

# **SOUTHEAST ALASKA Subsistence Regional Advisory Council**



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*Inside Waterway, Ketchikan, Alaska*

## **Meeting Materials**

March 12–14, 2013

Ketchikan

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**SOUTHEAST ALASKA SUBSISTENCE REGIONAL ADVISORY COUNCIL**

Ted Ferry Civic Center, 888 Venetia Avenue, Ketchikan, Alaska  
 March 12, 2013; 9:00 a.m. – March 14, 2013; 12:00 p.m.

**AGENDA**

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

**PLEASE NOTE:** These are estimated times and the agenda is subject to change.

\*Asterisk identifies action item.

<b>1. Call to Order</b> ( <i>Chair</i> )	
<b>2. Roll Call and Establish Quorum</b> ( <i>Secretary</i> ).....	3
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C. Secretary (New Chair)	
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E. 805(c) Report/Summary of FSB Action on Fisheries Proposals	
<b>8. Public and Tribal Comments on Non-Agenda Items</b>	
<b>9. Old Business</b>	
A. Update on the draft Memorandum of Understanding between Federal Subsistence Board and State of Alaska ( <i>Steve Kessler</i> )	
B. Review the status of the Kootznoowoo Inc. Extended Jurisdiction Petition ( <i>Steve Kessler</i> )	
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D. Deferred Stikine Proposal & Summary Report ( <i>Robert Larson</i> ) .....	83
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**10. Review of State Board of Game Wildlife Regulatory Actions**

- A. State Board of Game Actions (*Neil Barton*)

**11. New Business (Chair)**

- A. Review and Propose Changes to Subsistence Wildlife Regulations\* ..... 104
- B. Review and Comment on Draft Tribal Consultation Implementation Guidelines  
(*Jack Lorrigan, OSM*)\* ..... 119
- C. Rural Determination Process Review (*David Jenkins, OSM*) ..... 125

**12. Agency Reports**

- A. OSM
  - 1. Budget Update
  - 2. Staffing Update
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- B. Forest Service — Schedule of Proposed Actions (*Terry Suminski*)
- C. NPS
- D. ADF&G — update on Prince of Wales wolf research project (*Neil Barton*)
- E. Native Organizations — Hydaburg Cooperative Association report on FRMP project at Hetta Lake (*Tony Christianson*)

**13. Future Meetings ..... 130**

- A. Confirm date and location of fall 2013 meeting (Petersburg, September 12–14, 2013) \*
- B. Select date and location of spring 2014 meeting \*

**14. Closing Comments**

**15. Adjourn (Chair)**

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

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

If you have any questions regarding this agenda or need additional information, please contact Southeast Alaska Council Coordinator Robert Larson at 907-772-5930 or contact the Office of Subsistence Management at 1-800-478-1456 for general inquiries.

**REGION 1**  
**Southeast Alaska Regional Advisory Council**

<b>Seat</b>	<b>Yr Apptd Term Expires</b>	<b>Member Name &amp; Address</b>
<b>1</b>	2010 <b>2013</b>	<b>Timothy Charles Ackerman</b> Haines, Alaska
<b>2</b>	2004 <b>2013</b>	<b>Frank Glade Wright Jr.</b> Hoonah, Alaska
<b>3</b>	1993 <b>2013</b>	<b>Patricia Ann Phillips</b> Pelican, Alaska
<b>4</b>	2000 <b>2013</b>	<b>Michael Allen Douville</b> Craig, Alaska
<b>5</b>	2002 <b>2013</b>	<b>Harvey Kitka</b> Sitka, Alaska
<b>6</b>	1999 <b>2014</b>	<b>Bertrand J. Adams Sr.</b> <span style="float: right;"><b>Chair</b></span> Yakutat, Alaska
<b>7</b>	2002 <b>2014</b>	<b>Floyd M. Kookesh</b> Angoon, Alaska
<b>8</b>	2002 <b>2014</b>	<b>Donald C. Hernandez</b> Point Baker, Alaska
<b>9</b>		<b>Vacant</b>
<b>10</b>	2006 <b>2012</b>	<b>Aaron T. Isaacs, Jr.</b> Klawock, Alaska
<b>11</b>	2010 <b>2014</b>	<b>John A. Yeager</b> Wrangell, Alaska
<b>12</b>	2003 <b>2015</b>	<b>Michael D. Bangs</b> Petersburg, Alaska
<b>13</b>	2009 <b>2015</b>	<b>Cathy A. Needham</b> Juneau, Alaska

**MINUTES OF THE SEPTEMBER 26-28, 2012  
SOUTHEAST ALASKA SUBSISTENCE REGIONAL ADVISORY COUNCIL MEETING**

**Location of Meeting:**

Sitka Tribe Community House – Sitka, Alaska

**Time and Date of Meeting:**

Wednesday, September 26, 2012, 11:00 a.m. – 5:00 p.m.

Thursday September 27, 2012, 9:00 a.m. – 5:00 p.m.

Friday September 28, 9:00 a.m. – 4:30 p.m.

**Call to order:**

The fall meeting of the Southeast Alaska Subsistence Regional Advisory Council was called to order Wednesday, September 26, 2012 at 11:00 a.m.

Council members: Council members Tim Ackerman, Frank Wright, Michael Douville, Harvey Kitka, Bert Adams Sr., Floyd Kookesh, Don Hernandez, Archie Nielsen, Merle Hawkins, John Yeager, Michael Bangs, and Cathy Needham attended the meeting on September 26. Patricia Phillips was excused by the chair.

Mr. Nielsen was sick September 27-28; Mr. Kitka was excused by the chair on September 28 and Ms. Phillips was able to attend the meeting September 28.

Mr. John Duncan provided a warm welcome to the Council from the Sitka Tribe of Alaska at the beginning of the meeting and Ms. Carol Goularte welcomed the Council to Sitka on behalf of the U.S. Forest Service later in the meeting.

The Agenda was approved as a guide with the following changes: ADF&G Deputy Commissioner Dave Bedford will provide a review of the Pacific Salmon Treaty process at 3:30 p.m. September 26, the proposal review procedure will include a discussion of Tribal consultation, and council discussion and public comment period regarding the Petition for Extraterritorial Jurisdiction will be included under Old Business.

March 2012 Council minutes: corrections to the previous council meeting minutes include the addition of the comments regarding the customary and traditional use Secretarial review by Mr. Pete Probasco and including the names of all the attendees from the joint Council-Board meeting as attendees for the Council meeting.

**Attendees:**

Pat Pourchot	Anchorage	DOI Office of the Secretary
Kathy O'Reilly-Doyle	Anchorage	OSM
Jack Lorrigan	Anchorage	OSM
Stan Pruszenski	Anchorage	USFWS
Cal Casipit	Juneau	USFS
Carol Goularte	Sitka	USFS
Steve Kessler	Anchorage	USFS

Justin Koller	Sitka	USFS
Beth Pendleton	Juneau	USFS
Jeff Reeves	Craig	USFS
Terry Suminski	Sitka	USFS
Glen Chen	Homer	BIA
Pat Petrivelli	Anchorage	BIA
Gene Virden	Anchorage	BIA
Deb Cooper	Anchorage	NPS
Nance Swanton	Anchorage	NPS
Dan Sharp	Anchorage	BLM
David Bedford	Juneau	ADF&G
Davin Holen	Anchorage	ADF&G
Doug Larsen	Juneau	ADF&G
James W. Shewmake	Juneau	ADF&G
Lauren Sill	Juneau	ADF&G
Jennifer Yuhas	Anchorage	ADF&G
Jeff Feldpausch	Sitka	Sitka Tribe of Alaska
Jessica Gill	Sitka	Sitka Tribe of Alaska
Heather Riggs	Sitka	Sitka Tribe of Alaska
Tom Lang Sr.	Metlakatla	Tsimshian Tribe
Peter Naoroz	Juneau	Kootznoowoo Inc.
Aakwt Iaa	Haines	Auk Tribe
Rob Sanderson Jr.	Ketchikan	CCTHITA
John Martin Jr.	Juneau	Tenakee Tribe
Anthony Christianson	Hoonah	Hydaburg Cooperative Association
Ed Schoenfeld	Juneau	Coast Alaska News
Harriet Beale	Sitka	Public
Michael Baines	Sitka	Public
Aaron Bean	Sitka	Public
Sue Detmiller	Sacramento CA	Public
Wesley R. Dick	Sitka	Public
John Duncan Sr.	Sitka	Public
Albert Judson	Sitka	Public
Gail E. Marvin	Juneau	Public
Mike Miller	Sitka	Public
John Nielson	Sitka	Public
Steve Reifstahl	Sitka	Public
Kitty Wilson	Sitka	Public

**Council Comments:**

Mr. Hernandez noted that the salmon and halibut fishing season in the central portion of Southeast Alaska was mediocre. Because of the cool wet spring and summer there were very few berries on Prince of Wales Island. Deer abundance appears to be below normal on northern Prince of Wales Island with very low

numbers of deer on Kupreanof and Kuiu Islands. The low abundance of deer is likely due to a high abundance of wolves in Game Management Units 2 and 3.

Ms. Hawkins also noticed the lack of berries, likely due to the cool wet conditions this summer, in areas near Ketchikan. It is a challenge for a person from Ketchikan to obtain subsistence resources. The eulachon fishery on the Unuk River was not opened again this year. The effect of mining activities in British Columbia on our fisheries resources is unknown but may be significant. It is important to maintain and teach traditional uses to others in your family and community.

Mr. Nielsen expressed his concern over aggressive law enforcement regarding the harvest and sale of sea otters.

Mr. Ackerman reported that the poor berry crop extended into the Haines area. The blue berry plants were not in good shape after last year's snow and did not recover because of the cool weather this summer. There was 360 inches of snow in Haines last winter and the moose population suffered significant mortality. Halibut stocks are being intercepted before they reach upper Lynn Canal. There was a good return of eulachon to the Chilkoot River but a poor showing on the Chilkat River. All salmon species, except Chinook, returned in good numbers to local streams.

Mr. Kookesh reported that the community of Angoon was becoming more economically healthy but at \$5.40 per gallon, gasoline is prohibitively expensive. Salmon have a high value to rural residents and a fairer allocation will be established as the Extended Jurisdiction Petition process moves forward. These allocation concerns are shared by residents of Kake. Deer are abundant near Angoon and sea otters have not caused a problem with local shellfish stocks. Coho stocks appear to be very weak.

Mr. Yeager noticed an abnormal amount of snow in the mountains near Wrangell this summer. There was a good return of eulachon to the Stikine River but the coho salmon return appears weak. The sockeye subsistence salmon fishery on the Stikine River was good this summer but the local deer population is likely depressed. There are many sightings of wolves and bear in this area.

Ms. Needham had an opportunity to travel extensively throughout Alaska this summer and enjoyed experiencing conditions in those areas.

Mr. Wright agreed that sockeye salmon are a highly valued and important subsistence resource but they are becoming more difficult to obtain. Bears, sea lions and sea otters are abundant near Hoonah and are making it more difficult for subsistence fishermen to be successful. There is a local business that is paying \$3.00 per pound for blueberries. This is a welcomed employment opportunity for many local residents. Dungeness crab, normally taken by subsistence users are being taken by commercial fishers and halibut are becoming more difficult to catch each year.

Mr. Douville questions whether the herring management plan for the Craig area is providing for conservation of that stock. There has been no herring spawning activity on Fish Egg Island and essentially unrestricted fishing for the herring pound fishery. The return of pink salmon to local streams is one of the poorest in recent years. Shellfish are disappearing from local areas because of predation by sea otters.

Mr. Bangs is concerned about the effect of the increasing populations of sea lions and whales on local fish stocks. Sport, commercial and subsistence uses of shellfish stocks are being negatively impacted by the increasing sea otter population. There have been good numbers of halibut near Petersburg this summer and the number of moose harvested in the Wrangell/Petersburg area to date has been above normal.

Mr. Kitka is concerned that the harvest of nanny goats in the State hunt results in the closure of the subsistence hunt. There have been good numbers of sockeye returning to local streams but the sea otters are causing local shellfish stocks to disappear. The health of the local herring stock is a concern as the subsistence needs for herring eggs were not met and the commercial fishery harvested only half the harvest quota.

Mr. Adams reported that there was an exceptionally large amount of snow in Yakutat last winter. There was considerable property damage and snow was on the ground into July. Because of the cold weather last summer, there was a very poor berry crop and strawberries did not ripen till mid-September. There is still a conservation issue with the local moose herd and the number of moose that can be taken west of the Dangerous River has been reduced again this year. Although the local herring population has been increasing the past few years, there was only spotty spawn this year. One interesting item was the first record of California sea lions in Yakutat Bay this summer. Of the 18 river systems in the Yakutat area that have had eulachon returns, only the Akwe had eulachon this year. The importance of understanding social issues is vitally important when deliberating proposals. The staff analyses need to do a better job of explaining the effect of the proposals on the culture and lifestyle of people. Tribes need additional funds to participate and the Agencies need to provide funding for adequate support of the program. The Glacier Bay National Park has a new Ranger in Yakutat.

**Public and Tribal Comments:**

Thomas Lang Sr., representing the Metlakatla Indian Community, informed the Council that Tribal consultation regarding these proposals, particularly the eulachon proposals was not adequate. The Metlakatla Indian Community was not informed the Council was going to consider these proposals. Restricting seine gear as proposed in FP13-20 is not appropriate because it will prevent a fisherman from catching a large enough volume of eulachon to share. Commercial fishers and mining activity in Canada may have caused the decline in eulachon on the Unuk River. Mr. Lang is also opposed to FP13-21 because it would not allow sharing and FP13-18 because it is unnecessary as the fishery can be managed with special actions.

Rob Sanderson Jr., representing the Ketchikan Indian Community, opposed FP13-20 because people in Ketchikan and Metlakatla rely on fishermen that use large boats and seines to harvest enough eulachon to share. Increasing mining activities in Canada will have a negative effect on fisheries in the Southeastern Alaska Area. He also is opposed to FP13-21 as an unnecessary restriction for access to eulachon. Salmon by-catch by the commercial groundfish fleet in the Gulf of Alaska is a large issue that must be addressed.

Jeff Feldpausch, representing the Sitka Tribe of Alaska, requested the Council support the Sitka Tribes request to the State Board of Fisheries to add herring the State's Forage Fish Management Plan. The Council agreed to send a letter to the Board of Fisheries supporting the Agenda Change Request. Mr. Feldpausch supports closing the waters under Federal jurisdiction in Sitka Sound to non-subsistence uses. The residents of Sitka harvested only about half of their herring egg needs, the commercial fishery caught

only half of the quota and the stock appears to be much smaller than forecast. There needs to be a sanctuary for herring because of the poor stock condition.

Gail E. Martin, representing herself, asked the Council to do everything in its power to support Native subsistence rights. Everything should be brought to the table for Tribal consultation.

Peter Naroaz, representing Kootznoowoo Corporation, reminded the Council that the process to address issues raised by the Petition to Extend Federal Jurisdiction is now beginning. The partial barrier waterfall at Kanalku will be modified next summer and a study to establish an Amounts Necessary for Subsistence for the community of Angoon has been funded. Escapement into Kanalku was poor again this year and the State needs to put more effort into providing for escapement. This is primarily a State program and will require a State solution but the Federal program must provide assistance.

Bob Loescher, representing the Alaska Native Brotherhood Grand Camp, informed the Council that although the Secretaries did not grant the relief asked for in the Petition, the problem was recognized and there is an expectation for solutions at a local level. There is considerable interest in this process by residents of other areas that have overfishing problems. All of the affected parties need to join together to develop a solution not be separated. Mr. Loescher expects the Secretaries direction to be brought to a conclusion and changes implemented within 36 months.

Mr. John Martin, representing himself, reminded the council that it is important for Native youth to “Save our Ways”. There are current laws and regulations that must be followed but that does not mean traditional ways can’t be remembered. To be Tlingit means to be a real human; John is here and he is visible.

Mr. Steve Reifentstahl, representing himself, noted that three years is not a long time in the life cycle of sockeye salmon and it would be unrealistic to see the effects of increasing escapements of altering the partial barrier falls at Kanalku in that amount of time. The productivity of Kanalku Lake is poorly defined and escapements are variable because the return is dependent on survival of eggs, survival of fry in the lake, marine survival and fishing mortality. The trend in the Sitka Sound herring stock is increasing abundance. The amount of participation in harvesting herring eggs is declining. It is not necessary to close the Mahknati Island area to protect herring or the subsistence use of herring.

Albert Judson, representing himself, is concerned for the continued subsistence uses for all persons. There were less herring eggs in Hoonah than normal and subsistence should have a preference.

### **Council Action on Federal Subsistence Regulatory Proposals**

#### **FP13-16; Rescind requirements to mark subsistence taken salmon**

The Council recommended approving this proposal (12-0) to rescind the requirement for the Southeastern Alaska Area but keep the requirement for Yakutat. Harvest practices in Yakutat are much more closely tied to the commercial fishery than in Southeast Alaska where the subsistence fisheries have little or no association with an ongoing commercial fishery. The Council made several relevant observations;

- 1) A salmon caught by a subsistence fisher has much more value to that person as food rather than the value it would have in the commercial market because of the time and effort expended to capture the fish.
- 2) Because these fish are taken in fresh water, there is little or no commercial value in the fish.

- Because of their condition, there would not be a problem with fish entering the commercial market even if there was a provision that allowed a person to sell the fish commercially.
- 3) Anyone selling fish to a commercial buyer must have a CFEC commercial fishing permit. Failure to properly document the sale of a salmon has prohibitively significant criminal and administrative consequences to both the seller and buyer.
  - 4) There is absolutely no incentive to sell subsistence salmon. There is no provision to mark subsistence taken halibut and no requirement to mark sport taken salmon or halibut.
  - 5) The Federal subsistence fishery is the smallest component of the total harvest and the one with the least opportunity to sell a fish commercially.
  - 6) It is not customary to cut fins from a subsistence taken fish.

