handicrafts that incorporate bear claws, including:

- CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) is an international agreement created to ensure that international trade in wild animals and their parts does not threaten the survival of the species worldwide. Although brown bears are not endangered in Alaska, they are listed as endangered in the lower 48 states of the U.S. and worldwide. Therefore, products from brown bears require CITES permits for international trade (as well as black and polar bears). Under CITES, both tag numbers and permits can be issued.
 - When a bear is sealed, a CITES tag number is attached to the bear hide.
 - A CITES permit is needed to take a handicraft that includes a brown bear part, such as a claw, into another country. To do that, a CITES tag number would need to be provided to a law enforcement officer to get a CITES permit (cost is \$25). This is the responsibility of the buyer, not the seller, unless the seller is exporting the item out of the country (in which case they are required to pay for an export license).
- Sealing of brown bears was also discussed; of particular concern was where bears could be sealed. The existing Federal regulations require modification to allow brown bears to be sealed in villages rather than regional centers. ADF&G representatives assured the Council members that subsistence users would not have to leave the community to get a bear sealed.

Following this discussion, the working group discussed options with regard to regulatory action to bring to the Federal Subsistence Board. The working group was in consensus that:

- Deferred Proposal WP08-05 should be rejected by the Federal Subsistence Board. State representatives at the working group meeting concurred that the Deferred Proposal WP08-05 should be rejected.
- A new proposal should be submitted. The new proposed regulation would require sealing the brown bear if the subsistence user intends to sell a handicraft incorporating the claw(s). A CITES tag number, which is provided when the hide is sealed, would then accompany the handicraft. The new proposal would be submitted by OSM staff.

- Further details regarding how a CITES tag number would accompany a handicraft (a certificate or sticker or some other mechanism) are being developed by staff. These details will be provided to the working group at a later date and will be included in the proposal when it is submitted.
- The proposed regulation would apply only to Federally qualified subsistence users who sell handicrafts incorporating brown bear claw(s). There would be no change for those who take brown bears, make handicrafts for personal use, and do not intend to sell such a handicraft.
- Further details for the proposed regulation still need to be developed addressing how the CITES tag number would accompany the handicraft as well as changes to the regulations regarding the ability to seal the hide in villages rather than regional centers. The working group reached consensus on the following language (additions are bolded). For Federally qualified subsistence users:

You may sell handicraft articles made from the skin, hide, pelt, or fur of a brown bear (including claws) taken from Units 1-5, 9A-C, 9E, 12, 17, 20, 22, 23, 24B (only that portion within Gates of the Arctic National Park), 25, and 26.

If you intend to sell a handicraft incorporating a brown bear claw(s), the hide must be sealed, which includes a CITES tag number. The CITES tag number must accompany the handicraft.

The analysis of this proposal will be presented to all Councils for their recommendations at the fall 2011 meetings, and will be considered by the Federal Subsistence Board at its January 2012 meeting.

QUESTIONS AND ANSWERS REGARDING THE BROWN BEAR CLAW HANDICRAFTS WORK GROUP

Why was this working group formed?

At the May 2008 Federal Subsistence Board meeting, the idea of a working group was suggested by the State as a way to address some of their concerns with Federal regulations that allow the sale of handicrafts that include brown bear claws. The Federal Subsistence Board endorsed the formation of a working group, and clarified that its membership needed to include representatives of the Regional Advisory Councils. The Federal Board also deferred action on a statewide proposal submitted by Alaska Department of Fish and Game (ADF&G) that addressed Federal regulations, pending the outcome of the working group.

What is the charge of the working group?

The draft charge of the working group was developed at a meeting of State and Federal staff in January 2009. The charge is as follows:

Develop a method(s) to recommend to the Federal Subsistence Board and the Board of Game for tracking brown bear claws made into handicrafts that is enforceable and culturally sensitive, commensurate with the need to provide conservation of this wildlife resource.

Who is in the working group and how often has it met?

The brown bear claws handicraft tracking working group includes representatives of the ADF&G, Alaska Wildlife Troopers, Office of Subsistence Management, US Fish and Wildlife Service, US Forest Service, and nine of the ten Regional Advisory Councils. Federal and state agency staff met five times between January and August 2009, but Council representatives were only able to attend one of these meetings by teleconference (June 2009). The working group met again in July 2010.

What is currently allowed under Federal subsistence regulations with regard to brown bear parts?

