



## Federal Subsistence Board

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



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

FOREST SERVICE

AUGUST 7 2024

IN REPLY REFER TO:  
OSM.A24066

Richard Greg Encelewski, Chair  
Southcentral Alaska Subsistence Regional Advisory Council  
c/o Office of Subsistence Management  
1011 East Tudor Road, MS 121  
Anchorage, Alaska 99503-6199

Dear Chair Encelewski:

This letter responds to the Southcentral Alaska Subsistence Regional Advisory Council's (Council) fiscal year 2023 Annual Report. The Secretaries of the Interior and Agriculture have delegated to the Federal Subsistence Board (Board) the responsibility to respond to these reports. The Board appreciates your effort in developing the Annual Report. Annual Reports allow the Board to become aware of the issues outside of the regulatory process that affect subsistence users in your region. The Board values this opportunity to review the issues concerning your region.

**1. To request an ANILCA Section 804 Analysis be started on the Nelchina Caribou Herd**

*The Nelchina Caribou Herd (NCH) is an important subsistence resource for rural subsistence users in the Southcentral Alaska Region, specifically for those that reside in Units 11, 12, and 13. Recent population counts show that the NCH population is very low, and closures to both the State and Federal hunting seasons were warranted. The population is so low that ceremonial and educational take of animals from this herd may also be very limited, if allowed at all. A Section 804 analysis needs to be prepared to ascertain which communities should be allowed to harvest from the NCH, and under which circumstances and scenarios, when it begins to rebound. The Council also wishes that the Section 804 analysis be completed using all available data. Land ownership in these units varies highly between State, Federal, and private, and using data from only one source would fail to give the analysis a robust dataset to base conclusions on.*

**Recommendation:**

*The Council requests that a Section 804 analysis on the NCH be prepared as soon as possible*

*and that all available data from Units 11, 12, and 13 be utilized.*

**Response:**

An ANILCA §804 user prioritization analysis is part of both Wildlife Special Action requests WSA24-02 and WSA24-03. The Board acted on the closure portion of the requests during their June 2024 meeting. The §804 user prioritization analysis will go through the regulatory process as an out-of-cycle Wildlife Proposal WP25-01, which the Council will consider at its fall 2024 meeting and the Board will act on during the Board fisheries regulatory meeting in February 2025 (Topic 1 & 3 Encl.).

**2. Ongoing climate change impacts on ocean resources including paralytic shellfish poisoning, and ocean acidification impacts on clams, salmon, and ocean food webs**

*The Council remains interested in how climate change is impacting marine food webs, including changes to the distribution and timing of paralytic shellfish poisoning (PSP), as well as what short- and long-term effects ocean acidification have on the marine ecosystem. Marine subsistence resources such as shellfish, salmon, and seaweed are critical to the people that call the Southcentral Alaska Region home. Impacts to marine food webs have profound impacts on species utilized as subsistence resources and, therefore, on subsistence users. The Council envisions the combined effects of the new seasonality of PSP and ocean acidification will be highly detrimental to these food webs and to our ability to meet our subsistence needs. Understanding the impacts of climate change on shellfish and salmon will allow State and Federal subsistence managers to respond more readily to changing populations. The Council did hear from a lead subject matter expert on these topics at our fall 2023 meeting, and we hope to continue to hear from them in the future.*

Recommendation:

*None at this time, the Council would like the Board to be aware of these concerns.*

**Response:**

Thank you for bringing to our attention your concern regarding the climate change impacts to marine food webs, PSP distribution and timing, and ocean acidification short- and long-term effects, as it is important for us to be aware of the changing conditions and how they affect satisfaction of subsistence needs.

We take the issue of climate change seriously and acknowledge that it's a major threat to the cultures of the people who live here. We also acknowledge that climate change is an intractable global problem. As community leaders and land managers, we are committed to doing all we can within our capacity to address this issue here in Alaska, and to carry this message and your concerns to our national agency colleagues.

### **3. Request the initiation of a review and evaluation of the current customary and traditional use determination process**

*The Council expressed interest in reviewing and updating the process for customary and traditional use (C&T) determinations. The Council is aware of the eight factors for C&T (listed below) and understands that currently not all factors need to be met to recognize C&T uses by a community. The Council is also aware that in 2010, the Regional Advisory Councils were asked by the Secretary of the Interior to provide input on the process to make it broader and more inclusive. At that time, the input provided by this Council was for the process to be broad and inclusive of the resources being harvested by communities, not to make the criteria broad and inclusive to new communities requesting C&T use determinations. The Council worries about increased competition for limited subsistence resources, such as Copper River salmon and the NCH, from an increasing rural resident population and the establishment of new rural communities who then request C&T determinations. The Council noted that requiring communities meet all factors of C&T uses could alleviate some issues with the C&T determination request process.*