The State recommended keeping the fin clipping requirement and noted that the lack of citations of this regulation can be interpreted to mean that it is working as intended. Ms. Yuhas will send a letter to the Council to answer the following three questions: when did the State imposed the fin clipping requirement in Southeast Alaska and Yakutat, what is the State's perception of the magnitude of sale of Alaskan sport taken fish both within the State and in other States and what are the rules regarding the sale of sport taken fish in other States.

#### FP13-17; Eliminate possession limits for traditionally harvested salmon

The Council recommended not adopting this proposal (0-12). There is clearly a conservation concern with eliminating possession limits for subsistence taken salmon and that concern is unrelated to the method of take or preservation. The high demand for sockeye salmon does not allow an unrestricted harvest. The current regulations already allow for unlimited harvest of pink and chum salmon where the demand is low and the abundance his high. Adopting this proposal would not allow subsistence users to harvest additional sockeye salmon because in-season special actions would be required to restrict harvest and provide for conservation. There would need to be a significant increase in funding for population assessment studies to harvest additional fish while preventing overharvest of some stocks.

#### FP13-18; Revise steelhead harvest limits by drainage

The Council recommended approval of this proposal (12-0). The Council noted that although adopting this proposal may have a negative impact on some residents of Prince of Wales Island, it was necessary to address a conservation concern with steelhead due to the potential of exceeding the maximum harvest for any one stream. Current rules do not provide for adequate conservation of these stocks. There is limited access to streams on Prince of Wales Island during the winter fishery and harvests are concentrated on a few streams. The total fishing mortality should not exceed 10% of the total return and if a relatively large portion of the total allowable harvest is taken in the winter, there is a potential for overharvest in the larger, more popular spring fishery. In addition to addressing an emerging conservation issue, adopting the proposal would be beneficial to the majority of subsistence users because it allows the maximum number of households to participate in the subsistence steelhead fishery. The most accessible streams are the most popular and have the greatest potential for requiring in-season special actions to close the fishery once the annual allowable harvest is taken. Unless the Federal program adds a provision to prevent a small number of households from concentrating harvest on these streams, there is an increasing likelihood for unknowingly exceeding the allowable harvest

under regulations that are now in place. The harvest cap of 100 fish in the winter fishery with a total fishery cap of 600 fish is unnecessary and provides no benefit to either subsistence users or managers. The current harvest is much less than these caps and management and conservation issues are identified on a stream by stream basis not on a fishery basis.

FP13-19; Revise sockeye salmon harvest limits on the Stikine River

The Council voted to approve the proposal (12-0) as suggested in the OSM Preliminary Conclusion (limit corrected to say level). This action would eliminate the Stikine River subsistence fishery sockeye salmon annual guideline harvest level from both Federal regulations and the U.S.-Canada Pacific Salmon Treaty. The council noted there was no conservation concern with removing the annual guideline harvest level as the stocks appear healthy and the subsistence harvest relatively small. The in-season manager has the authority to close the fishery for conservation if necessary. The harvest from the subsistence fishery is already part of the total U.S. allocation and there is no need to have a separate subsistence fishing allocation. Federal regulations or the Treaty Annex are not the appropriate locations to apportion the U.S. allocation between domestic user groups. This action is in the best interests of subsistence users as it would better reflect the actual management of the subsistence fishery.

FP13-20; Establish eulachon harvest limits and limit methods and means in the Burroughs Bay river systems

The Council recommended not supporting this proposal (0-11). Restricting the gear as suggested would result in methods that are too inefficient for practical purposes. Reducing the harvest limit as suggested would prevent sharing of this important resource; a culturally significant aspect of a subsistence fishery. It is expected that Federal managers would communicate and cooperate with potential fishers prior to opening the fishery to provide for a conservative fishery.

FP13-21; Restrict eulachon harvest limit to 35 pounds per person annually

The Council recommended not supporting this proposal (0-11) for much the same reasons as they used to support their action on FP13-20. Adopting this proposal would be an unnecessary restriction on subsistence uses of eulachon. The in-season manager has the ability to set harvest limits as required for conservation. Any future fishery will be managed conservatively through appropriate conditions on the subsistence fishing permit. These conditions will be established through consultation with users and State managers. Adopting the proposal would restrict the harvest to such an extent that the customary trade of eulachon or the production of eulachon grease would be prevented. There would be a significant increase in cost of participation by subsistence users.

FP13-22; Eliminate salmon harvest limits for residents of Kake

The Council recommended not supporting this proposal (0-11). The reasoning was much the same as used to justify not supporting FP13-17. Adopting the proposal would not benefit subsistence users because there is only a finite number of streams and a limited number of fish that can be harvested from each stream. Adopting this proposal would not provide for any new fishing opportunities or increased harvest without causing a conservation concern. Forcing the allocation of fish through an 804 process in areas with shared customary and traditional use determinations is unnecessary and not beneficial to subsistence users.

FP13-23; Reduce steelhead harvest limits on the Klawock River

The Council took no action on this proposal due to previous action on FP13-18.

FP13-24; Restrict designated fishers on the Klawock River to only fish for elders

The Council did not recommend support of this proposal (0-11) because it would be an unnecessary restriction to subsistence uses. The preferred alternative to address the subsistence steelhead fishery on the Klawock River and the remainder of streams on Prince of Wales Island is captured in the Council's recommendation to support proposal FP13-18.

FP11-18; Close the eulachon fishery in sections 1C and 1D

The Council recommended adopting this proposal (11-0) as modified in the OSM Preliminary Conclusion to require a Federal subsistence fishing permit for all of District 1. Closing the fishery in regulation is unnecessary because any actions required for conservation can and have been done by the Federal in-season manager in cooperation with State managers. The OSM Preliminary Conclusion to require a permit is an excellent method of documenting harvest from some of the many streams where eulachon have appeared in recent years. Not closing the area in regulation will facilitate opening the area when stocks rebound. There was compelling public testimony from residents of Metlakatla opposing the closure and supporting the permit requirement.

FP09-05; Close Federal public waters in the Makhnati Island area to non-subsistence use of herring

The Council recommended against adopting this proposal (4-6-1). The majority of the Council agreed there was no conservation concern for the Sitka Sound herring stock. The stock has shown an increasing population trend for many years and even with the erroneous high forecast in 2012, the stock is at a high abundance level. The recent decision by the State Board of Fish to close a significant portion of Sitka Sound (including most of the Federal Public Waters) to commercial fishing was an important factor in the decision to not support the proposal. The decision by the State Board of Fish was a consensus, arrived at through a public process with all the stakeholders participating. The Council should honor that process. Several council members noted that herring eggs are typically harvested by residents of many communities and shared widely throughout the State. Residents of urban communities (specifically Juneau and Ketchikan) have a long history of use of this resource and this proposal would unnecessarily prevent harvesting in this area by residents of urban communities.

The minority view was that the proposal should be supported because core areas of herring spawning and subsistence use must be protected. The Council has heard extensive public testimony that the stocks are actually in a decline and that the Amount Necessary for Subsistence Uses has not been met in recent years. Closing Federal Public Waters would have a significant beneficial effect on the herring stock and the ability of federally qualified persons to harvest herring eggs.

**State of Alaska Wildlife Regulatory Proposals:**

Mr. Doug Larson, ADF&G Wildlife Division Regional Supervisor for the Southeast Alaska Region, provided excellent overview of the State Board of Game regulatory process and the topics covered by the proposals to change State regulations. Some of the proposals would have little effect on subsistence users but some situations will require action by the Federal program for full implementation. Mr. Larson informed the Council that the participation by Mr. Douville at the last Board of Game meeting had a mean-

ingful influence with the State Board of Game and was greatly appreciated. The Council was very interested in the State's position on whether any of the proposals have merit and what effect action on these proposals would have on Federal subsistence users. The Council decided to postpone recommendations on State proposals until the ADF&G staff analyses are completed. That document will be available to the public around the first of December. After review of that document, a teleconference meeting may be called by the Chair to provide recommendations to the Board of Game and select a member of the Council to attend the Board of Game meeting.

**Council Actions Not Related to Regulatory Proposals:**

The Council recommended approving the draft Memorandum of Understanding between Federal Subsistence Board and State of Alaska (10-0) with some minor wording changes. The Council thanked the Board for how they incorporated previous comments from the Council into new draft document. The recommended edits from the Council are:

Page 160 of the Council book, PREAMBLE, second paragraph; there should be a reference to Section 802 of ANILCA (suggested addition in bold). ...are responsible to ensuring that the taking on Federal public lands of fish and wildlife for nonwasteful subsistence uses, as defined in ANILCA **Section 802 (2) non-wasteful subsistence uses of fish and wildlife and other renewable resources shall be the priority consumptive uses of all such resources on the public lands of Alaska; when it is necessary to restrict taking to assure the continued viability of a fish or wildlife population or the continuation of subsistence uses of such population, the taking of such population for nonwasteful subsistence uses shall be given preference on the public lands over other consumptive uses; .....**

Page 163 of the Council book, section IV. Paragraph 4 last sentence, insert words in bold after ...users and others; **are and will continue to be** an important component of information gathering and management programs.

Page 164 of the Council book, section V. General Provision (2) last sentence, insert words in bold; Supplemental protocols to this document , **including an Information Sharing Protocol**, may be developed....

The U.S. Forest Service Regional Forester Beth Pendleton and Subsistence Program Leader Steve Kessler provided the Council with a briefing on the status of the Kootsnoowoo Petition for Extraterritorial jurisdiction. The response letters from the Secretaries to Kootsnoowoo Inc. were included in the Council book. The Secretaries want to see immediate progress through a local management process. The Forest Service is facilitating a process that will involve reviewing the situation, organizing a project to address needs, interviewing stakeholders, providing a written assessment and providing a written report to the Board. The program will begin in November 2012. The Council recognized there may be a need for Council involvement in the assessment phase of the process and selected (10-0) the Chair and the vice-chair as the Council's representatives in that process. The topic will be included on the spring Council meeting agenda and many future agendas.

The Council recommended approving (10-0) the recommendation for projects as listed in the Fisheries Resource Monitoring Program section of the Council book. The 2014 request for proposals will include eulachon, sockeye population assessments and harvest monitoring projects. The Council will be asked to prioritize information needs and project proposals at their next meeting. The Council was generally

supportive of a Wildlife Information program but did not support allocating some of the funds used in the Fisheries program to support a wildlife study.

The Council identified 10 annual report topics for consideration at the March meeting. They included:

- Reviewing the Wildlife Information Services program and the associated Strategic Plan
- Review the potential negative impacts of mining activities in Canada on U.S. fisheries
- Review the need for a subsistence user on the U.S./Canada Transboundary River Panel
- Review methods of collaboration with ADF&G in attaining the Amount Necessary for Subsistence Use
- Review the need for congressional action regarding the harvest of sea otters
- Review the education and outreach to the public regarding the role of the Council and how members of the public can best participate in the Federal process
- Review how best to ask the Board to protect the subsistence halibut fishery
- Sea lions and sea otters are becoming so numerous they are interfering with the ability of people to harvest of fish and shellfish. Information item for the Board
- The current meeting conduct and procedures can be disruptive to the deliberation process and do not promote efficient use of the Council's time. The Council should provide information to the Board detailing their concerns and provide suggestions for improvement.
- There is a good opportunity for communication and collaboration regarding in-season management of specific fish stocks between ADF&G and FRMP project principle investigators. Board should be informed of this opportunity

The Council recommended approval of the Charter (10-0) as written in the Council Book.

The Council recommended (10-0) Mr. John Yeager represent the Council at the U.S. Section meeting of the Transboundary River Panel.

The Council recommended (without opposition) supporting the changes to the Regulatory Cycle Review, described as items 1-4 on Page 193 of the Council Book. The Council thanked the Board and OSM staff for their careful consideration of the situation and fully supported expanding the meeting windows as shown on Table 3 of the briefing document; page 195 of the Council Book.

**Agency and Tribal Comments:**

National Park Service, Nancy Swanton; reminded the Council there were two national parks within the Southeastern Alaska and Yakutat Areas. The Park Service has plans to build a "Hoonah House" in Glacier Bay. The 2011 Dry Bay celebration was a big success and another celebration is planned for 2012. There are rainbow smelt and sea lion abundance studies underway in Yakutat and a Yakutat Tlingit ethnographic study to identify cultural resources that may be present in the Glacier Bay National Park.

State of Alaska, Department of Fish and Game, Deputy Commissioner and U.S. representative to the Pacific Salmon Commission, David Bedford; provided an informative review of the Pacific Salmon Commission and the Pacific Salmon Treaty between the United States and Canada. The Treaty was necessary to address issues resulting from the "Tragedy of the Commons" as a result of unregulated competition for pacific salmon by fisheries in the U.S. and Canada. The Treaty was built around the principle of Equity where each country should receive the benefit from salmon production in their country. Issues on the

Stikine River are first addressed by the bi-lateral Transboundary River Panel prior to consideration by the Pacific Salmon Commission. Mr. Bedford will meet with the Pacific Salmon Commission Executive Committee and include the proposal to change the Stikine River subsistence sockeye salmon guideline harvest level on the meeting agenda for the Transboundary River Panel and the Pacific Salmon Commission. Although Mr. Bedford is and advocate for subsistence uses during negotiations with Canada, he recommended Federal staff plan to attend these meetings. The first meeting of the Transboundary River Panel will be in Vancouver B.C. on January 14-18, 2013 and the annual meeting of the Pacific Salmon Commission will be in Portland on February 11-15, 2013.

State of Alaska, Department of Fish and Game, Division of Wildlife Conservation, Doug Larson; reported that this is the last year of a marten mortality and home range study on Kuiu Island. This is the first year of a wolf home range and population assessment study on Prince of Wales Island.

State of Alaska, Department of Fish and Game, Division of Subsistence, Lauren Sill; is conducting studies on the use of herring in Sitka Sound in conjunction with the Sitka Tribe. The Division is also conducting comprehensive use surveys in five communities. Studies targeting uses of wolves on Prince of Wales and the harvest of seals and sea lions are also planned.

Hydaburg Cooperative Association, Tony Christiansen; provided a report on effect the Fisheries Resource Monitoring Project at Hetta Lake is having on the health of the municipality of Hydaburg. There are significant economic benefits for the people employed by the project. There are also social benefits because the residents of the community support the process of exerting local control of fishery harvest monitoring. There are technical benefits of counting and sampling the sockeye salmon escaping into Hetta Lake. The Fisheries Resource Monitoring Program is a huge success story in Hydaburg and is providing for conservation of a fragile resource. There will be a follow-up technical report at the March meeting.

**Future Meetings:**

The spring 2013 Council meeting was confirmed for Ketchikan March 12-14, 2013. Lodging and a meeting venue will need be arranged. The fall 2013 Council meeting was tentatively set for Petersburg September 24-26, 2013.

**Closing Comments:**

- We need to remember and abide by “True Law”. This is the most important lesson we learn from our elders.
- There are currently no time limits on public comments for non-agenda items. This process is disruptive and inefficient. There should be time limits.
- It would be a nice gesture if the Council members could have business cards.
- The customary and traditional determination workgroup did a considerable amount of work.
- There has been considerable progress in improving the program within the past two years.
- The Fisheries Resource Monitoring Program enriches communities.
- The time volunteered by the Council members is much appreciated.
- Staff work is high quality.
- ADF&G staff input much appreciated.

The Council meeting adjourned at 5:00 p.m. September 28, 2012.

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

|s| *Robert Larson*

*November 2, 2012*

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*Robert Larson, DFO, USFS Subsistence Management Program*

|s| *Bertrand Adams*

*November 2, 2012*

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*Bertrand Adams, Chair, Southeast Alaska Subsistence Regional Advisory Council*

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

## **Southeast Alaska Subsistence Regional Advisory Council**

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January 22, 2013

### **Customary and Traditional Use Determination Recommendation Briefing**

#### **Issue:**

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

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

#### **Background:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Southeast Council Findings:**

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

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

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

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

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

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

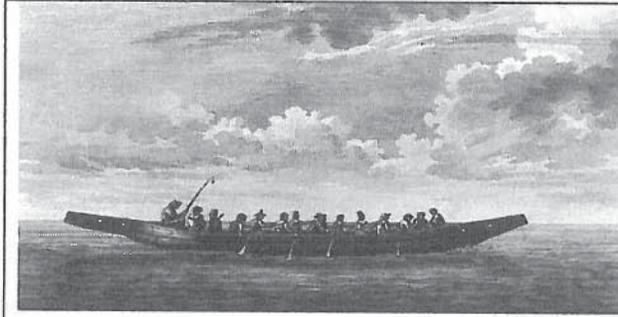
**Action:**

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

**Key Contacts:**

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

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



**Southeast Alaska Subsistence Regional  
Advisory Council**

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

*kaadashan@alaska.net*

RAC SE13001.RL

**JAN 11 2013**

Mr./Ms. <First Name, Last Name>, Chair  
<Region> Subsistence Regional Advisory Council  
P.O. Box XXXX  
<City>, AK <Zip Code>

Dear Mr./Ms. <Last name>:

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

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

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

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

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

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

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

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

Chair, Subsistence RAC

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

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

Gunalchéesh (thank you).

Sincerely,

Bertrand Adams Sr., Chair

Enclosures

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

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

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

**PURPOSE**

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

**INTRODUCTION**

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

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

## **BOARD AUTHORITIES**

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

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

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

## **POLICY**

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

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

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

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

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

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

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

### **Decision Making**

The Board shall:

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

### **Additional Guiding Considerations:**

The Board recognizes that:

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

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

**Definitions:**

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

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

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

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

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

# Southcentral Subsistence Regional Advisory Council

## Comments on Draft C&T Policy

### Decision Making

The Board shall:

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

Together,

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

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

### Additional Guiding Considerations:

The Board recognizes that:

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

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

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

On Page 3 of the Draft Policy:

**Decision Making**

The Board shall:

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

Chuck Burkhardt  
PO Box 272  
Gustavus, AK. 99826

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

Federal Subsistence Board and Staff:

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

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

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

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

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

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

Respectfully,

Chuck Burkhardt

/S/

To: Theo Matuskowitz and Subsistence Board

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

Re: Customary and Traditional use Policy Draft.