Under Federal subsistence regulations, Federally qualified subsistence users may sell handicraft articles made from the skin, hide, pelt or fur of a brown bear (including claws) taken from Units 1-5, 9A-C, 9E, 12, 17, 20, 23, 24B (only that portion within Gates of the Arctic National Park), 25 and 26. In Units 1-5, Federally qualified subsistence users may sell handicraft articles made from the skin, hide, pelt, fur, claws, bones, teeth, sinew or skulls of a brown bear taken in Units 1, 4 or 5. Raw claws may not be sold to anyone, including other subsistence users.

Will the working group change Federal Subsistence regulations?

Only the Federal Subsistence Board can change Federal subsistence regulations, and it is not the goal of the working group to rescind Federal regulations that allow for the sale of handicrafts that incorporate brown bear claws. The working group is looking for a non-burdensome way to track legally harvested claws that protects the artist, the buyer, and the resource, and is supported by the Councils.

If the working group can devise a way to track brown bear claws used in handicrafts, how would this protect subsistence users?

Illegally-harvested brown bears are resources that are being taken away from subsistence users. In some cases, poaching for bear parts is incorrectly attributed to legitimate hunters, unfairly affecting peoples' opinions of hunting and subsistence. Developing a mechanism to track legally harvested claws could protect handicraft makers by showing the claws that are used were legally harvested. It could also protect the buyer by developing a mechanism to document and track, which will allow buyers to legally import the handicrafts into other states and countries. This will protect the resource and enhance the value of legitimately obtained handicrafts by making the legal claws identifiably separate from the illegal claws on the market.

What are some of the concerns over the sale of brown bear claws in Alaska?

Although brown bear populations are generally healthy and productive in Alaska, this is not the case in other parts of the United States and the world. There is a demand for bear parts in foreign and domestic markets that poachers and traffickers fill by obtaining brown bears for their parts (primarily paws, claws and gall bladders) and shipping them to illegal markets. These illegal activities threaten populations of brown bears in other parts of the US and world and could eventually affect Alaskan bear populations.

What drives the illegal trade in brown bears and their parts?

Prices for individual claws are highly variable. There have been reports of brown bear paw soup costing \$800 per bowl in Asia, and brown bear claw necklaces costing over \$3,000. These high prices drive the trade in illegal brown bear parts. In the past ten years, agents from US Fish and Wildlife Service and the Alaska Wildlife Troopers have documented over 150 cases where they have found dead bears with

only the claws, paws or gall bladders removed. These cases do not reflect findings by other enforcement agencies that have different ways of organizing individual cases. Illegal harvests are considered poaching and are not reflective of the legal harvests of subsistence users.

What options are there for tracking claws?

The Brown Bear Claw Working Group is looking at existing programs that track animal parts in different countries using such mechanisms as tags, seals, stickers or permits that stay with the animal part. While a technical solution such as individually identifiable microchips inserted in each claw would be possible, such marking and tracking is not wide spread, and such marking of individual claws might not be effective on a global scale.

Would it work to have documentation for claws?

We think so, as long standing programs for other resources have worked. CITES (Convention of International Trade of Endangered Species) has an established and successful documentation and tracking program to track the legal and illegal movement of threatened or endangered species. Alaska brown bears are already protected under CITES and between 1975-2003, there were over 6,500 reports of legal brown bear claw exports.

To take advantage of this program, the Federal Subsistence Management Program could use the existing ADF&G procedures for sealing when the hunter plans on using the claws for making a handicraft to sell in the future. The existing ADF&G procedures is to attach a CITES tag to the bear hide when the bear is sealed. The appropriate forms to document and track brown bear claws taken by Federally qualified subsistence users could be incorporated into the sealing process when the hide is sealed, thereby minimizing paperwork and burden on the hunter. A numbered sticker or permit could then be issued and would stay with the handicraft as proof the claws came from a legally harvested Alaskan brown bear. The Federal government manages CITES permit distribution.

The handicrafts made from brown bear claws legally harvested in Alaska by Federally qualified subsistence users should be distinct from all other sources of brown bear claws to identify that the handicrafts came from sustainably managed bear populations and from Federally protected Alaskan subsistence users. This will protect the resource and enhance the value of legitimately obtained handicrafts. Possession of a CITES permit would allow the buyer to legally take brown bear claw handicrafts into other countries.

In which units is sealing of brown bear currently not required?

Sealing brown bear skins and skulls harvested by Federally qualified subsistence users on Federal public lands is not required (unless you remove the skin or skull from the unit) in Units 5, 9B, 17, 18, portions of 19A, 19B (downstream of and including the Aniak River drainage), 21D, 22 (except 22C), 23 (except the Baldwin Peninsula north of the Arctic Circle), 24, and 26A. *These are the only units or portions of units where new sealing requirements would have an effect, and only when the intent is to sell the brown bear claw handicraft.*

In which units would the proposed regulation have no effect?