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

#### **Recommendation:**

*While the Council looks forward to attending the session on this topic at the All-Council meeting in March 2024, we would like to see additional action taken. The initiation of a new review of the C&T Use Determination Process would be a good start. The review could look at the creation of criterion thresholds. For example, the factors that incorporate time, (e.g., "long-term", "many years", and "passing knowledge from generation to generation" are not clearly defined and are subjective).*

**Response:**

The Board appreciates the Council's input and perspective on customary and traditional use determinations and the associated process. The Board understands the Council's concerns that using customary and traditional use determinations in the most inclusive manner possible could increase competition over limited resources. Some Regional Advisory Councils share your concerns, although the Board recognizes that this issue is particularly germane in the Southcentral region because it has a large population that can easily access many fish and wildlife resources by the road system.

If the Council is concerned about competition over local resources, it should be noted that the Board has a separate process for limiting users when there is a conservation concern or a threat to the continuation of subsistence uses of the resource. The first step is to close Federal public lands and waters to the harvest of a resource by all except federally qualified subsistence users. The Board will not prioritize among subsistence users without first closing to other uses and users. If there continues to be concerns for the resource or the continued subsistence use of that resource, then the Board can initiate a Section 804 user prioritization process to reduce the number of eligible federally qualified subsistence users based on the following criteria: customary and direct dependence, local residency, and the availability of alternative resources.

There was recently a special action request for a Section 804 user prioritization of the Nelchina Caribou Herd on Federal lands (Wildlife Special Action WSA24-02/03). The Board approved WSA24-02 with modification (see enclosed news release) closing Federal public lands to caribou hunting by all users in Units 11, 12 remainder, and 13 for the 2024/2025 regulatory year due to conservation concerns with an exception provided for traditional religious ceremonies and cultural/educational program permit harvest. No action was taken on WSA24-03. The Board also supported the Section 804 analysis but would like to see it go through the full regulatory process to allow time for input from the Subsistence Regional Advisory Councils and the public. The Board will take action on the Section 804 user prioritization analysis at its the February 2025 Board fisheries regulatory meeting through consideration of Wildlife Proposal WP25-01.

The Board believes that the strength of the customary and traditional use determination process is that it provides Regional Advisory Councils with the flexibility to apply the eight factors within the context of their own region when considering proposals. Further, the Board relies on the Councils recommendations to inform and guide the decision-making process. As noted by the Council, in 2016 the Board determined that it would consider the eight factors of customary and traditional use holistically when making determinations: the factors would not have established thresholds. This decision provides Councils and the Board with the flexibility to evaluate each proposal on its own merits rather than by predetermined metrics. Contexts of subsistence uses vary greatly among regions, species, and times. What your Council considers "long term use" of salmon may not align with that of other Councils. Likewise, your Council's perspectives on what constitutes a "pattern of use" may vary depending on the species and areas

of use. It is paramount that the Councils and Board can evaluate proposals holistically, considering contextual evidence provided by Office of Subsistence Management analyses, public testimonies, and local observations and Indigenous knowledge.

In addition, while providing the Councils with the flexibility to use its local and Indigenous knowledge to evaluate each proposal on its own merits, the Board relies on the Council's expertise and defers to their recommendations. Since 2016, the Board has deferred to all the Southcentral Regional Advisory Council's recommendations on all customary and traditional use proposals. Most recently, the Council supported proposals to recognize the customary and traditional use of all fish in Cook Inlet Area by residents of Moose Pass (FP23-08/09/10), and the Board approved these proposals. Likewise, the Board supported the Council's opposition on proposals to recognize customary and traditional use of salmon in the Chitina subdistrict of the upper Copper River District by residents of Richardson Highway between mile posts 45 and 47 (FP23-14) and residents of the Alaska Highway from the Canadian border to Dot Lake (FP23-15/16). The Board appreciated the Council's justifications for these recommendations and their use of local and Indigenous knowledge, perspectives, and understandings of the evidence.

The Board hopes this response helps with the Council's concerns about customary and traditional use determination. If the Council continues having concerns with the process, please provide the Board with specific barriers that are impeding the Council from making decisions and engaging in the process. The Board appreciates the Council's commitment to improving the customary and traditional use determination process and the Federal Subsistence Management Program.