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

Thanks for listening.

Erik Weingarh



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

November 28, 2007

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

RE: Comments on Draft Customary & Traditional Use Policy

Dear Mr. Matuskowitz:

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

#### Purpose

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

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

#### Introduction

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

Board Authorities:

No Comment

## Policy

Paragraph one - No comment

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

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

Paragraph four - No comment

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

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

## Decision Making

Bullet one - No comments

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

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

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

Bullet five - No comments

## Additional Guiding Considerations

No comment

## Definitions

No comment

## Summary

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

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

Thank you for the opportunity to provide these comments.

Sincerely,

/S/

Wilson Justin

Cc MSTC Board  
Elaine Sinyon  
Shawn Sanford



0011833422  
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NINILCHIK TRADITIONAL COUNCIL  
P.O. Box 39070  
Ninilchik, Alaska 99639  
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Web Site: [www.ninilchiktribe-nsn.gov](http://www.ninilchiktribe-nsn.gov)

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November 30, 2007

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

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

Dear Federal Board Members,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,  
/S/

Ivan Encelewski  
NTC Executive Director



## YAKUTAT TLINGIT TRIBE

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

December 7, 2007

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

Subject: Policy on Implementation of Customary and Traditional Use Determinations

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

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

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

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

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

Thank you for the opportunity to respond.

Sincerely,

/S/

Victoria L. Demmert, President  
Yakutat Tlingit Tribe

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



November 28, 2007

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

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

Dear Federal Board Members,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

/S/

Linda Tyone,  
Chairperson



## CENTRAL COUNCIL

*Tlingit and Haida Indian Tribes of Alaska*

ANDREW P. HOPE BUILDING

### Office of the President

320 W. Willoughby Avenue • Suite 300

Juneau, Alaska 99801-9983

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December 7, 2007

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

**Subject: Policy on Implementation of Customary and Traditional Use Determinations**

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

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

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

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

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

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

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

Sincerely,

/S/

  
William E. Martin  
President

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

December 1, 2007

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

RE:    Comments on Draft Customary and Traditional Use Policy

Dear Federal Board Members:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

/S/

Julie Kitka  
President

/chd

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

### OFFICE OF THE COMMISSIONER

SARAH PALIN, GOVERNOR

P.O. BOX 115526  
JUNEAU, AK 99811-5526  
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December 7, 2007

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

Attn: Theo Matuskowitz  
e-mail at [subsistence@fws.gov](mailto:subsistence@fws.gov)

Dear Mr. <sup>Mike</sup>Fleagle:

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

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

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

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

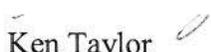
does not provide guidance in the form of procedural steps, identifiable criteria, or analytic thresholds that are necessary to prevent inconsistent and unjustified C&T determinations. The record clearly confirms that such thresholds, criteria, and procedural steps are needed in order to reduce the ongoing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

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

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

Sincerely,

/s/ 

  
Ken Taylor  
Deputy Commissioner

Attachment A: Section Specific Comments on the Draft Policy

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

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

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

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

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

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

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

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

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

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This section of Title I actually states:

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

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

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

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

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

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

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

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

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

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

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### **Decision Making:**

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

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

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

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

### **Additional Guiding Considerations**

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

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

### **Additional Guiding Considerations**

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

### **Definitions**

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

## ATTACHMENT B

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

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

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

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

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

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

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

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

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



December 4, 2007

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

**FAX: (907) 786-3898**

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

Dear Mr. Matuskowitz,

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

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

**Policy Purpose and Background:**

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

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

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

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

### **Review and Comments:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Summary:**

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

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

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

Respectfully,

Ricky Gease, Executive Director  
Kenai River Sportfishing Association



## UNITED FISHERMEN OF ALASKA

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December 7, 2007

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

### **Re: Draft Customary and Traditional Use Policy**

Dear Mr. Matuskowitz:

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

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

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

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

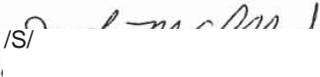
The policy also states that determinations "must be based on a community's long term consistent pattern of use" and that "in all instances, the Board makes a decision based upon the best available information." However, without accountability in the decision making process, it is unclear how the "best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

Theo Matuskowitz

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

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

Thank you for your consideration,



Joe Childers  
President

MEMBER ORGANIZATIONS

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

## **GUIDANCE ON ANNUAL REPORTS**

### **Background**

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

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

### **Report Content**

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

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

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

### **Report Clarity**

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

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

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

### **Report Format**

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

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



***Southeast Alaska  
Subsistence Regional  
Advisory Council***

**Bertrand Adams Sr., Chair**

January x, 2013

Mr. Tim Towarak, Chair  
Federal Subsistence Board  
C/o U.S. Fish and Wildlife Service  
Office of Subsistence Management  
1011 E. Tudor Road, Mail Stop 121  
Anchorage, AK 99503

Greetings Chairman Towarak:

This is the 2012 Annual Report of the Southeast Alaska Subsistence Regional Advisory Council as authorized under Title VIII of the Alaska National Interest Lands Conservation Act. The Council wishes to share information and raise a number of concerns dealing with implementation of Title VIII of ANILCA and the continuation of subsistence uses in the Yakutat and Southeastern Alaska Areas.

In 2012, the Council met in Juneau, March 20-22, and in Sitka, September 26-28. The Council was honored to meet in joint session with the Subsistence Board during the March meeting. We believe that this level of trust will enable all parties involved in the Petition for Extraterritorial Jurisdiction to develop a solution that addresses everyone's concerns and protects the various sockeye salmon stocks in the Chatham Strait area. Thank you for forwarding our recommendations to the Secretaries of Agriculture and The Interior. During the September meeting, the Council provided the Board recommendations on: fisheries proposals, the Memorandum of Understanding with the State, the Council Charter and regulatory cycle modifications. The Council remains concerned with how the customary and traditional use determination process is being implemented. A letter detailing these concerns is being prepared to send to the other Regional Councils for their consideration.

As stated in previous annual reports, the Council supports pre-decisional communication and collaboration with the State Boards of Fish and Game. The needs of the subsistence user require cooperation at all levels of the various State and Federal management agencies.

The Council receives testimony on a number of issues that are not directly linked to the jurisdiction and authority of the Council but are very important to the residents of the Region. The Council would like for the Board to be aware that area residents are very concerned with the following issues:

- There are a number of large scale mining projects planned in Canada on the headwaters of rivers flowing into waters of the United States. These activities have the potential for serious negative impacts on U.S. fisheries.
- Depending on the outcome of the process to address subsistence fishing issues on the Stikine River, the Council may nominate a subsistence user to serve on the U.S./Canada Transboundary Panel.
- The Council requests the Board to do what it can to protect the subsistence halibut fishery.
- The impact of the expanding sea otter population in the region is becoming more pronounced and there does not appear to be any local solution. Substantive changes in management may require congressional action.
- The sea lion population in the region is at historic high levels. A population of this size is having a significant negative effect on the ability of local residents to harvest marine fish.
- Information on salmon timing and abundance obtained through Fisheries Resource Monitoring Program projects is timely and accurate and therefore potentially very valuable to State fishery managers. The Council encourages communication and collaboration regarding in-season management of specific fish stocks between ADF&G and project principle investigators.

## 2012 Annual Report Topics

### Issue 1: Customary and traditional determinations

In 2011, the Board asked the Council to review the customary and traditional use determination process. The Council determined that the Federal customary and traditional use determination process was based on State of Alaska regulations in place when ANILCA was enacted and it is time to develop a Federal process based on ANILCA. The Council recommended amending Modify 50 CFR 100.16 (a) to address requirements contained in Section 804 of ANILCA.

The regulation should read: “The Board shall determine which fish and wildlife have been customarily and traditionally used for subsistence. These determinations shall identify the specific community’s or area’s use of [~~specific fish stock and wildlife population~~] **all species of fish and wildlife that have traditionally used, in their (past and present) geographic areas**”.

In 2012, the Council organized a working group to review additional information and detail the Council’s concerns. As a result, the Council approved writing a letter to the other councils asking for support in addressing the identified issues with the current customary and traditional use determination process. The Council anticipates continued dialog with the other councils prior to the formulation of new policies or regulations.

**Issue 2: Reviewing the Wildlife Information Services program and the associated Wildlife Strategic Plan**

There is a need for population assessment and life history information for wildlife in this region. The Wildlife Information Services Program was initiated to provide a mechanism to provide funds for studies. The program has not been funded each year and there are several information gaps that must be filled before the Council can make informed regulatory recommendations. The Council recommends that the Board provide funding to first; update the strategic plan for wildlife in the Southeastern Alaska and Yakutat Area and second to fund the most important wildlife information need identified in this process.

**Issue 3: Review the education and outreach to the public regarding the role of the Council and how members of the public can best participate in the Federal process**

The Board has expended considerable energy in developing a protocol for consultation with Tribes and ANSCA Corporations. There should be similar efforts to provide outreach services to other subsistence users, members of the public and interested organizations. This issue relates to an issue identified in the 2011 Annual report concerning the need for increased emphasis on ways to understand the social, cultural and economic issues contained in evaluating regulatory proposals.

**Issue 4: Review methods of collaboration with ADF&G in attaining the Amount Necessary for Subsistence Use**

The Council wanted to remind the Board that most of the subsistence fish harvested in the region are taken under State authority. The reason is that the State regulations provide fishers with the greatest flexibility to fish because those regulations are valid in marine, intertidal and freshwater. State rules are contingent on providing opportunity to attain the Amounts Necessary for Subsistence Use. Therefore, collaboration and cooperation with the State to identify an appropriate level of subsistence use is one of the programs that will have an immediate and positive direct effect on the success of rural users in subsistence fishing. The Council suggests that the Federal program take a proactive role in assisting the State to identify appropriate amounts necessary for subsistence use.

**Issue 5: Public Comment Policy at Council meetings**

The Council is concerned that a lack of a policy describing conduct during the public comment portion of the Council meeting is resulting in situations affecting the ability of the Council to allocate adequate time for deliberations. For instance, testimony that is not directed at the issue under consideration, repeated testimony by an individual or excessive time (story telling) by an individual on a topic, can be disruptive to the deliberation process and does not promote efficient use of the Council's time. The Council recommends the Board provide a meeting protocol to assist the Chair in providing rules for conduct by the public yet be flexible enough to not restrict the flow of information from the public to the Council.

Thank you for considering the management and program issues of concern to the Council. Please address any questions with this letter directly to Mr. Robert Larson, Council Coordinator, U. S. Forest Service, Box 1328, Petersburg, AK 99833, 1 907-772-5930, robertlarson@fs.fed.us.

Sincerely,

Bertrand Adams Sr.  
SESRAC Chair

cc. Interagency Staff Committee  
Beth Pendleton, Forest Service Regional Forester

DRAFT



U.S. FISH and WILDLIFE SERVICE  
BUREAU of LAND MANAGEMENT  
NATIONAL PARK SERVICE  
BUREAU of INDIAN AFFAIRS  
FWS/OSM12056.CJ

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

SEP 10 2012



Mr. Bertrand J. Adams Sr., Chair  
Southeast Alaska Subsistence  
Regional Advisory Council  
P.O. Box 75  
Yakutat, Alaska 99689

Dear Mr. Adams:

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

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

### **Issue 1: Customary and traditional determinations**

*At the March 2011 Council meeting, the Council was asked to review how the current customary and traditional use determination process was working. The Council observed that the Federal customary and traditional use determination process and the eight factor analysis is a carryover from State of Alaska regulation. Now that it appears the Federal program will be permanent; it would be appropriate to develop a Federal process based on ANILCA rather than a process developed to address State regulatory authorities. Unfortunately, the Office of Subsistence Management did not provide sufficient information to the Council regarding how the current customary and traditional use determination process was being applied to allow the Council to make definitive recommendations to the Board. The Council wishes to reiterate the recommendation made to the Board during the March 2011 meeting:*

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

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*The Council reiterates support for the following specific regulatory change as recommended at the March 2011 meeting:*

*Modify 50 CFR 100.16 (a). The regulation should read: "The Board shall determine which fish and wildlife have been customarily and traditionally used for subsistence. These determinations shall identify the specific community's or area's use of ~~[specific fish stock and wildlife population]~~ **all species of fish and wildlife that have traditionally used, in their (past and present) geographic areas.**"*

### **Response**

If the Council wishes to submit a proposal for a regulatory change, it will need to do so outside of the annual report process. Since this regulation is not part of the regular fish or wildlife regulatory cycle, the Council may submit a proposal at any time, using the standard regulation proposal format. Your Council Coordinator or any Office of Subsistence Management (OSM) staff can assist in preparing the proposal.

As you are aware, at the end of the Council meeting on March 22, 2012, the Council formed a working group to make recommendations on customary and traditional use determinations that would be brought back to the Board. Council member Needham volunteered to lead the working group, which is made up of Patty Phillips and Tim Ackerman. Ms. Needham noted an interest in having the workgroup address this issue between the March meeting and the September meeting of the Council (Board transcript, Volume II, March 21, 2012, page 346). Mr. Probasco then asked that the Council let OSM know what assistance they need in the form of staff and materials. It is the Board's understanding that the Council has been provided with information and the working group will be working on the issue at its own pace, and that it will meet in connection with the Council's fall 2012 meeting. If the working group comes up with any other recommendations, those too can be submitted as regulatory proposals at any time.

### **Issue 2: Increased emphasis of social concerns in staff analysis**

*The format of the staff analysis used to describe the effects of a proposal to change either fish or wildlife regulations does not incorporate an adequate evaluation of the social and cultural issues encompassed by the proposal. The current process concentrates on a factual account of the status of the species in question (stock size, reproductive rates, life history, harvests, etc.) necessary to understand the scientific basis of the proposal. An increased emphasis on social, cultural and economic issues would facilitate dialog with Tribes and ANCSA Corporations similar to consultation but available to the Council prior to deliberations. An example of this problem is the lack of discussion of the social, cultural and economic use of bear claws by residents of Southeast Alaska and the unfortunate adoption of WP12-01 by the Board.*

Mr. Bertrand Adams Sr.

### **Response**

The Board recognizes that it is important to include traditional ecological knowledge in proposal analyses. Federal subsistence staff recognize the need for this type of information in analyses and strive to provide a thorough discussion of the social, cultural, and economic information in all analyses. However, staff will continue to endeavor to obtain additional information when possible. As you are aware, staff often rely on the Council to provide information that may not be available in the literature, which is incorporated into proposal analyses before the analysis goes to the Board. Therefore, in the future, OSM staff and your Council Coordinator will be encouraged to assist the Council in facilitating discussions of these issues. The Board believes that the Tribal consultation process itself is designed to start meaningful dialogue with Tribes.

### **Issue 3: Encourage Tribes to comment on social issues in testimony**

*The Council recommends the Board encourage Tribes and ANCSA Corporations to discuss the social, cultural and economic issues contained in the regulatory proposal (content of the analysis) not simply the Tribes position on a specific proposal. This information must be made available to the analyst early in the process to be truly effective. The Board needs to initiate communication and provide education to Tribes regarding their opportunities to affect the regulatory process (ask the tribes for what is needed). If an ANCSA Corporation is going to be involved in management of subsistence resources, they also need to be educated and formally incorporated into the Council process. The Council is concerned that interjecting comments from the Tribes and ANCSA Corporations directly to the Board increases that group's influence more than subsistence users.*

*Consultation by Tribes and ANCSA Corporations at Board meetings may contain significant new information that was not available to the Council. When that situation occurs, the proposal should be deferred and returned to the Council for additional consideration because the Council must always provide the primary "bottom-up" recommendation to the Federal Subsistence Board, consistent with ANILCA Section 805.*

*There will need to be a mechanism in the structure of Council meetings to accommodate testimony from Tribes and ANCSA Corporations prior to deliberations. Comments from that group must not circumvent the Council process.*

### **Response**

We appreciate your concerns and take note of your recommendations. We are considering the best approach to encourage Tribes and Alaska Native Claims Settlement Act (ANCSA) Corporations to discuss the social, cultural, and economic issues of the regulatory proposals. Training Tribes is included in the recently adopted Tribal Consultation Policy and your recommendation could be incorporated into the training. The training has not yet been developed, but we will forward your recommendations to those who will be developing training

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in the near future. An important aspect of this process will be to build trust, and hopefully a robust and meaningful consultation process will accomplish that.

At its May 2012 meeting, the Board tasked the Tribal Consultation Workgroup with drafting implementation guidelines for the Board's Tribal Consultation Policy. Your comments have been provided to Crystal Leonetti, co-chair of the Tribal Consultation Workgroup, and will be considered by the workgroup as it develops the implementation guidelines. We agree that it is vitally important for the Councils to have information from Tribes and ANCSA Corporations during the Council meetings prior to deliberations to ensure that Council recommendations best represent the regions' interests. It is the Board's intent to have Tribal and ANCSA Corporation input early to strengthen the Council process, not circumvent it.

#### **Issue 4: Budget**

*The Council has a continuing concern with maintaining an adequate budget to support the subsistence program. Specifically, the Council has a priority need to fund wildlife resource information projects necessary for the successful management of the Region's wildlife populations.*

*There should be adequate funds available to respond to the wolf listing petition. These funds could be used for studies to include population monitoring, wolf ecology and population dynamics.*

#### **Response**

On May 24, 2012, Secretary of Agriculture Thomas J. Vilsack responded to your letter dated March 27, 2012, regarding funding for the Federal Subsistence Management Program in Alaska. Secretary Vilsack recognizes that funding has decreased from a peak in 2005, and at that time there were sufficient moneys for a small Wildlife Resource Monitoring Program. The Secretary's letter does not predict future increases in funding.

Recognizing that funding is unlikely to increase, but that there may be high priority wildlife resource monitoring to fund at a future Council meeting, the U.S. Forest Service and OSM would be agreeable to engage in a discussion with you about prioritizing fish and wildlife monitoring needs.