The proposed regulations would have no effect on those units where sealing is already required. These units are: 1-4, 6-8, 9A, 9C—9E, 10-16, portions of 19A, 20, 21A—C, 21E, 22C, 25, 26B and 26C.

BRIEFING ON THE NEW FEDERAL SUBSISTENCE PERMIT SYSTEM

The Federal Subsistence Management Program issues permits to Federally qualified subsistence users where specified in regulations.

- Recognizing limitations of the existing system, beginning in February 2010, a new Federal Subsistence Permit System (FSPS) was developed and the wildlife harvest component was brought on line in mid-April.

OSM staff undertook the project to improve efficiencies by:

- Building the latest security measures into the new FSPS in order to protect personal information of permit holders as well as the integrity of the harvest data
- Allowing for in-season tracking of harvests, thereby allowing for more responsive in-season management and conservation of species
- Standardizing terminology and improving accuracy of the issued permits and also harvest reporting data subsequently entered and managed within the system
- Allowing Federal managers to generate tailored, functional reports to provide staff biologists and anthropologists with solid basis for subsequent regulatory analyses and actions
- Streamlining the process of issuing permits to Federally qualified users, as well as tracking the returns of the harvest information reports.

Since April, OSM personnel have trained more than 96 Federal agency staff how to issue permits using the new system

- More than 3,200 permits have been issued since then

Feedback from users is overwhelmingly positive:

- Public users – much quicker process to receive permits, less time waiting in line
- Agency staff – far more useful than before

What's in store for the future?

- The fisheries management component of the permit system is under development and is expected to be available for use in the 2011 season.
- Web based harvest reporting

Winter 2011 Regional Advisory Council Meeting Calendar

February 15–March 24, 2011 current as of 09/28/10

Meeting dates and locations are subject to change.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
<i>Feb. 13</i>	<i>Feb. 14</i>	<i>Feb. 15</i> <i>Window</i> <i>Opens</i>	<i>Feb. 16</i>	<i>Feb. 17</i>	<i>Feb. 18</i>	<i>Feb. 19</i>
			K/A—Kodiak		NWA—Kotzebue	
<i>Feb. 20</i>	<i>Feb. 21</i> HOLIDAY	<i>Feb. 22</i>	<i>Feb. 23</i>	<i>Feb. 24</i>	<i>Feb. 25</i>	<i>Feb. 26</i>
			YKD—Bethel			
<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>
		EI—Tanana				
		WI—Galena				
<i>Mar. 6</i>	<i>Mar. 7</i>	<i>Mar. 8</i>	<i>Mar. 9</i>	<i>Mar. 10</i>	<i>Mar. 11</i>	<i>Mar. 12</i>
	NS—Barrow		BB—Naknek			
<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>
			SC—Anchorage			
		SP—Nome				
<i>Mar. 20</i>	<i>Mar. 21</i>	<i>Mar. 22</i>	<i>Mar. 23</i>	<i>Mar. 24</i> <i>Window</i> <i>Closes</i>	<i>Mar. 25</i>	<i>Mar. 26</i>
		SE—Sitka				

Fall 2011 Regional Advisory Council Meeting Window

August 30–October 15, 2011 current as of 09/28/10

Meeting dates and locations are subject to change.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Aug. 21	Aug. 22 WINDOW OPENS	Aug. 23	Aug. 24	Aug. 25	Aug. 26	Aug. 27
		NS—TBA				
Aug. 28	Aug. 29	Aug. 30	Aug. 31	Sept. 1	Sept. 2	Sept. 3
Sept. 4	Sept. 5 HOLIDAY	Sept. 6	Sept. 7	Sept. 8	Sept. 9	Sept. 10
			KA—Cold Bay or King Cove			
Sept. 11	Sept. 12	Sept. 13	Sept. 14	Sept. 15	Sept. 16	Sept. 17
Sept. 18	Sept. 19	Sept. 20	Sept. 21	Sept. 22	Sept. 23	Sept. 24
Sept. 25	Sept. 26	Sept. 27	Sept. 28	Sept. 29	Sept. 30 END OF FY2011	Oct. 1
Oct. 2	Oct. 3	Oct. 4	Oct. 5	Oct. 6	Oct. 7	Oct. 8
Oct. 9	Oct. 10 HOLIDAY	Oct. 11	Oct. 12	Oct. 13	Oct. 14 WINDOW CLOSES	Oct. 15
			BB—Dillingham			