#### **4. Jurisdiction on subsistence shellfish resources in Prince William Sound**

*The Council has expressed concerns over subsistence opportunities within Prince William Sound. The Council acknowledged that the Board does not have jurisdiction over management of subsistence resources in intertidal and marine waters as the resources in those waters outside of Federal subsistence jurisdiction are managed by the State of Alaska. The Council would like to see this modified because subsistence harvesters have been utilizing both the intertidal zone and open ocean to collect food for thousands of years, and it is a disservice to federally qualified subsistence users to not have authority over the resources contained there. State regulations have been much more stringent than Federal regulations for peoples' ease of getting food, which puts a burden on rural subsistence users.*

#### **Recommendation:**

*The Council requests that the Board examine how co-jurisdiction with the State in the marine waters of Prince William Sound could occur. This would allow federally qualified subsistence users the ability to harvest species for subsistence uses under Federal regulations in the intertidal and marine waters.*

**Response:**

The Board understands the importance of marine resources to federally qualified subsistence users and thanks the Council for acknowledging that there is no Federal jurisdiction in the marine waters of Prince William Sound. Federal subsistence jurisdiction applies only to Federal public lands and waters within and adjacent to the exterior boundaries of most Federal land units. The State and Federal government have “concurrent jurisdiction” on Federal public lands, with Federal law preempting state law when there is a conflict, but the state has “exclusive jurisdiction” on state-owned and private lands and the Board has no authority to change that. The best way to affect change in the management of those fish and shellfish resources is to participate in the Alaska Board of Fisheries (BOF) Prince William Sound finfish and shellfish cycles. The 2024/2025 BOF cycle includes Prince William Sound and Upper Copper/Upper Susitna Finfish and Shellfish (except shrimp), Southeast and Yakutat Finfish and Shellfish, and Statewide Shellfish, PWS Shrimp, and Supplemental Issues. While the opportunity to submit proposals has passed, we recommend the Council review the submitted proposals and consider commenting on those affecting resources important to federally qualified subsistence users. Please visit the BOF webpages for more information. If you have questions on the BOF process, please contact the Office of Subsistence Management State Liaison George Pappas at [george\\_pappas@ios.doi.gov](mailto:george_pappas@ios.doi.gov) or 907-317-2165.

Alaska Board of Fisheries home page

<https://www.adfg.alaska.gov/index.cfm?adfg=fisheriesboard.main>

Alaska Board of Fisheries 2024/2025 meeting schedule

<https://www.adfg.alaska.gov/static/regulations/regprocess/fisheriesboard/pdfs/2023-2024/2024-2025%20BOF%20Meeting%20Schedule.pdf>

**5. Concern over lack of public involvement with removal of Delegation of Authority**

*The Council recognizes that the Board can delegate specific regulatory authority to local Federal managers “to set harvest and possession limits, define harvest areas, specify methods or means of harvest, specify permit requirements, and open or close specific fish or wildlife harvest seasons within frameworks established by the Board.” Through delegated authority, local Federal managers may also issue emergency or temporary special actions. Per the reply to the Councils FY22 Annual Report, moving forward our Council Coordinator will provide this Council with copies of Delegation of Authority Letters (DAL) for the Southcentral Alaska Region to allow the Council to review them annually. The Council is concerned that a regular review of delegation of authority letters is not occurring, that there does not appear to be a public process for rescinding delegated authority if it is warranted, and that the process is not a clear and transparent one for the public.*

**Recommendation:**

*The Council would like the Board to set parameters for the general public and the Councils to*

*initiate the review or removal of delegation of authority. The Council would also like the Board to discuss establishing a formal process for Councils to review regional DALs on a set schedule if requested by the Councils.*

**Response:**

Due to the Councils' concern, more effort is being directed toward Delegated Authority by OSM staff. A newly created training detailing roles and responsibilities of managers with delegated authority is being implemented this year. This will educate managers on how to enact the authority given to them and with whom they should be communicating when considering actions. In addition, training about the Board's delegation of authority will also be presented to Council members at the Fall 2024 council meetings. We have asked OSM to request input from the Councils about concerns and opportunities as part of this training. Your input has been noted by our team and will be incorporated to our process of developing guidance for delegated authority. Feedback from the Councils would be used to help shape any potential processes related to this topic moving forward.

In closing, I want to thank you and your Council for your 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 am confident that the subsistence users of the Southcentral Alaska Region are well represented through your work.

Sincerely,



Anthony Christianson  
Chair

Enclosure: Topic 1 & 3 Encl. – NR WAS24-02/03 FSB action

cc: Southcentral Alaska Subsistence Regional Advisory Council  
Federal Subsistence Board  
Office of Subsistence Management  
Interagency Staff Committee  
Benjamin Mulligan, Deputy Commissioner, Alaska Department of Fish and Game  
Mark Burch, Assistant Director, Division of Wildlife Conservation, Alaska Department of  
Fish and Game  
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