The Board agrees that obtaining information on wolves is important for appropriate management of wolf populations and to respond to the petition to list the Alexander Archipelago wolf under the Endangered Species Act. While the Forest Service is in a challenging budget environment, it has been able to cooperatively fund, with the Alaska Department of Fish and Game, an ambitious research project which started in the spring of 2012 on Prince of Wales Island. The goal of this research is to combine multiple measures of abundance, each with its own unique set of strengths and limitations, into a reliable method for estimating the wolf population in the region. The research will use aerial counts of marked wolves, DNA-based population estimation derived

Mr. Bertrand Adams Sr.

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from hair and scats, and surveys of local wolf harvesters. The work will focus on Unit 2 with the intent to develop a strategy that can be applied throughout Southeast Alaska. The project is planned to continue until September, 2015; however, it is subject to the availability of funding pending the annual Congressional appropriations process.

### **Issue 5: Coordination with the State regulatory processes**

*The Council must increase interactions, coordination and communication with the State regulatory process – specifically the Alaska State Boards of Fish and Game. The Federal and State management staff have a good working relationship but the Council must have a greater role in participating with the State Boards process. The Council should have a greater presence and adequate funding to participate in the State of Alaska Board of Game and Board of Fish regulatory meetings.*

### **Response**

The Board is supportive of Regional Advisory Councils (Councils) participating at State Alaska Board of Game and Board of Fish regulatory meetings when there are issues affecting Federal subsistence users of their region. OSM has worked with the Councils to support limited RAC member attendance and participation at the Board of Game and Board of Fish meetings in the past and will continue to do so as the travel budget allows. This will permit Councils to increase interactions, coordination and communication with the State regulatory process, to the benefit of Federally qualified subsistence users and the resources they depend upon.

### **Issue 6: Sea Otters**

*The Council recognizes the Subsistence Board does not manage sea otters or most of the resources that they consume. However, Title VIII of ANILCA, allows the Council to hear concerns regarding subsistence uses of wild renewable resources by residents of the Region. The Council has heard approximately 64 testimonies regarding sea otters since 2004; some of which have resulted in letters from the Council to either the Board or the U.S. Fish and Wildlife Service. Concerns regarding capricious enforcement and the definition of what is considered significantly altered are being addressed by the users. It is good that those issues are being addressed through other channels; but there is a role for the Board. The Council believes there must be additional coordination between the various Federal and State Agencies to acknowledge the threat to the subsistence lifestyle of residents of this region by sea otters. Food resources available to residents and economic opportunities regarding shellfish are disappearing. That fact should be reported by the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, The Bureau of Indian Affairs and the U.S. Forest Service at every opportunity. The Council's recommendation is that the Board plan and fund a research study to quantify the impact of sea otters to subsistence users.*

Mr. Bertrand Adams Sr.

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**Response:**

As you noted, marine mammals are not under Board jurisdiction. Except in a few very limited areas, the Federal Subsistence Board has no jurisdiction in the marine waters of Southeast Alaska where sea otters reside. However, the Board recognizes that the Council has a role in all subsistence issues in the Region, as described in ANILCA Section 805. The U.S. Fish & Wildlife Service (USFWS), outside of its role on the Board, is the lead Federal agency for overseeing sea otter populations.

Addressing stakeholders' concerns and working in cooperation with agencies on the Southeast sea otter issue is a priority for the USFWS. The USFWS made a lot of progress on stakeholder engagement in the last year. Verena Gill, USFWS sea otter biologist, attended your March meeting at the invitation of Robert Larson, Southeast Council Coordinator, and gave a joint presentation on the Southeast sea otter issue with USFWS law enforcement, the Southeast Regional Dive Fisheries Association, and Native representatives. The Southeast Alaska Sea Otter Working Group (along with University of Alaska, Sitka Tribe, ADF&G, and fishing organizations) has been giving various presentations across Alaska, for example, at the Marine Mammal Commission in Anchorage on January 25, 2012 and the Board of Fisheries in Petersburg on January 15, 2012. The working group, along with a representative from the Southeast Council, also met in Juneau on January 4, 2012, to discuss strategy. Additionally, the USFWS has participated in numerous interviews on APRN addressing the Southeast sea otter issue. So there has been good progress on coordination and information sharing in general in the last year. The USFWS will be continuing down the same coordination/outreach path in the future and will continue to engage the Southeast Council.

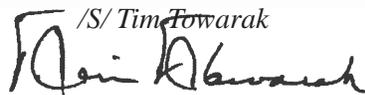
As to your specific concern – the impact of sea otters on subsistence resources in the Southeast – there have been some research developments in that area. According to recent estimates, rural residents of Southeast Alaska harvest approximately 900,000 pounds of shellfish each year. The potential loss of that amount of food could conceivably have significant but unknown effects on the use of subsistence foods under federal jurisdiction. How these foods will be replaced and what the effect will be from increased competition on other resources is unknown. The USFWS is working with the University of Alaska to study the impact of sea otters on subsistence and commercial fisheries in the Southeast. Information on this research can be found at <http://seagrant.uaf.edu/research/projects/10/otter/index.php>. This is a coordinated effort between multiple partners and was funded by the North Pacific Research Board, the Alaska Sea-Grant Program and the USFWS.

Mr. Bertrand Adams Sr.

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

Sincerely,

/s/ Tim Towarak  


Tim Towarak, Chair  
Federal Subsistence Board

cc: Southeast Alaska Subsistence  
Regional Advisory Council  
Federal Subsistence Board  
Interagency Staff Committee  
Pete Probasco, Assistant Regional Director, OSM  
Kathy O'Reilly-Doyle, Deputy Assistant Regional Director, OSM  
Carl Johnson, Council Coordinator Div. Chief, OSM  
Robert Larson, U.S. Forest Service  
Administrative Record

## Stikine River Subsistence Salmon Fishery 2012 Season Summary

Robert Larson, U.S. Forest Service  
December 1, 2012

### Executive Summary

This report fulfills the commitment for the 2012 season Stikine River U.S. subsistence salmon fishery summary for the bilateral U.S.-Canada Pacific Salmon Commission (Commission). In 2012, 130 households harvested 16 large Chinook salmon during the Chinook salmon season, 1,155 sockeye salmon during the sockeye salmon season and 110 coho salmon during the coho salmon season.

### Introduction

A subsistence fishery was established for sockeye salmon on the Stikine River in 2004 by the Federal Subsistence Board (Board), through coordination with the Transboundary River Panel (Panel) and the Commission. By action of the Board, and coordination with the Panel and Commission, directed fisheries for Chinook and coho salmon were added in 2005. Regulatory changes for the 2006 season included an increase in the mesh size of gillnets during the Chinook fishery (to 8 inch stretched mesh) and an earlier starting date for the sockeye fishery. There were no changes in subsistence fishing regulations or permit conditions for the 2007 fishing season. In 2008, two regulatory changes were made to the subsistence fishery. The first change made subsistence fishing permits valid for the length of the fishing season, May 15 through October 1. The second change moved the start date of the subsistence coho salmon fishery from August 15 to August 1. Changing the coho fishery start date allowed continuous subsistence fishing between May 15 and October 1. There were no subsequent changes to the regulations for the 2009 through 2012 seasons.

Eligibility for participation in the Federal subsistence fishery is limited to residents of Wrangell, Petersburg, Meyers Chuck, and the immediate vicinity through a positive customary and traditional use determination adopted by the Board.

Federal jurisdiction and prominent features of the Stikine River are shown in **Figure 1**.

### Federal Subsistence Fishing Regulations

The Federal subsistence fisheries regulations are detailed in Subpart C and D of the Code of Federal Regulations (36 CFR part 242 and 50 CFR part 100). The sections relevant to the Stikine River are as follows:

§\_\_\_\_.24 *Customary and traditional use determinations.*

(2) *Fish determinations. The following communities and areas have been found to have a positive customary and traditional use determination in the listed area for the indicated species:*

*Southeastern Alaska Area:*

*District 8 and waters draining into that District: Salmon, Dolly Varden, trout, smelt, and eulachon. Residents of drainages flowing into Districts 7 & 8, residents of drainages flowing into District 6 north of the latitude of Point Alexander (Mitkof Island), and residents of Meyers Chuck.*

§\_\_\_\_.27 *Subsistence taking of fish.*

(i) Fishery management area restrictions.

(13) Southeastern Alaska Area.

(xv) You may take Chinook, sockeye, and coho salmon in the mainstem of the Stikine River only under the authority of a Federal subsistence fishing permit. Each Stikine River permit will be issued to a household. Only dip nets, spears, gaffs, rod and reel, beach seine, or gillnets not exceeding 15 fathoms in length may be used. The maximum gillnet mesh size is 5 1/2 inches, except during the Chinook season when the maximum gillnet mesh size is 8 inches.

(A) You may take Chinook salmon from May 15 through June 20. The annual limit is 5 Chinook salmon per household.

(B) You may take sockeye salmon from June 21 through July 31. The annual limit is 40 sockeye salmon per household.

(C) You may take coho salmon from August 1 through October 1. The annual limit is 20 coho salmon per household.

(D) You may retain other salmon taken incidentally by gear operated under terms of this permit. The incidentally taken salmon must be reported on your permit calendar.

(E) The total annual guideline harvest level for the Stikine River fishery is 125 Chinook, 600 sockeye, and 400 coho salmon. All salmon harvested, including incidentally taken salmon, will count against the guideline for that species.

#### **Pacific Salmon Treaty, Annex IV Direction**

Provisions specific to the Stikine River subsistence fishery are contained within Annex IV of the Pacific Salmon Treaty and are very similar, but not exactly the same, as subsistence fishing regulations. For instance, the allowable sockeye salmon season in the Annex is two days longer than the sockeye salmon fishing season in subsistence fishing regulations.

(3)(a)(1) Sockeye Salmon:

(iv) Pursuant to this agreement, a directed U.S. subsistence fishery in U.S. portions of the Stikine River will be permitted, with a guideline harvest level of 600 sockeye salmon to be taken between June 19 and July 31. These fish will be part of the existing U.S. allocation of Stikine River sockeye salmon.

The Annex also contains three conditions common to the subsistence Chinook, coho and sockeye salmon fisheries that are not included in subsistence fishing regulations. These conditions define the subsistence fishing area, require weekly and end of season fishing reports and specify that regulatory changes must be approved by the Pacific Salmon Commission.

(3)(a)(1,2,3) For this fishery:

a. The fishing area will include the main stem of the Stikine River, downstream of the international border, with the exception that fishing at stock assessment sites identified prior to each season is prohibited unless allowed under specific conditions agreed to by both Parties' respective managers.

b. Catches will be reported weekly, including all incidentally caught fish. All tags recovered shall be submitted to the Alaska Department of Fish and Game.

c. A written report on the fishery summarizing harvests, fishing effort and other pertinent information requested by the Transboundary Panel will be submitted by the management agency for consideration by the Panel at its annual post season meeting.

d. Any proposed regulatory changes to the fishery during the remaining years of this annex would need to be reviewed by the bilateral Transboundary panel and approved by the Pacific Salmon Commission.

### **Subsistence Fishery Management**

Federal subsistence fishing rules are published in the Code of Federal Regulations (CFR) and in a regulatory handbook summary. The regulatory handbooks are available to the public through a number of license vendors, Alaska Fish and Game offices and local U.S. Forest Service offices. The CFRs and the handbook are also available online at the Office of Subsistence Management website at: <http://alaska.fws.gov/asm/index.cfm>. Subsistence fishing permits are required and are available from any U.S. Forest Service District Office on the Tongass National Forest. In 2012, Stikine River subsistence fishing permits were only issued by the Wrangell and Petersburg Forest Service Ranger District offices.

The 2012 subsistence fishery in-season harvest monitoring plan focused on tracking the number of fishermen and obtaining estimates of harvest through a random selection telephone interview process. Fishery performance data that included the total number of permits issued to date and a Chinook, sockeye and coho salmon harvest estimate were reported to State fishery managers on a weekly basis.

### **2012 Season Fishery Performance**

In-season monitoring of the subsistence fishery harvest consisted of catch-to-date estimates of Chinook, sockeye and coho salmon harvest from telephone interviews with a random subset of permit holders. In-season harvest estimates were compiled by calculating the average catch by species by permit to date and expanding by the total number of permits issued. Typically, 15 to 25 permit holders were randomly selected for interviews each week. Weekly harvest estimates from the first few weeks of the fishery and the last few weeks of the fishery were subject to increased variability because the proportion of fishermen that fished was small compared to the total number of permits issued. In those instances, fishery performance data from previous years was used to attenuate those variations. U.S. Forest Service staff from the Wrangell and Petersburg District offices and Law Enforcement officers maintained a regular presence on the river during the entire subsistence fishery.

During the 2012 Chinook salmon fishery, May 15 through June 20, a total of 16 Chinook, no coho and 137 sockeye salmon were harvested (**Table 1**). During the sockeye salmon fishery, June 21 to July 31, a total of 34 Chinook, 2 coho and 1,155 sockeye salmon were harvested (**Table 2**). Although the Treaty authorizes a June 19 start date of the sockeye fishing season, Federal subsistence fishing regulations specify a later June 21 sockeye salmon subsistence fishing season opening date. During the coho salmon fishery, August 1 through October 1, a total of 3 Chinook, 110 coho and 10 sockeye salmon were harvested (**Table 3**).

In total, for the 2012 season including fish harvested incidentally outside of established fishing seasons, 130 permit holders harvested a total of 53 Chinook salmon greater than 28 inches, 47 chum salmon, 112 coho salmon, 32 pink salmon and 1,302 sockeye salmon. There were no steelhead trout, no cutthroat trout and one Dolly Varden harvested (**Table 4**). There were 23 Chinook salmon less than 28 inches harvested. The first Chinook salmon was harvested May 26, the first sockeye salmon was harvested on June 13 and the first coho salmon was harvested July 25 (**Table 5**).

Approximately 35% of the permits issued in 2012 were issued to residents of Petersburg and 65% issued to residents of Wrangell. An end-of-season letter reminding permit holders to report subsistence harvests was sent to each permit holder at the end of the season. Any permittees that did not report by October 15 were contacted by telephone. Year-end harvest fishing reports were obtained from all except three permittees.

## **2012 Management and Regulatory Issues**

Pre-season and post-season total return estimates were above escapement goals for Chinook, coho and sockeye salmon. There are no formal escapement goals for pink and chum salmon returning to streams in the Stikine River drainage. The statistical week 22 in-season return estimate for Chinook salmon predicted the escapement goal would not be met (assuming the baseline harvests were taken). In response, the Federal in-season manager issued a letter to permit holders requiring 48 hour reporting of any Chinook salmon harvested for the remainder of the Chinook salmon season. The letter also reminded subsistence fishers to closely monitor their nets.

The subsistence sockeye fishery has exceeded the sockeye fishery annual guideline harvest level (GHL) as specified in Federal regulations and Treaty language in each of the last four years. A formal process to address the subsistence sockeye salmon fishery (GHL) was initiated when the Southeast Subsistence Regional Advisory Council (Council) submitted a regulatory proposal (FP13-19) to the Board to change the GHL. Following public testimony and deliberation, the Council recommended eliminating the GHL entirely. The Council's rationale was that the presence of any guideline harvest level is inconsistent with the management practices of the other fisheries targeting Stikine River origin sockeye salmon. Eliminating the subsistence sockeye salmon GHL would allow the subsistence fishery to operate completely within the U.S. allocation; subject to the normal domestic allocation protocols. Sockeye salmon harvested for subsistence are part of the U.S. total allowable catch and the harvest is reported in-season, on a weekly basis, to the ADF&G fishery managers. There is no conservation or fishery management concerns with eliminating the guideline harvest level. Staff from the Office of Subsistence Management, the U.S. Forest Service, plus a member of the Council will discuss this issue and the rationale for the Council's recommendation, at the U.S. Section and the bilateral meeting of the Panel.

There were no subsistence fishery violation citations issued by fisheries enforcement officers in 2012 and no conflicts with the test fishing program or reports of subsistence fishing in clear water tributaries.

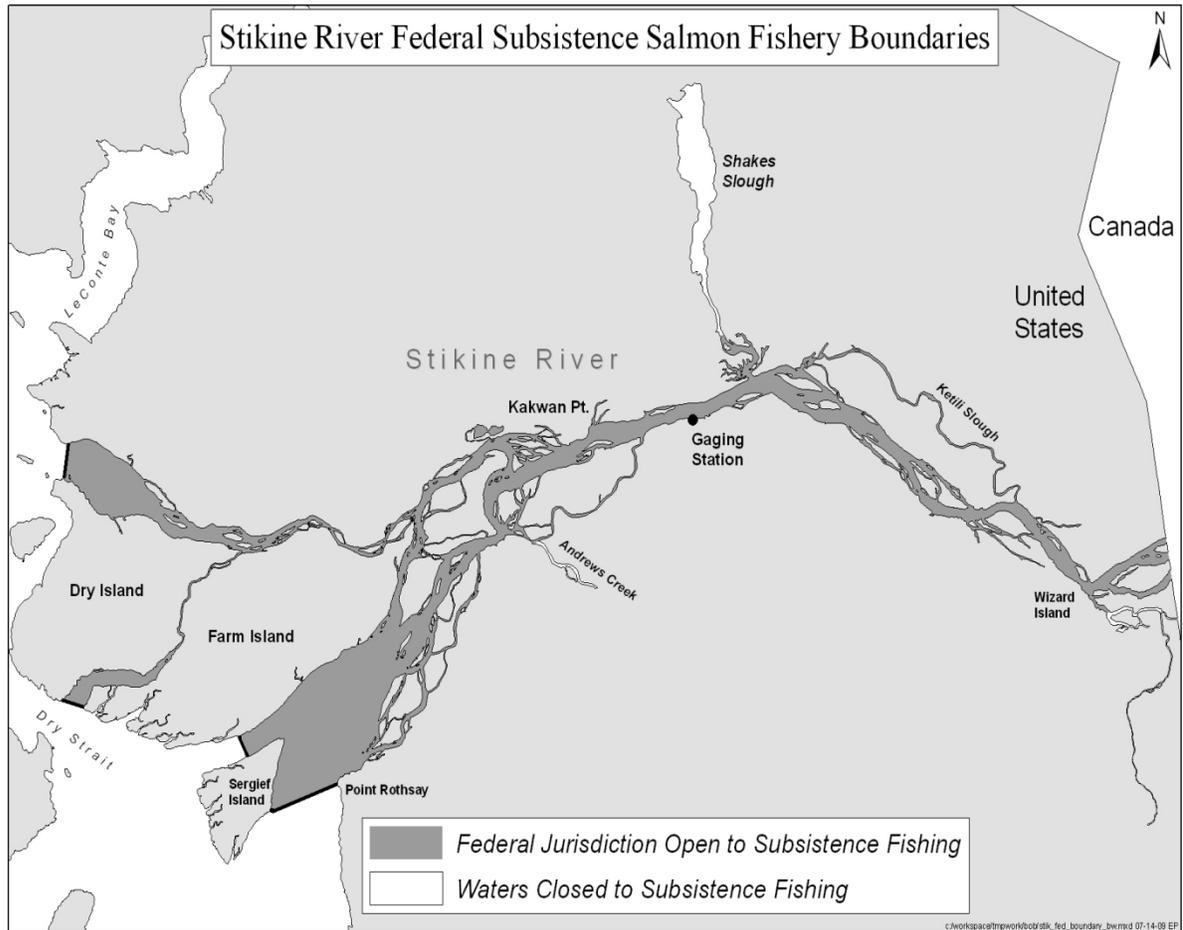


Figure 1. Prominent geographic features of the Stikine River.

Table 1. Stikine River Chinook salmon subsistence fishery, seasonal harvest by year.

Stikine River Chinook Salmon Fishery Subsistence Harvest								
Chinook Salmon Season (May 15 through June 20)								
Year	Chinook	Chum	Coho	Dolly Varden	Pink	Trout	Sockeye	Steelhead
2004	No Chinook salmon season in 2004							
2005	13	0	0		2	4	0	18
2006	13	1	0		0	0	0	8
2007	24	0	0		0	0	0	61
2008	8	0	0		1	0	0	2
2009	9	0	0		2	0	1	17
2010	14	0	0		1	0	0	65
2011	16	0	0		0	0	0	64
2012	16	0	0		0	0	0	137

Table 2. Stikine River sockeye salmon subsistence fishery, seasonal harvest by year.

Stikine River Sockeye Salmon Fishery Subsistence Harvest								
Sockeye Salmon Season (June 21 through July 31)								
Year	Chinook	Chum	Coho	Dolly Varden	Pink	Trout	Sockeye	Steelhead
2004	12	11	0	1	22	0	243	1
2005	2	22	1	2	65	0	233	0
2006	24	19	0	3	23	0	377	0
2007	12	11	0	1	57	0	178	1
2008	17	5	0	4	0	0	426	0
2009	22	46	0	18	66	0	706	0
2010	44	33	13	11	38	0	1,554	4
2011	48	64	1	3	189	0	1,686	0
2012	34	40	2	1	23	0	1,155	0

Table 3. Stikine River coho salmon subsistence fishery, seasonal harvest by year.

Stikine River Coho Salmon Fishery Subsistence Harvest								
Coho Salmon Season (August 1 through October 1)								
Year	Chinook	Chum	Coho	Dolly Varden	Pink	Trout	Sockeye	Steelhead
2004	No Coho salmon season in 2005							
2005	0	0	52	0	0	0	1	0
2006	0	0	21	0	0	0	5	0
2007	0	0	23	0	2	0	5	1
2008	0	7	42	0	18	0	0	0
2009	0	0	21	0	0	0	0	0
2010	3	4	122	0	22	0	34	0
2011	2	10	39	0	0	0	5	5
2012	3	7	110	0	9	0	10	0

Table 4. Stikine River subsistence fishery, total annual harvest.

Stikine River Total Subsistence Harvest by Year									
Year	Permits	Chinook	Chum	Coho	Dolly Varden	Pink	Trout	Sockeye	Steelhead
2004	40	12	11	0	1	22	0	243	1
2005	35	15	22	53	4	69	0	252	0
2006	48	37	20	21	3	23	0	390	0
2007	44	36	11	23	1	59	0	244	2
2008	50	25	12	42	5	18	0	428	0
2009	80	31	46	21	20	66	1	723	2
2010	107	61	37	135	12	60	0	1,653	7
2011	129	66	74	40	3	189	0	1,741	5
2012	130	53	47	112	1	32	0	1,302	0

Table 5. Stikine River total subsistence harvest by statistical week, 2012 season.

2012 Stikine River Subsistence Harvest by Statistical week								
Week Ending	Catch week	Chinook	Chum	Coho	Dolly Varden	Pink	Sockeye	Steelhead
5/19	20	0	0	0	0	0	0	0
5/26	21	1	0	0	0	0	0	0
6/2	22	8	0	0	0	0	0	0
6/9	23	0	0	0	0	0	0	0
6/16	24	5	0	0	0	0	71	0
6/23	25	4	0	0	0	0	86	0
6/30	26	3	0	0	0	0	56	0
7/7	27	3	1	0	0	0	116	0
7/14	28	8	5	0	0	3	306	0
7/21	29	14	17	0	1	4	404	0
7/28	30	1	12	2	0	5	163	0
8/4	31	3	7	0	0	15	90	0
8/11	32	0	4	0	0	3	6	0
8/18	33	0	0	0	0	0	0	0
8/25	34	3	1	35	0	2	4	0
9/1	35	0	0	0	0	0	0	0
9/8	36	0	0	9	0	0	0	0
9/15	37	0	0	4	0	0	0	0
9/22	38	0	0	59	0	0	0	0
9/29	39	0	0	3	0	0	0	0

## **WILDLIFE CLOSURE REVIEW BRIEFING**

As called for in the Closure Policy, the Office of Subsistence Management is reviewing existing wildlife closures to determine whether the original justifications for closure continue to apply. These reviews are being conducted in accordance with guidance found in the Federal Subsistence Board's Policy on Closures to Hunting, Trapping and Fishing on Federal Public Lands and Waters in Alaska, which was adopted in 2007. According to the policy, existing closures will be reviewed at least every three years, and are typically completed on a three-year rotational schedule. Most of the closures being reviewed this cycle were last reviewed by the Federal Subsistence Board (Board) in 2008. A summary of the current closure reviews which are applicable to your Regional Advisory Council are provided.

Section 815(3) of ANILCA allows closures when necessary for the conservation of healthy populations of fish and wildlife, and to continue subsistence uses of such populations. The existing closures represent both situations. For example, the closure for the hunting of muskox in Unit 26 was adopted because of the low muskox population; and the Unit 2 deer closure was adopted because rural residents provided substantial evidence that they were unable to meet their subsistence needs because of competition from other users of the resource.

Distribution and abundance of fish and wildlife populations are known to fluctuate based upon a variety of factors such as weather patterns, management actions, habitat changes, predation, harvest activities, and disease. Subsistence use patterns are also known to change over time in response to many factors including resource abundance, human population changes, among others. It is for these reasons that the Board decisions to establish specific closures are revisited periodically.

The Wildlife Closure Reviews contain a brief history of why a closure was implemented, along with a summary of the current resource condition and a preliminary OSM recommendation as to whether the closure should be continued or deleted from the regulations.

Councils are asked to consider the OSM preliminary recommendation and share their views on the issue. Input from the Councils is critical to the development of regulatory proposals needed to address adjustments to regulations. Any regulatory proposals that may result from this review process will be considered through the normal regulatory cycle. The current window for wildlife proposals closes on March 29, 2013. Councils may choose to work with OSM staff to develop a proposal; however proposals addressing these issues can be submitted by anyone.

**POLICY ON CLOSURES TO HUNTING, TRAPPING AND FISHING  
ON FEDERAL PUBLIC LANDS AND WATERS IN ALASKA**

**FEDERAL SUBSISTENCE BOARD**

Adopted August 29, 2007

**PURPOSE**

This policy clarifies the internal management of the Federal Subsistence Board (Board) and provides transparency to the public regarding the process for addressing Federal closures (closures) to hunting, trapping, and fishing on Federal public lands and waters in Alaska. It also provides a process for periodic review of regulatory closures. This policy recognizes the unique status of the Regional Advisory Councils and does not diminish their role in any way. This policy is intended only to clarify existing practices under the current statute and regulations; it does not create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its agencies, officers, or employees, or any other person.

**INTRODUCTION**

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) establishes a priority for the taking of fish and wildlife on Federal public lands and waters for non-wasteful subsistence uses over the taking of fish and wildlife on such lands for other purposes (ANILCA Section 804). When necessary for the conservation of healthy populations of fish and wildlife or to continue subsistence uses of such populations, the Federal Subsistence Board is authorized to restrict or to close the taking of fish and wildlife by subsistence and non-subsistence users on Federal public lands and waters (ANILCA Sections 804 and 815(3)). The Board may also close Federal public lands and waters to any taking of fish and wildlife for reasons of public safety, administration or to assure the continued viability of such population (ANILCA Section 816(b)).

**BOARD AUTHORITIES**

- ANILCA Sections 804, 814, 815(3), and 816.
- 50 CFR Part 100 and 36 CFR Part 242, Section .10(d)(4).

**POLICY**

The decision to close Federal public lands or waters to Federally qualified or non-Federally qualified subsistence users is an important decision that will be made as set forth in Title VIII of ANILCA. The Board will not restrict the taking of fish and wildlife by users on Federal public lands (other than national parks and park monuments) unless necessary for the conservation of healthy populations of fish and wildlife resources, or to continue subsistence uses of those populations, or for public safety or administrative reasons, or "pursuant to other applicable law." Any individual or organization may propose a closure. Proposed closures of Federal public lands and waters will be analyzed to determine whether such restrictions are necessary to assure conservation of healthy populations of fish and wildlife resources or to provide a meaningful preference for qualified subsistence users. The analysis will identify

the availability and effectiveness of other management options that could avoid or minimize the degree of restriction to subsistence and non-subsistence users.

Like other Board decisions, closure actions are subject to change during the yearly regulatory cycle. In addition, closures will be periodically re-evaluated to determine whether the circumstances necessitating the original closure still exist and warrant continuation of the restriction. When a closure is no longer needed, actions to remove it will be initiated as soon as practicable. The Office of Subsistence Management will maintain a list of all closures.

### **Decision Making**

The Board will:

- Proceed on a case - by - case basis to address each particular situation regarding closures. In those cases for which conservation of healthy populations of fish and wildlife resources allows, the Board will authorize non-wasteful subsistence taking.
- Follow the statutory standard of "customary and traditional uses." Need is not the standard. Established use of one species may not be diminished solely because another species is available. These established uses have both physical and cultural components, and each is protected against all unnecessary regulatory interference.
- Base its actions on substantial evidence contained within the administrative record, and on the best available information; complete certainty is not required.
- Consider the recommendations of the Regional Advisory Councils, with due deference (ANILCA § 805 (c)).
- Consider comments and recommendations from the State of Alaska and the public (ANILCA § 816 (b)).

### **Conditions for Establishing or Retaining Closures**

The Board will adopt closures to hunting, trapping or fishing by non-Federally qualified users or Federally qualified subsistence users when one or more of the following conditions are met:

- Closures are necessary for the conservation of healthy populations of fish and wildlife:
  - a) When a fish or wildlife population is not sufficient to provide for both Federally qualified subsistence users and other users, use by non-Federally qualified users may be reduced or prohibited, or
  - b) When a fish or wildlife population is insufficient to sustain all subsistence uses, the available resources shall be apportioned among subsistence users according to their:

- 1) Customary and direct dependence upon the populations as the mainstay of livelihood,
  - 2) Local residency, and
  - 3) Availability of alternative resources, or
- c) When a fish or wildlife population is insufficient to sustain any use, all uses must be prohibited.
- Closures are necessary to ensure the continuation of subsistence uses by Federally qualified subsistence users.
  - Closures are necessary for public safety.
  - Closures are necessary for administrative reasons.
  - Closures are necessary “pursuant to other applicable law.”

### **Considerations in Deciding on Closures**

When acting upon proposals recommending closure of Federal public lands and waters to hunting, trapping, or fishing, the Board may take the following into consideration to the extent feasible:

- The biological history (data set) of the fish stock or wildlife population.
- The extent of affected lands and waters necessary to accomplish the objective of the closure.
- The current status and trend of the fish stock or wildlife population in question.
- The current and historical subsistence and non-subsistence harvest, including descriptions of harvest amounts, effort levels, user groups, and success levels.
- Pertinent traditional ecological knowledge.
- Information provided by the affected Regional Advisory Councils and Alaska Department of Fish and Game.
- Relevant State and Federal management plans and their level of success as well as any relationship to other Federal or State laws or programs.
- Other Federal and State regulatory options that would conserve healthy populations and provide a meaningful preference for subsistence, but would be less restrictive than closures.

- The potential adverse and beneficial impacts of any proposed closure on affected fish and wildlife populations and uses of lands and waters both inside and outside the closed area.
- Other issues that influence the effectiveness and impact of any closure.

### Reviews of Closures

A closure should be removed as soon as practicable when conditions that originally justified the closure have changed to such an extent that the closure is no longer necessary. A Regional Council, a State or Federal agency, or a member of the public may submit, during the normal proposal period, a proposal requesting the opening or closing of an area. A closure may also be implemented, adjusted, or lifted based on a Special Action request according to the criteria in 50 CFR 100.19 and 36 CFR 242.19.

To ensure that closures do not remain in place longer than necessary, all future closures will be reviewed by the Federal Subsistence Board no more than three years from the establishment of the closure and at least every three years thereafter. Existing closures in place at the time this policy is implemented will be reviewed on a three-year rotational schedule, with at least one - third of the closures reviewed each year.

Closure reviews will consist of a written summary of the history and original justification for the closure and a current evaluation of the relevant considerations listed above. Except in some situations which may require immediate action through the Special Action process, closure review analyses will be presented to the affected Regional Council(s) during the normal regulatory proposal process in the form of proposals to retain, modify or rescind individual closures.

*/S/ Mike R. Fleagle*

\_\_\_\_\_  
Chair, Federal Subsistence Board

*/S/ Thomas O. Melius*

\_\_\_\_\_  
Board Member, U.S. Fish and Wildlife Service

*/S/ Niles Cesar*

\_\_\_\_\_  
Board Member, Bureau of Indian Affairs

*/S/ Denny Bschor*

\_\_\_\_\_  
Board Member, U.S. Forest Service

*/S/ Marcia Blaszak*

\_\_\_\_\_  
Board Member, National Park Service

*/S/ T. P. Lonnie*

\_\_\_\_\_  
Board Member, Bureau of Land Management

**FEDERAL WILDLIFE CLOSURE REVIEW  
WCR12-02**

**Closure Location: Unit 5A—Moose**

**Current Federal Regulation**

*Unit 5A, except Nunatak Bench—1 bull by joint State/Federal registration permit only. From Oct. 8– Oct. 21, Federal public lands will be closed to taking of moose, except by residents of Unit 5A.* *Oct. 8–Nov. 15*

**Closure Dates: October 8– 21**

**Current State Regulations:**

<b>Species and Bag limits — Moose</b>	<b>Permit/Ticket Required</b>	<b>Open Season</b>
<b>Unit 5A Remainder:</b>	<i>RM061</i>	<i>Oct. 15–Nov. 15</i>
<i>One bull by permit, available in Douglas or Yakutat or by mail from Douglas beginning Aug. 17</i>		

**Regulatory Year Initiated: 1991**

**Regulatory History: (initial proposal number not known)**

Moose hunting in Unit 5A, except Nunatak Bench has been managed using a registration permit system since 1978. In 1990, the Federal government began managing subsistence hunting, fishing, and trapping on Alaska’s Federal public lands. On October 5, 1990 the Federal Subsistence Board (Board) closed Federal lands in Unit 5A to moose hunting from October 15–21, except for Yakutat residents (FSB 1990). Additionally, the harvest quota for Unit 5A except the Nunatak Bench was set at 60 bulls, and the quota for the area west of the Dangerous River was set at 30 bulls (OSM 2012). In 1992, the list of communities with a positive customary and traditional use determination was expanded to include all the residents of Unit 5 and not just the residents of Yakutat (P92-012A). The Board used an emergency special action (S92-10) to close the moose season in Unit 5A west of the Dangerous River in 1992 because the harvest quota had been reached. In 1994, the Board adopted proposal P94-17 for Unit 5A, which allowed a community-based harvest of 10 additional moose for community potlatches and ceremonial uses from August 1 to December 31.

In 1996, to allow for increased opportunity by Federally qualified subsistence users, the Board adopted proposal P96-014, which extended the Federal season by one week from a beginning date of October 15 to October 8. The regulatory dates for the closure of Federal public lands to non-Federally qualified subsistence users were changed in 2000 from October 15 to October 21 to October 8 – October 21 (P00-010), to reflect the change in the Federal moose season start date of October 8. In 2004, the Board adopted proposal WP04-20, which established a joint State/Federal registration permit for subsistence hunting of moose in Unit 5A (RM061), that allowed for more efficient management and harvest monitoring of the hunt. The State issued Emergency Orders in 2004 (01-02-04) and 2007 (01-08-07) to close the portion of Unit 5A west of the Dangerous River when the number of moose harvested reached 28 to prevent the harvest from exceeding the quota of 30 bulls. In 2008, in response to continued low

bull:cow ratios in Unit 5A, the Board adopted WSA08-05, which reduced the total harvest quota from 60 to 50 bulls for Unit 5A except the Nunatak Bench and from 30 to 20 bulls for Unit 5A west of Dangerous River. In October 2008, the State issued an Emergency Order (01-07-08) closing the portion of Unit 5A west of the Dangerous River when the harvest reached 20 bull moose. In 2009, the State raised the harvest quota from 50 to 55 bull moose in Unit 5A except the Nunatak Bench, and from 20 to 25 bull limit for the area west of Dangerous River. This change was based on surveys conducted during the winter of 2008, which indicated improved bull:cow ratios.

In 2009, the harvest quota for moose in Unit 5A except the Nunatak Bench was set by the Board at 60 bulls and for Unit 5A west of Dangerous River at 30 bulls. In 2010, the Board adopted Special Action WSA09-04, which delegated the U.S. Forest Service Yakutat District Ranger, temporary authority to establish a quota and close the moose season for Unit 5A. In 2010, the Board adopted proposal WP10-22, which removed from regulation the delegation of authority to the Yakutat Ranger District. In March of 2011, the board issued a letter of delegation to the Yakutat District Ranger to set Federal subsistence harvest quotas, close, reopen or adjust seasons, and adjust harvest and possession limits for moose (as well as deer and mountain goats).

In 2009, 2010, and 2011, the Yakutat District Ranger, via delegated authority, reduced the moose harvest quota in the fall for Unit 5A except the Nunatak Bench from 60 to 55 bulls with no more than 25 of those bulls to be taken in the area west of the Dangerous River from October 8 to November 15 (SA7-MO-06-09, SA7-MO-06-10, and SA13-MO-09-11). The Alaska Department of Fish and Game (ADF&G) also reduced the yearly moose harvest quota for the State season in Unit 5A remainder, except for Nunatak Bench, from 60 to 55 bulls and from 30 to 25 bulls west of the Dangerous River during the period between 2009 and 2011.

**Closure last reviewed: 2009 — WCR08-02**

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

*Section §815(3) of ANILCA states:*

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

The Federal Register notice states that the action was taken to “assure a preferential subsistence opportunity of rural Alaska residents with C&T.”

**Council recommendation for original closure:**

The Southeast Regional Advisory Council had not been established prior to the original closure, and thus there was no recommendation at that time.

**State recommendation for original closure:**

The State recommendation for the original closure was not found in 1990 Federal Subsistence Board Meeting Book or in the archives.

## Biological Background:

Moose were first sighted along lower Alsek River drainage in the eastern section of Unit 5A in the late 1920s and early 1930s. By the 1950s the moose population had expanded its range westward to the Malaspina Forelands west of Yakutat Bay. The population grew rapidly and by the 1960s was estimated to be over 2,000, which was likely above the carrying capacity of the range (Barten 2006). During the 1960s and early 1970s the population declined due to both liberal harvest seasons, including cow hunts designed to protect the moose habitat, and severe winters in 1970 and 1972 that reduced the survival and recruitment (Scott 2010).

In 1974, the moose population in Unit 5A was estimated to be approximately 300 animals (FWS 1996). Concern over low population numbers resulted in a hunting closure of Unit 5A from 1974–1977. Following these closures, the Yakutat Forelands (**Figure 1**) moose population slowly recovered to a high of approximately 685 moose (unadjusted) in 2007 (**Figure 2**). A complete survey of the Yakutat Forelands herd was conducted in March 2010 and resulted in an unadjusted count of 301 moose. Although the survey conditions were poor to fair, the unadjusted count was considerably lower than the 685 counted in 2007. Several factors should be considered when comparing the spring (2010) survey with the fall (2007) survey because the moose distribution is likely to be very different between the seasons. In addition to the timing of the surveys, variation in survey intensity, snow conditions, and survey area flown could also affect the number of moose seen. Following the 2007 survey, there were several severe winters, which probably reduced survival and recruitment and caused a decline in the moose population (Barten 2012). Calves and large bulls usually suffer the greatest mortality during the high snowfall winters. Large bulls often enter winter in poorer condition due to stress from the breeding season. Calves, due to their small size, have difficulty surviving during the winter because they have less energy reserves at the beginning of winter and have to expend more energy moving through deep snow than the larger animals.

In 1989, the State developed a management plan (ADF&G 1990) for Unit 5A Yakutat Forelands with three objectives: 1) to maintain a moose population of 1000 animals post-hunt, 2) to sustain an annual harvest of 70 moose, and 3) to provide a hunter success rate of 28%. Population counts conducted in the 1970s and 1980s were based on annual winter moose surveys that had been adjusted using a 50% sightability correction factor (Smith and Franzman 1979). However, more recent data from a sightability study on the Yakutat Forelands during winter aerial moose surveys suggest that a 70% sightability correction factor is more appropriate (Oehlers 2007). It should be noted that the 70% correction factor reflects good snow cover, which does not always occur during the population surveys. Ideally, a sightability logistic regression model would include covariates such as snow coverage, habitat type, and group size in addition to population data so that more accurate annual estimates were obtained. However, due to variation in survey conditions such as timing, survey routes, survey conditions, number of trained personnel and snow conditions, these criteria have not been consistently recorded and so only the raw survey data is used for abundance trend information (Barten 2006, Barten 2008, Scott 2010, Scott 2011a) (**Figure 1**). The abundance estimates using the 50% and 70% correction factors presented for comparison in Figure 1 provide only a rough population estimates. The adjusted moose population, using the 70% sightability correction factor, has been relatively stable (mean=568, range 278–978, n=8) since 2000 and appears to be near the carrying capacity of the habitat (Scott 2010, Barten 2012). It should be noted that an estimate of 600–800 moose may be a more realistic population goal for Unit 5A, because the population seems to fluctuating around this level during the past 10 years (Barten 2012).

Since 2000 complete surveys of the Unit 5A Yakutat Forelands have generally been conducted,. However, some surveys have been limited to a smaller area to obtain herd composition data. Prior to 2005, the surveys were conducted in open areas where concentrations of moose were known to occur.

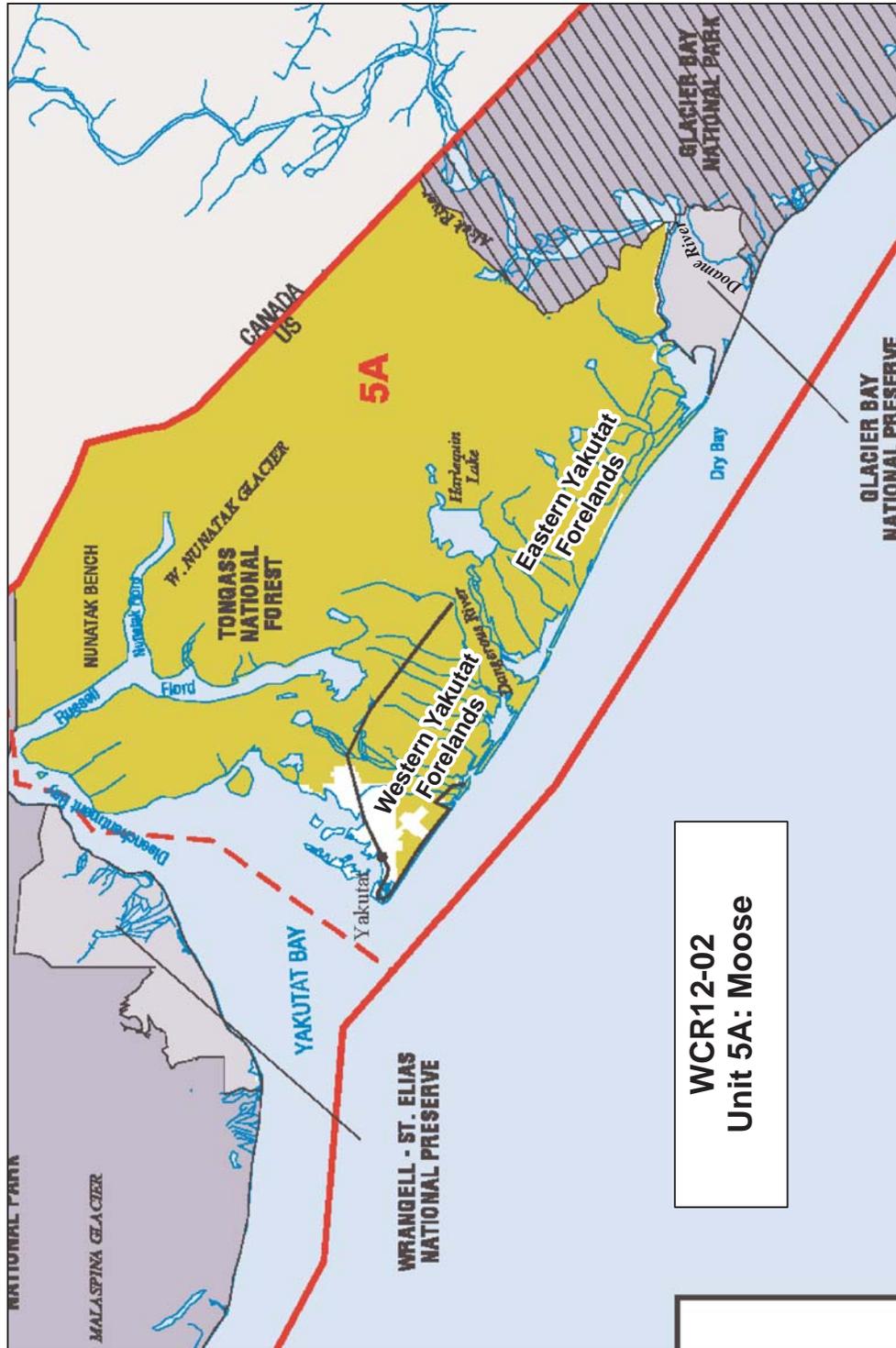
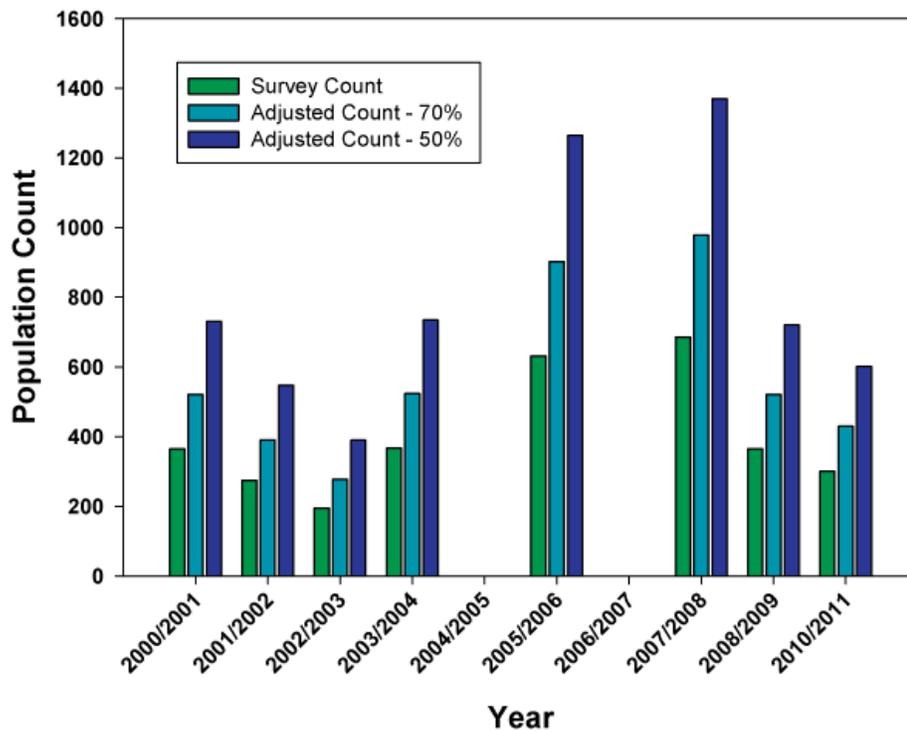


Figure 1. Location of the Western and Eastern Yakutat Forelands in Unit 5A.



**Figure 2.** Estimated fall moose population in Unit 5A Yakutat Forelands from aerial survey counts adjusted with a 50% and 70% sightability correction factor. In 2005 systematic line transect surveys were initiated.

The distribution and movements of moose in addition to the observer's ability to detect moose during aerial surveys are highly variable and dependent on the weather conditions, timing, and amount of snow cover in the late fall. Thus, population counts prior to 2005 may have missed large segments of the moose population and are probably not very reliable for detecting population trends (Barten 2008). In 2005, a more rigorous systematic survey design was developed using line transects which allowed for increased survey coverage, increased reliability of population estimates, reduced bias in the areas selected, and consistency between years. Despite the new survey design, weather conditions often prevented surveys being conducted at the same time, in the same area, and snow cover conditions also vary each year. The counts from these more systematic surveys, however, should be expected to result in more accurate population counts that can be used to detect population trends. It should be noted that the change in the sightability correction factor from 50% to 70% coincided with the change in survey design in 2005.

Although no formal habitat studies have been conducted to assess the quality of the moose habitat in Unit 5A, the relatively stable population numbers, relatively good body condition and high pregnancy and twinning rates indicate that the quality and quantity of forage habitat is good (ADF&G 2005, Oehlers 2007).

In 2005, separate surveys were conducted in the eastern Yakutat Forelands (east bank of Dangerous River to the Doame River; Barten 2005) and the western Yakutat Forelands (west bank of Dangerous River to Yakutat airport; Barten 2006) (**Figure 1**). Bull:cow estimates from December surveys should be considered minimum ratios as bull moose typically have begun to shed their antlers. Based on data from

November/December moose composition surveys in the Western and Eastern Yakutat Forelands between 2005 and 2011, the bull:cow ratio averaged 18:100 (n=5, range 10:100–34:100) and 20:100 (n=3, range 18:100–23:100), respectively (**Table 1**) (Scott 2010, Scott 2011b). The lower bull:cow ratios in the western Yakutat forelands relative to the eastern Yakutat forelands of Unit 5A may be due in part to the greater impact of hunting in this area as a result of increased accessibility. Average bull:cow ratios in both Eastern and Western Yakutat Forelands are below the ADF&G management objectives of a minimum bull:cow ratio of 25:100 (Scott 2010, Scott 2011b, Barten 2012, pers. comm.).

**Table 1.** Moose composition survey results for the Yakutat Forelands, 2005-2008 (Barten 2002, 2005, 2006b, 2007; Oehlers 2008a, b, c; Scott 2011b).

Month	Year	Survey Area	# Bulls	# Cows	# Calves	#		Bull:cow
						Unknown	Total	
March	2002	Yakutat Forelands	28	146	21	0	195	19:100
November	2005	Eastern Forelands	33	166	17	0	216	20:100
November	2006	Western Forelands	12	119	11	0	142	10:100
December	2007	Western Forelands	24	21	21	200	266	11:100 <sup>1</sup>
December	2007	Eastern Forelands	55	49	53	262	419	18:100 <sup>1</sup>
November	2008	Western Forelands	23	67	4	0	94	34:100
December	2008	Western Forelands	24	166	31	0	221	14:100
December	2008	Eastern Forelands	23	100	4	2	139	23:100
November	2011	Western Forelands	28	141	60	0	229	20:100

<sup>1</sup> Minimum estimate.

### Harvest History:

The annual moose harvest ranged from 25 to 48 during 2001–2011, with a mean of 38 (OSM 2012) (**Table 2**). A joint State and Federal permit was implemented for Unit 5A in 2004 to allow for better tracking of hunting effort and harvest and to simplify the permit application and reporting process for the hunters. The mean annual harvest, following implementation of the joint State/Federal registration permit in 2004 was 39.

The majority of the moose harvest occurs during the first two weeks (October 8-21) of the season in the western forelands by local residents. Only residents of Unit 5A are allowed to hunt bull moose during the first week of the season beginning October 8 and Federal public lands are closed to non-Federally qualified users until October 22, thus creating a two week period where there is no competition from hunters that live outside of Unit 5A. The residents of Unit 5A have taken on average of approximately 65% of the harvest annually since 2004 (FWS 2010). Most of the harvest by local residents occurs during the first two weeks of the season. Only residents of Unit 5A are allowed to hunt bull moose during the first week of the season beginning October 8 and Federal public lands are closed to non-Federally

qualified users until October 22. This creates a two week period during which there is no competition from hunters that live outside of Unit 5A. Overall hunter success averaged 25% between 2001 and 2010, which is below the ADF&G management objective of 28%.

**Table 2.** Number of reported moose harvested in Unit 5A between 2001/2002–2010/2011 from both State and Federal permits (OSM 2012).

Year	Number of Moose Harvested
2001/2002	38
2002/2003	45
2003/2004	30
2004/2005 <sup>a</sup>	40
2005/2006	37
2006/2007	33
2007/2008	48
2008/2009	35
2009/2010	38
2010/2011	37
<sup>a</sup> Implementation of the Joint State/Federal permit	

### OSM Recommendation

**maintain status quo**

**initiate proposal to modify or eliminate the closure**

**other recommendation**

### Justification for the OSM recommendation:

The Federal closure for Unit 5A moose remains important to the residents of Unit 5A as it provides a subsistence priority under Section 804–Title VIII of ANILCA. None of the State’s biological or management objectives for the moose population in Unit 5A have been met. Under the current harvest regime, the moose population has remained stable at approximately 568, but still below current State management objective of 1000. The current minimum bull:cow moose ratio (20:100) is below the State recommended minimum bull:cow ratio of 25:100, which is needed to ensure timely breeding of cows and to maximize productivity. The majority of the moose harvested are taken by Federally qualified users during the first two weeks of the season. The annual hunt by the Federally qualified subsistence users takes place primarily in the western Yakutat Forelands where accessibility by boat or vehicle is much greater than in the eastern Yakutat Forelands. Typically it is much more expensive to hunt in the eastern Yakutat Forelands. Without the closure, it is very likely that non-Federally qualified hunters would hunt early in the season as Yakutat is easily accessible by commercial airlines on a daily basis. The number of moose available for harvest is limited as moose numbers are currently low. The majority of the harvestable surplus of this population is being harvested by Federally qualified subsistence users. Maintaining the status quo is consistent with sound management principles and the conservation of healthy populations while providing a priority for subsistence uses over other consumptive uses as

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

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

## Federal Subsistence Board News Release



Forest Service

**For Immediate Release:**

January 14, 2013

**Contact:**

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

### Call for Proposals to Change Federal Subsistence Hunting and Trapping Regulations

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

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

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

**Submit proposals:**

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

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

You may call the Office of Subsistence Management at 800-478-1456 or email [subsistence@fws.gov](mailto:subsistence@fws.gov) with your questions.

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

-###-

### **Wildlife Regulatory Proposal**

To change regulations during the two-year regulatory cycle, submit a request to change the regulations by providing the following information:

- Name
- Organization
- Address
- Phone
- Fax
- E-mail

1. What regulation do you wish to change? (*Include management unit number and species. Quote the current regulation if known. If you are proposing a new regulation, please state “new regulation.”*)

2. How should the new regulation read? (*Write the regulation the way you would like to see it written.*)

3. Why should this regulation change be made?

4. What impact will this change have on wildlife populations?

5. How will this change affect subsistence uses?

6. How will this change affect other uses, such as sport/recreational and commercial?  
*Please attach any additional information to support your proposal.*

You may submit proposals/comments by one of the following methods:

*Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov> and search for FWS–R7–SM–2012–0104, which is the docket number for this rulemaking.

*By hard copy:* U.S. mail or hand-delivery to: USFWS, Office of Subsistence Management, 1011 East Tudor Road, MS 121, Attn: Theo Matuskowitz, Anchorage, AK 99503-6199, or hand delivery to the Designated Federal Official attending any of the Federal Subsistence Regional Advisory Council public meetings. See “Regional Advisory Councils” (<http://alaska.fws.gov/asm/rac.cfml>) for additional information on locations and dates of the public meetings.

## Development of Tribal Consultation Policy for the Federal Subsistence Board

Members of the Federal Subsistence board include:

Three at-large members appointed by Secretaries of the Interior & Agriculture

Regional Directors of:

Department of the Interior –

Bureau of Indian Affairs

Bureau of Land Management

Fish & Wildlife Service

National Park Service

Department of Agriculture –

Forest Service

### ***Background:***

The Alaska National Interest Lands Conservation Act (ANILCA) tasked the Board with the regulating, on behalf of the Secretaries, subsistence uses of fish and wildlife on Federal public lands in Alaska. ANILCA recognized the significance of subsistence in the lives of Alaska Natives and non-Natives (Sec. 801), established conservation system units and the priority for subsistence use over other uses on Federal public lands in Alaska (Sec. 802 and Sec. 804), and requires all Federal agencies to consider the impacts of authorized land use on subsistence users (Sec. 810). In January 2011, the Secretary of Interior directed the Federal Subsistence Board (Board) to consult with federally recognized Tribes in Alaska on actions that have a significant direct impact on tribal interests. As a result, the Board commenced the development of a Tribal Consultation Policy.

### ***Summary of Board & Consultation Workgroup Actions:***

- A workgroup formed, consisting of seven Federal and seven Tribal representatives, with one Federal and one Tribal co-chair. Members include:
  - Della Trumble, first Tribal Co-Chair Agdaagux Tribe of King Cove, King Cove Village Corporation
  - Crystal Leonetti, Co-Chair, US Fish & Wildlife Service
  - Rosemary Ahtuanguaruk, Current Tribal Co-Chair, Barrow/Nuiqsut
  - John W. Andrew, Organized Village of Kwethluk
  - Lillian Petershoare, US Forest Service
  - Jean Gamache, National Park Service
  - Nancy Swanton, National Park Service
  - Shawna Larson, Native Village of Chickaloon
  - Richard Peterson, Organized Village of Kasaan
  - Pete Probasco/Andrea Medeiros, Fish & Wildlife Service, Office of Subsistence Management
  - Brenda Takeshorse, Bureau of Land Management
  - George Carlson Yaska, Jr., Huslia/Fairbanks
  - Bobby Andrew, Native Village of Ekwok
  - Glenn Chen/Pat Petrivelli, Bureau of Indian Affairs

- New members added to the workgroup as a result of solicitation for nominations from all Tribes and ANCSA Corporations (June, 2012) and OSM hiring a Native Liaison (August, 2012)
  - Charles Ekak, Olgoonik Corporation of Wainwright
  - Cliff Adams, Beaver Kwit'chin Corporation
  - Gloria Stickwan, Ahtna, Inc.
  - Roy Ashenfelter, Bering Straits Native Corporation, Kawerak, Inc.
  - Gary Harrison, Chickaloon Native Village
  - Edward Rexford, Native Village of Kaktovik
  - Michael Stickman, Nulato Tribal Council
  - Jack Lorrigan, Office of Subsistence Management
  
- Over the period of 18 months:
  - the Board and workgroup conducted 16 consultation meetings with over 200 Tribes and more than 15 ANCSA corporations (there are 229 Tribes and about 200 ANCSA corporations in Alaska);
  - the workgroup met in person twice for two to three days each time and once by teleconference, and met twice with the Interagency Staff Committee (a committee made up of employees from each of the five federal agencies and from the Office of Subsistence Management); and
  - five letters were sent to all Tribes and ANCSA corporations from the Federal Subsistence Board Chairman, Tim Towarak, inviting comments on the policy. Nineteen written comments were received from Tribes and ANCSA corporations during policy development.
  
- The Board adopted the Tribal Consultation Policy on May 9, 2012. They directed the workgroup to commence writing “implementation guidelines” and an ANCSA corporation consultation policy for their consideration. The Workgroup is currently in development of those two documents and will use a similarly inclusive process.

### ***Chronology:***

**May 2011** – The Board directed Crystal Leonetti to lead a federal-tribal workgroup in drafting a Policy on consultation.

**Late May 2011** – A team of seven federal and seven tribal representatives formed, called the “Consultation Workgroup”.

**June 2011** – The consultation workgroup met for three days. Tribal representatives elected a tribal co-chair, Della Trumble. Under the leadership of the co-chairs, the workgroup drafted a preamble for the policy as well as a consultation protocol to use for the federal subsistence wildlife regulations proposals for the fall cycle of Regional Advisory Council meetings and for the January 2012 Federal Subsistence Board meeting. The workgroup also developed a plan for consulting with Tribes at the BIA Tribal Service

Providers Conference in December 2011, and for consulting with ANCSA corporations at the annual Alaska Federation of Natives conference in October 2011.

**July 2011** – Board Chair Tim Towerak sent a letter to all 229 federally recognized tribes and all regional and village ANCSA corporations inviting them to participate in the upcoming teleconference consultations on the federal subsistence wildlife regulations proposals. The letter also invited them to participate in the upcoming in-person consultation regarding drafting of the new Tribal consultation policy and ANCSA corporation consultation policy.

**August-September 2011** – A series of 12 teleconference consultations were held, one for the tribes in each RAC region, and two for ANCSA corporations which were available to corporations statewide. These teleconferences were focused on the federal subsistence wildlife regulation proposals as well as the new consultation policies.

**October 2011** – In-person consultation on the draft policy with (did we also have teleconference?) Tribes and ANCSA corporations during the Alaska Federation of Natives conference.

**December 2011** – In-person consultation on the draft policy with Tribes during the Bureau of Indian Affairs Tribal Service Providers conference in Anchorage. At least 300 people representing over half of the 229 Tribes were present. Additionally, Board members from F&WS, NPS, Forest Service, BIA, BLM and at-large member Tim Towarek were present

**December 2011** – The Workgroup met for two days to develop the tribal consultation policy based on the comments received during consultations and on written recommendations from Tribes and ANCSA corporations. The Workgroup met for a third day with the Regional and State directors of the five federal agencies to review the draft policy and gain direction for future action related to specific aspects of the draft policy.

**January 2012** – Workgroup co-chairs Leonetti and Trumble presented the Draft Tribal Consultation Policy to the Board. The Board approved the draft language and supported the Workgroup in providing this draft to all Tribes and ANCSA corporations and to the Regional Advisory Councils for their review and comment.

**January-March 2012** – Regional Advisory Councils reviewed the draft policy and provided feedback to the workgroup.

**February 2012** – A letter was sent to Tribes and ANCSA corporations from Board Chairman Tim Towerak to ask for their comment on the draft policy.

**April 2012** – The Workgroup met to review and incorporate changes based on feedback from Tribes, ANCSA corporations, and Regional Advisory Councils.

**May 2012** – The consultation workgroup co-chairs Leonetti and Trumble presented the Draft Tribal Consultation Policy to the Board. The Board discussed and unanimously approved the adoption of the Policy!

**June 2012** – Board Chairman Tim Towerak sent a letter to all Tribes and ANCSA corporations providing them with the adopted policy and soliciting nominations for more members on the Workgroup. Additional members were needed from ANCSA corporations since their input is needed in drafting a supplemental policy for ANCSA corporations.

**August- December 2012** – The Workgroup sought input and guidance from field-level managers from each of the five agencies, and the Interagency Staff Committee to further develop the draft guidelines.

**January 2013** – the Workgroup met, improved the draft guidelines, and prepared for the Winter Federal Subsistence Board meeting. The Tribal and ANCSA representatives nominated and elected a new Tribal Co-Chair, Rosemary Ahtuangaurak, who is on the North Slope RAC and has been on the Workgroup since its inception.

**January 2013** – Federal Subsistence Board gave minor edits to the guidelines.

**February-April 2013** – Guidelines, with letter from Chair Tim Towarak, was sent to all Tribes for review and feedback. Guidelines and short summary were provided to RACS for review and feedback.

Government-to-Government Tribal Consultation Policy

*“Tribes and Alaska Native peoples have been this lands’ first conservationists and first multiple use land managers.” - Lillian Petershoare, Workgroup Member, United States Forest Service*

## **Federal Subsistence Board**

### **Government-to-Government Tribal Consultation Policy**

#### Preamble

The Federal Subsistence Board (Board) recognizes that indigenous Tribes of Alaska are spiritually, physically, culturally, and historically connected to the land, the wildlife and the waters. These strong ancestral ties to the land, wildlife and waters are intertwined with indigenous ceremonies such as songs, dances, and potlatches. The customary and traditional way of life has sustained the health, life, safety, and cultures of Alaska Native peoples since time immemorial. To effectively manage the Federal Subsistence Program, the Board will collaborate and partner with Federally recognized Tribes in Alaska to protect and provide opportunities for continued subsistence uses on public lands.

The United States has a unique legal and political relationship with Indian tribal governments, which has been established through and confirmed by the Constitution of the United States, statutes, executive orders, judicial decisions and treaties. In recognition of that special relationship, and pursuant to direction given by the Secretaries of the Interior and Agriculture to implement Executive Order 13175 of November 2000, “Consultation and Coordination with Indian Tribal Governments,” and to meet the requirements of the Presidential Memorandum of November 5, 2009, “Tribal Consultation,” the Board is developing this Government-to-Government Tribal Consultation Policy. This Policy sets out the Board’s responsibility to engage in regular and meaningful consultation and collaboration with Federally recognized Indian Tribes in Alaska on matters that may have substantial effects on them and their members. This Policy also upholds the Congressional mandate to implement the provisions of the Alaska National Interest Lands Conservation Act (ANILCA) of 1980, P.L. 66-487, which, with its implementing regulations, defines the roles and responsibilities of the Departments of the Interior and Agriculture in administering subsistence management of fish and wildlife on Federal public lands.

Government-to-government consultation undertaken through the Board’s process is a direct two-way communication conducted in good faith to secure meaningful participation in the decision-making process to the full extent allowed by law. The Board will consider and respond to the Tribes’ concerns brought forth through the consultation process (as defined in this policy) before making final decisions.

Two Department-level consultation policies provide the foundation for this policy. They are the Department of the Interior’s *Policy on Consultation with Indian Tribes (2011)* and the Department of Agriculture’s *2010 Action Plan for Consultation and Collaboration*. This policy is consistent with the

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Department-wide consultation policies, and it expands on them to apply the policies to the Federal subsistence management program.

The intent of this policy is to describe a framework under which the Board and Federally recognized Tribes in Alaska may consult on ANILCA Title VIII subsistence matters under the Board's authority.

## Background

The Federal Subsistence Program, as established by ANILCA and implemented by the Secretaries of the Interior and Agriculture, is a multi-agency program consisting of five agencies: Bureau of Indian Affairs, Bureau of Land Management, U.S. Forest Service, National Park Service, and U.S. Fish and Wildlife Service. These bureaus and rural subsistence users maintain the opportunity for a subsistence way of life by rural Alaskans on Federal public lands while managing for healthy populations of fish and wildlife. The Federal Subsistence Regional Advisory Councils have a foundational role in the Federal Subsistence Program. By statute, the Board must defer to Federal Subsistence Regional Advisory Council recommendations related to the taking of fish and wildlife on public lands unless they are: a) not supported by substantial evidence, b) violate recognized principles of fish and wildlife conservation, or c) would be detrimental to the satisfaction of subsistence needs (ANILCA § 805(c)). The Board distinguishes the deference to Federal Subsistence Regional Advisory Councils from the Tribal government-to-government relationship enjoyed by Federally recognized Tribes, and this Policy will not diminish in any way either the consultation obligations towards Federally recognized Tribes or its deference obligations to the Federal Subsistence Regional Advisory Councils.

The Federal Subsistence Management Program regulations are published twice in the Code of Federal Regulations (CFR): 50 CFR Part 100 and 36 CFR Part 242. The regulations have four subparts. Subparts A and B are within the sole purview of the Secretaries of the Department of the Interior and the Department of Agriculture. Responsibility and decisions relating to the provisions of Subparts C and D are delegated by the Secretaries to the Federal Subsistence Board. Subpart C concerns Board Determinations, including rural and customary and traditional use determinations, while subpart D consists of the regulations for taking fish, wildlife and shellfish.

## Goals

The goals of the Federal Subsistence Management Program are to:

1. Create and maintain effective relationships with Federally recognized Tribes in Alaska.
2. Establish meaningful and timely opportunities for government-to-government consultation.
3. Be responsive to requests from Federally recognized Tribes in Alaska to engage in consultation.
4. Work with Federally recognized Tribes in Alaska to improve communication, outreach and education.
5. Acknowledge, respect and use traditional ecological knowledge.
6. Recognize the importance of coordination, consultation and follow-up between the Federal Subsistence Board and Federally recognized Tribes in Alaska.

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7. Integrate tribal input effectively into the decision-making process for subsistence management on public lands and waters while maintaining deference to the Federal Subsistence Regional Advisory Councils.

## Consultation

### 1. Communication

It is the Board's intention that information sharing between Tribes and the Board/Federal staff will occur early and often. Information sharing includes, but is not limited to, sharing of traditional knowledge, research and scientific data. Communication between the Federal agencies and Tribes will occur in a timely manner to maximize opportunities to provide input to the Board's decisions. For in-season management decisions and special actions, consultation is not always possible, but to the extent practicable, two-way communication will take place before decisions are implemented. When Tribes bring up issues over which the Board does not have jurisdiction, the Board and Federal staff will provide Tribes with contact information for the state or Federal agency that can address the issue and will also provide the tribes' contact information to the relevant state or Federal agency

### 2. Roles and Responsibilities

Board members are responsible for implementing this policy and ensuring its effectiveness. The Native Liaison in the Office of Subsistence Management is the key contact for the Board's consultations with Tribes. The Native Liaison will also assist Federal land managers and Tribes with their consultations, as requested and as needed. Federal land managers and staff have a local relationship with Tribes and will maintain effective communications and coordination.

### 3. Topics for consultation are listed under the definition for "Action with Tribal Implications." They may include, but are not limited to:

- Regulations (e.g., taking of fish, wildlife and shellfish - harvest amounts, methods and means, cultural and educational permits and funerary/mortuary ceremonies; emergency and temporary special actions; customary and traditional use determinations and customary trade)
- Policies and guidance documents [Note: this is consistent with page 3 "Definitions" of DOI Policy "Departmental Action with Tribal Implication".]
- Budget and priority planning development [Note: this is consistent with page 16 USDA Action Plan for Tribal Consultation and Collaboration (Nov 2009) and page 3 "Definitions" of DOI policy – "Departmental Action with Tribal Implication" – specifically "operational activity".]
- Agreements (e.g. Cooperative Agreements, Memorandum of Understanding, Funding Agreements)

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4. Timing

Timing of consultation will respect both the Federal subsistence management cycle and the Tribal timeframes for doing business. The requirement of early notification, methods of notice, availability of Federal analyses and time and place of Federal Subsistence Regional Advisory Council meetings and Board meetings are described in Appendix A of the “Federal Subsistence Consultation Implementation Guidelines.” A chart showing the Federal subsistence management cycle is in Appendix B of the same document

5. Methods

No single formula exists for what constitutes appropriate consultation. The planning and implementation of consultation will consider all aspects of the topic under consideration. The Board will be flexible and sensitive to Tribal cultural matters and protocols. Familiarity with and use of Tribes’ constitutions and consultation protocols will help ensure more effective consultation. Consultation may be prompted by a Federally recognized Tribe in Alaska or by the Board. Methods for correspondence, meetings, and communication are further described in Appendix A: “Federal Subsistence Consultation Implementation Guidelines.”

## Accountability and Reporting

The Board will monitor consultation effectiveness and report information to the Secretaries, pursuant to the Department of the Interior and Department of Agriculture policies. On an annual basis, the Board will evaluate whether the policy has been implemented and is effective and what progress has been made towards achieving the seven goals outlined in this policy. The Board will actively seek feedback from Federally recognized Tribes in Alaska on the effectiveness of consultation, and the Board’s evaluation will summarize and reflect this feedback. The Board will modify the consultation process to incorporate needed enhancements, as identified through the annual review. The Board will provide Tribes an oral and written summary of the evaluation and changes, if any, in Board meetings with Tribes.

## Training

Training on this policy for Federal staff will conform to the requirements of the Department of the Interior and Department of Agriculture consultation policies. The Board recognizes the unique traditional values, culture and knowledge that Tribes can impart and shall incorporate Tribes into the training for the Board and staff. The Board will accompany subsistence users in the field to gain direct experience in traditional Alaska Native hunting and fishing activities. In addition, Federal Subsistence Management training will be offered to representatives of Tribal governments and Tribal members on a regular basis as funding allows. A list of possible venues for training is included in Appendix C: “Venues for Training.”

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## Alaska Native Corporation Consultation

Refer to the supplemental policy for consultation with Alaska Native Claims Settlement Act (ANCSA) corporations.

Adopted by the Board on May 9, 2012

## **Definitions**

Action with Tribal Implications – Any Board regulations, rulemaking, policy, guidance, legislative proposal, grant funding formula changes, or operational activity that may have a substantial effect on an Indian Tribe in Alaska.

Alaska National Interest Lands Conservation Act of 1980 (ANILCA) – Title VIII of the Act provides for the protection and continuation of subsistence uses of fish and wildlife by rural Alaskans on Federal public lands.

ANCSA Corporations – As defined in 43 U.S.C. § 1606, those regional and village corporations formed by Congress through the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 et seq., to provide for the settlement of certain land claims of Alaska Natives.

Consensus Agenda – The Federal Subsistence Board’s consensus agenda is made up of regulatory proposals for which there is agreement among the affected Regional Advisory Councils, a majority of the Interagency Staff Committee members, and the Alaska Department of Fish and Game concerning a proposed regulatory action. Anyone may request that the Board remove a proposal from the consensus agenda and place it on the non-consensus (regular) agenda. The Board votes on the consensus agenda after deliberation and action on all other proposals.

Consultation – The process of effective and meaningful government-to-government communication and coordination between the appropriate Federal agency and Tribe(s) conducted before the Federal government takes action or implements decisions that may affect Tribes.

Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) – Requires regular and meaningful consultation and collaboration with Tribal officials in the development of Federal policies that have Tribal implications to strengthen the United States government-to-government relationships with Indian Tribes, and to reduce the imposition of unfunded mandates upon Indian Tribes.

Federal Subsistence Board – The Board administers the subsistence taking and uses of fish and wildlife on public lands and exercises the related promulgation and signature authority for regulations of subparts C and D. The voting members of the Board are: a Chair, appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture; two public members appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture who possess personal knowledge of and direct experience with subsistence uses in rural Alaska; the Alaska Regional Directors of the U.S. Fish and Wildlife Service, National Park Service, and Bureau of Indian Affairs; the Alaska Regional Forester of the U.S. Forest Service; and, the Alaska State Director, Bureau of Land Management.

Federally Recognized Tribe in Alaska – Any Alaska Native Tribe, band, nation, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. §479a.

Interagency Staff Committee (ISC) – The ISC is made up of senior staff from the National Park Service, U.S. Fish and Wildlife Service, Bureau of Indian Affairs, Bureau of Land Management, and USDA Forest Service. The ISC members serve as the primary advisors for their agency’s respective Board member.

Office of Subsistence Management (OSM) – The OSM provides support to the Federal Subsistence Board and the Federal Subsistence Regional Advisory Councils. The staff includes fish and wildlife biologists, cultural anthropologists, technical and administrative staff, an Alaska Native liaison and liaisons to the Alaska Department of Fish and Game, and the Alaska Boards of Fish and Game.

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Regional Advisory Councils – Title VIII of ANILCA provides a foundational role for the ten Regional Advisory Councils in the development of regulations guiding the taking of fish and wildlife on Federal public lands in Alaska. Council members, a majority of whom are rural subsistence users, are appointed by the Secretary.

Special Action – An out-of-cycle change in the seasons, harvest limits or methods and means of harvest. The two types include: 1) emergency, which are effective for up to 60 days, and 2) temporary, which are effective for the remainder of the regulatory cycle.

**List of Appendices**

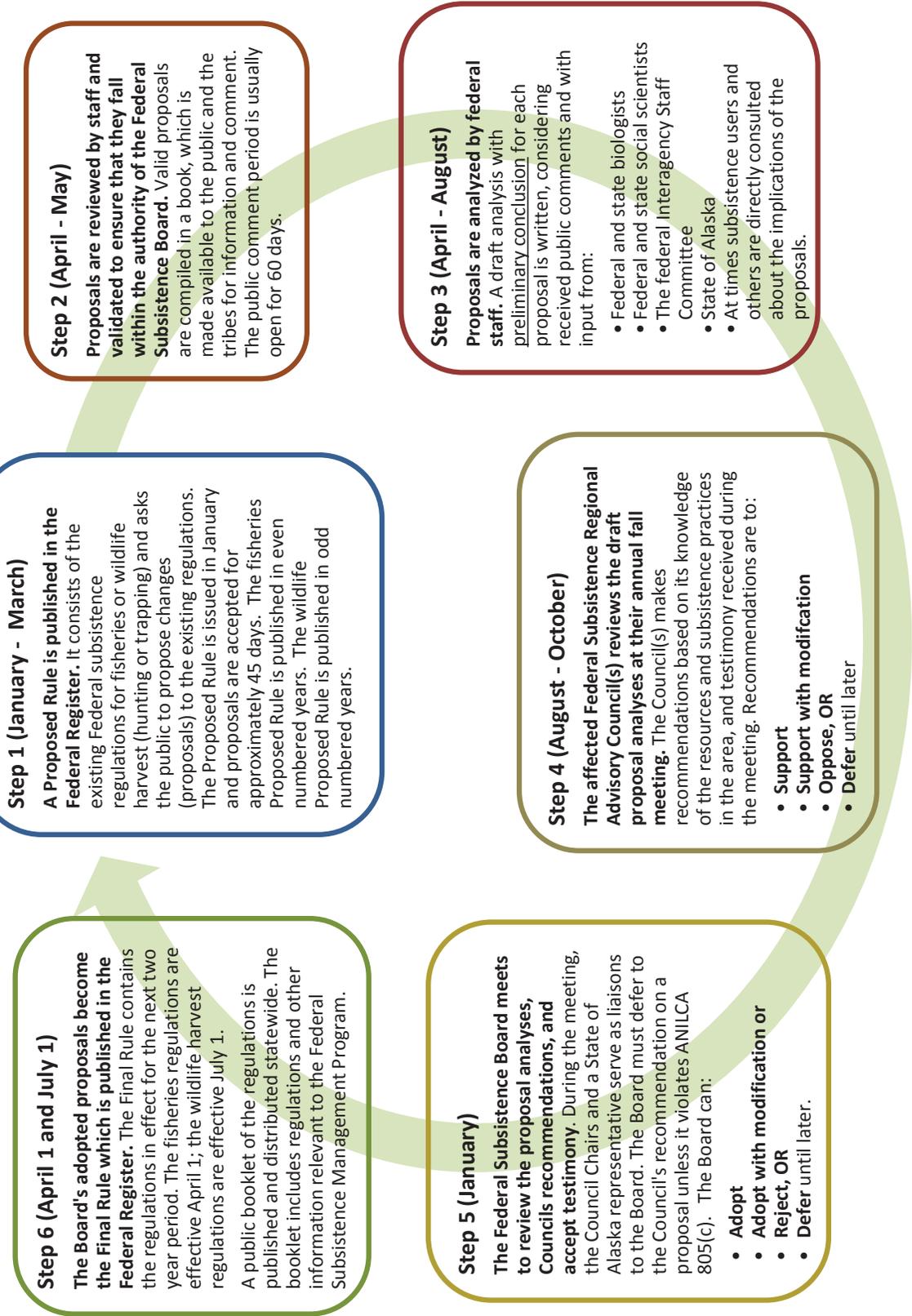
APPENDIX A: Federal Subsistence Consultation Implementation Guidelines

APPENDIX B: Federal Subsistence Management Cycle

APPENDIX C: Venues for FSMP Training



## Appendix B FEDERAL SUBSISTENCE MANAGEMENT PROGRAM ANNUAL REGULATORY PROCESS AT A GLANCE



## Implementation Guidelines

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### Federal Subsistence Board Government-to-Government Tribal Consultation Policy

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

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

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

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

**Step<sup>2</sup> 1.A.: Call for Proposals (January – March):** This step is where changes to fish or wildlife harvesting regulations (seasons, harvest limits, methods and means and customary and traditional use determinations) can be offered. Office of Subsistence Management (OSM) staff or land managers can assist Tribes in developing proposals.

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

OSM      Sends a return receipt letter to Tribes:

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

<sup>1</sup> Department of Interior Policy on Tribal Consultation

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

Regulatory process;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Other:**

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

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

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

**Recommended Training Topics for Federal Staff and Tribal Citizens**

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

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

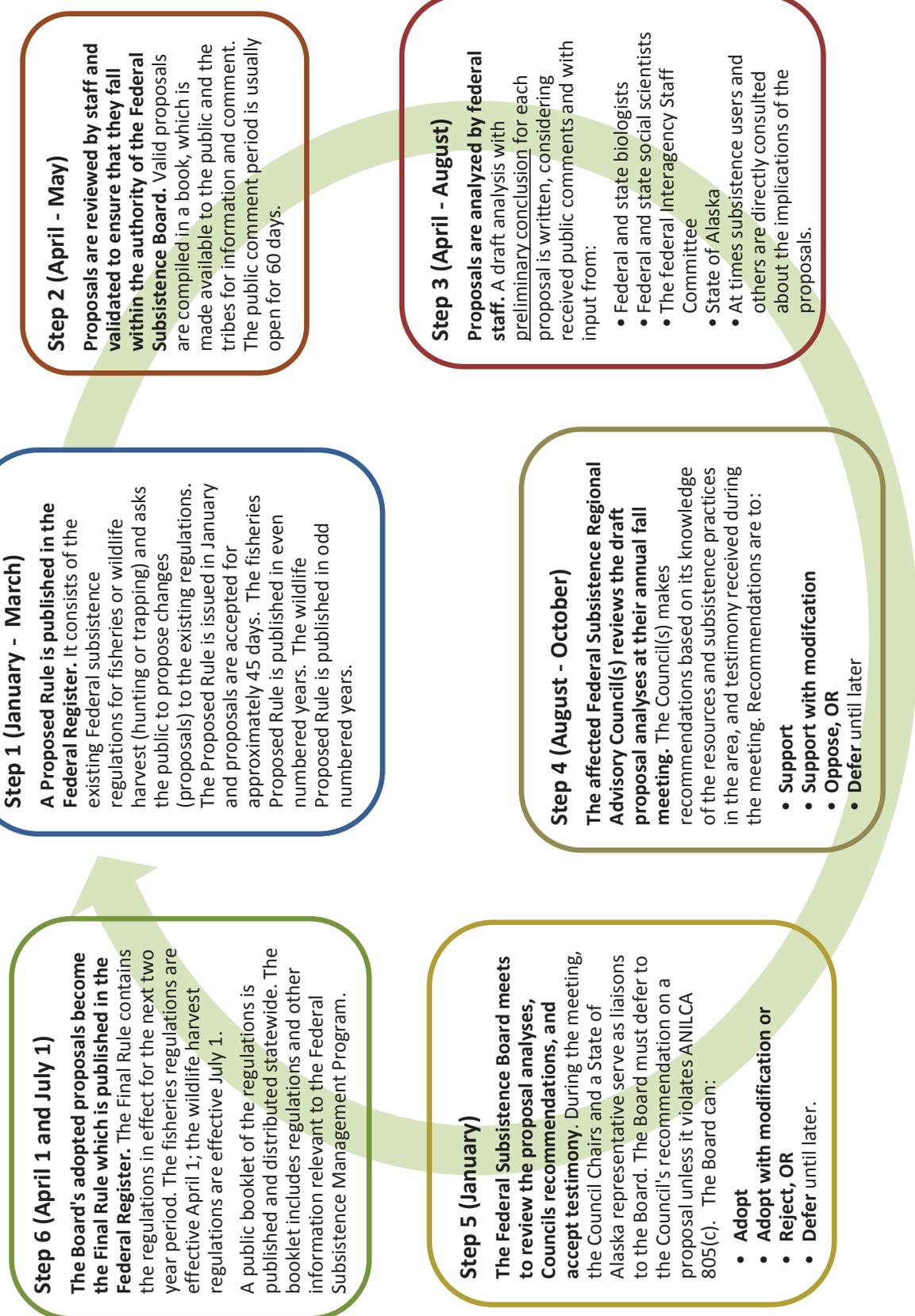
#### **Accountability, Reporting, and Information Management**

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



## Appendix B

### FEDERAL SUBSISTENCE MANAGEMENT PROGRAM ANNUAL REGULATORY PROCESS AT A GLANCE



#### Step 6 (April 1 and July 1)

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

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

#### Step 1 (January - March)

A Proposed Rule is published in the Federal Register. It consists of the existing Federal subsistence regulations for fisheries or wildlife harvest (hunting or trapping) and asks the public to propose changes (proposals) to the existing regulations. The Proposed Rule is issued in January and proposals are accepted for approximately 45 days. The fisheries Proposed Rule is published in even numbered years. The wildlife Proposed Rule is published in odd numbered years.

#### Step 2 (April - May)

Proposals are reviewed by staff and validated to ensure that they fall within the authority of the Federal Subsistence Board. Valid proposals are compiled in a book, which is made available to the public and the tribes for information and comment. The public comment period is usually open for 60 days.

#### Step 5 (January)

The Federal Subsistence Board meets to review the proposal analyses, Councils recommendations, and accept testimony. During the meeting, the Council Chairs and a State of Alaska representative serve as liaisons to the Board. The Board must defer to the Council's recommendation on a proposal unless it violates ANILCA 805(c). The Board can:

- Adopt
- Adopt with modification or
- Reject, OR
- Defer until later.

#### Step 4 (August - October)

The affected Federal Subsistence Regional Advisory Council(s) reviews the draft proposal analyses at their annual fall meeting. The Council(s) makes recommendations based on its knowledge of the resources and subsistence practices in the area, and testimony received during the meeting. Recommendations are to:

- Support
- Support with modification
- Oppose, OR
- Defer until later

#### Step 3 (April - August)

Proposals are analyzed by federal staff. A draft analysis with preliminary conclusion for each proposal is written, considering received public comments and with input from:

- Federal and state biologists
- Federal and state social scientists
- The federal Interagency Staff Committee
- State of Alaska
- At times subsistence users and others are directly consulted about the implications of the proposals.



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

## Federal Subsistence Board News Release



Forest Service

### For Immediate Release:

January 14, 2013

### Contact:

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

### Federal Subsistence Board Seeks Comments on Rural Determinations Process

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

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

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

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

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

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

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

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

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

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

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

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

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

**Submit written comments by one of the following methods:**

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

**E-mail:** [subsistence@fws.gov](mailto:subsistence@fws.gov)

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

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

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

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

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## **BRIEFING ON CONSULTATION WITH TRIBES AND ANCSA CORPORATIONS**

### **I. INTRODUCTION**

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

### **II. BACKGROUND**

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

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

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

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

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

### **III. POSITION OF INTERESTED PARTIES**

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

### **IV. FWS POSITION**

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

## Fall 2013 Regional Advisory Council Meeting Calendar

*August–October 2013 current as of 02/22/13*

Meeting dates and locations are subject to change.

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

# Winter 2014 Regional Advisory Council Meeting Calendar

*February–March 2014 current as of 02/22/13*

Meeting dates and locations are subject to change.

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

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

**Southeast Alaska Subsistence Regional Advisory Council**

**Charter**

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

- (3) A recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs.
    - (4) Recommendations concerning policies, standards, guidelines and regulations to implement the strategy.
  - e. Appoint one member to the Wrangell-St. Elias National Park Subsistence Resource Commission in accordance with Section 808 of the Alaska National Interest Lands Conservation Act (ANILCA).
  - f. Make recommendations on determinations of customary and traditional use of subsistence resources.
  - g. Make recommendations on determinations of rural status.
  - h. Provide recommendations on the establishment and membership of Federal local advisory committees.
5. **Agency or Official to Whom the Council Reports.** The Council reports to the Federal Subsistence Board Chair, who is appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture.
  6. **Support.** The U.S. Fish and Wildlife Service will provide administrative support for the activities of the Council through the Office of Subsistence Management.
  7. **Estimated Annual Operating Costs and Staff Years.** The annual operating costs associated with supporting the Council's functions are estimated to be \$175,000, including all direct and indirect expenses and .75 staff years.
  8. **Designated Federal Officer.** The DFO is the Subsistence Council Coordinator for the region or such other Federal employee as may be designated by the Assistant Regional Director – Subsistence, Region 7, U.S. Fish and Wildlife Service. The DFO is a full-time Federal employee appointed in accordance with Agency procedures. The DFO will:
    - Approve or call all of the advisory committee's and subcommittees' meetings,
    - Prepare and approve all meeting agendas,
    - Attend all committee and subcommittee meetings,
    - Adjourn any meeting when the DFO determines adjournment to be in the public interest, and
    - Chair meetings when directed to do so by the official to whom the advisory committee reports.

9. **Estimated Number and Frequency of Meetings.** The Council will meet 1-2 times per year, and at such times as designated by the Federal Subsistence Board Chair or the DFO.
10. **Duration.** Continuing.
11. **Termination.** The Council is subject to biennial review and will terminate 2 years from the date the charter is filed, unless prior to that date, the Charter is renewed in accordance with the provisions of Section 14 of the FACA. The Council will not meet or take any action without a valid current charter.
12. **Membership and Designation.** The Council's membership is composed of representative members as follows:

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

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

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

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

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

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

14. **Subcommittees.** Subject to the DFO's approval, subcommittees may be formed for the purposes of compiling information or conducting research. However, such subcommittees must act only under the direction of the DFO and must report their recommendations to the full Council for consideration. Subcommittees must not provide advice or work products directly to the Agency. The Council Chair, with the approval of the DFO, will appoint subcommittee members. Subcommittees will meet as necessary to accomplish their assignments, subject to the approval of the DFO and the availability of resources.
  
15. **Recordkeeping.** Records of the Council, and formally and informally established subcommittees or other subgroups of the Council, must be handled in accordance with General Records Schedule 26, Item 2, or other approved Agency records disposition schedule. These records shall be available for public inspection and copying, subject to the Freedom of Information Act, 5 U.S.C. 552.

/S/ Ken Salazar

Secretary of the Interior

DEC - 2 2011

Date Signed

DEC 03 2011

Date Filed