



Federal Subsistence Board

Office of Subsistence Management
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In Reply Refer To:
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Donald Hernandez, Chair
Southeast Alaska Subsistence
Regional Advisory Council
c/o Office of Subsistence Management
1101 East Tudor Road, MS 121
Anchorage, Alaska 99503-6199

Dear Chair Hernandez:

This letter responds to the Southeast Alaska Subsistence Regional Advisory Council's (Council) Fiscal Year 2024 Annual Report. The Federal Subsistence Board (Board) appreciates your effort in developing the Annual Report. Annual Reports allow the Board to become aware of issues outside of the regulatory process that affect subsistence users in your region. We value this opportunity to review the issues concerning your region.

1. Conflicts in scheduling Federal Subsistence Board meetings with other meetings

The Council was made aware of significant conflicts in the scheduling of several important upcoming meetings of organizations that make decisions affecting subsistence users. Specifically, the February 4–8, 2025, Board meeting was scheduled during the same time as the Alaska Board of Fisheries (BOF) meeting (January 28–February 9) and North Pacific Fishery Management Council (NPFMC) meeting (February 3–11).

*At its October 2024 meeting, a public testifier noted that the dates for the Board meeting were set **after** the BOF and NPFMC meetings were scheduled. The testifier opined that this was perhaps deliberate and that this will prevent some subsistence users from attending all of these meetings to give public testimonies. The testifier stated that this also unnecessarily complicates planning for the communities and organizations, as they will have to make decisions as to which individuals should attend which of these meetings happening simultaneously. For instance, members of the Ketchikan Indian Community (KIC) will have to choose whether to attend the Board meeting, where their proposal to rescind the nonrural designation for Ketchikan will be acted upon or the equally important Southeast and Yakutat Finfish and Shellfish BOF meeting. The BOF meetings are on a three-year meeting cycle, so if members of the public are not able to comment at this meeting, they will have to wait three more years for the next opportunity. Both*

the Board and the BOF meetings are extremely important to subsistence users, as both entities make substantial regulatory decisions that govern the take of fish and wildlife resources, which impact this user group.

One of the most important tools subsistence users possess to protect their subsistence way of life are their voices. Federal and State regulatory processes include important opportunities for public participation. Encouraging the public to engage is not enough; the Board must ensure that efforts are made to safeguard the public comment opportunity for those who wish to participate. If the meeting schedules of the most important decision-making bodies are not considered when choosing the Board meeting dates, then the Federal Subsistence Management Program (Program) is not operating in the spirit of public involvement, the cornerstone of the Program.

Request to the Board:

The Council asks the Board to require staff to research major meeting schedules before offering possible dates of Board meetings to its members for choice. The meeting schedules should include the Alaska Board of Fisheries, Alaska Board of Game, and Joint Board of Fisheries and Game meetings, NPFMC meetings, Alaska Federation of Natives meetings, and those of any other significant decision-making meetings that are of interest to subsistence users.

Response:

We understand your frustration. January and February of 2025 were difficult months to schedule the Board Fisheries Regulatory meeting. In addition to the overlapping meetings your Council noted, the Yukon River Panel (January 27 – 30) and the Alaska Forum on the Environment (February 3 – 7) were also meeting.

Board regulatory meetings are planned several years in advance out of necessity because of the many tight deadlines required for analyses to be drafted, reviewed, and finalized. The Wildlife Regulatory Meeting is always scheduled during the first half of April in even years, and the Fisheries Regulatory Meeting is always scheduled for the end of January or beginning of February during odd years.

We cannot deviate from these meeting windows as we are constrained by Regional Advisory Council meetings and the need to publish regulatory changes before the next fish or wildlife regulatory year begins. We do track other important concurrent meetings, as well as our Board member availability. We can, however, advertise and announce meeting windows on the Office of Subsistence Management (OSM) website and will commit to announcing them at least a year in advance during future Council and Board meetings.

2. Definition and guidelines for 'rural' community

The Council recently completed a multi-year process of deliberation and delivering a recommendation on a proposal to rescind nonrural designation status of Ketchikan. This was a long and complicated process that required significant engagement by the Council.

The Council struggled with making a recommendation on the proposal, in part because: 1) the Office of Subsistence Management (OSM) preliminary conclusion only offered a neutral position; 2) the Council felt Title VIII of ANILCA does not adequately define the term 'rural;' and 3) the history of how nonrural determinations were made in the past was confusing. Many Council members expressed their discomforts and difficulties with their decisions to support or oppose this proposal and some mentioned that it felt like this process was pitting Tribe against Tribe.

The policy and implementation of the nonrural determination process has changed over the years. The burden has been placed on the Councils to essentially define 'rural' as it sees it, taking into consideration a number of factors that residents are supposed to be familiar with. During its fall 2023 meeting, the Council offered suggestions to OSM staff regarding important factors to consider as 'rural characteristics' and items that the Council would like to see emphasized in the factfinding effort for the analysis.

At the fall 2024 meeting, a substantial analysis was provided, and the Council heard a record amount of testimony on the nonrural determination proposal. The Council asked questions about the definition of 'rural' during its deliberations. In seeking more guidance, they even questioned whether the proposed area was considered rural by the Department of Housing and Urban Development. Without an authoritative definition for 'rural,' it was challenging for the Council to complete this task.

The Council also considered the reasons for KIC's nonrural determination proposal. They reflected on the many comments from KIC members that supported the proposal claims, namely, that traditional wild foods of the area are critical to their health and survival. The Council would like to help the KIC tribal community steward its resources so that they can continue to hunt or fish in their area and have access to their resources. Under the current processes and regulations, the Council was unsure how best to do that.

During deliberations, the Council discussed what other means might be available to meet KIC's concerns to achieve adequate protection and provision for the physical, economic, traditional, and cultural existence as enshrined in ANILCA. One Council member pointed to a portion of the congressional history of ANILCA and wondered if a solution may be available through analyzing original intent.

Title VIII was originally added to ANILCA to protect the rights of Alaska Native peoples to continue their customary and traditional way of life. The final law provided a subsistence priority for rural residents, Native and non-Native alike.

801. The Congress finds and declares that—(1) the continuation of the opportunity for subsistence uses by rural residents of Alaska, including both Native and non-Native, on the public lands and by Alaska Native on Native lands is essential to Native physical, economic, traditional, and cultural existence and to non-Native physical, economic, traditional, and social existence.

If Title VIII was created with the purpose to essentially make amends for what the Indigenous populations of Alaska gave up and the shortcomings in the Alaska Native Claims Settlement Act (ANCSA), then a review may be helpful at this time, especially as it pertains to how Indigenous rights are protected. Was Title VIII originally added to the land conservation bill that came into existence to protect the rights of Alaska Natives to continue their customary and traditional way of life?

Perhaps this can be explored to see if a subsistence priority can be provided to Tribal citizens outside of making an entire area 'rural' for that purpose. Would the Secretary of the Interior be able to take action to protect the subsistence needs of Alaska Natives, acknowledging language in ANCSA and ANILCA's congressional history? Specifically, from the 1971 House Conference Report, Joint Statement of the Committee of Conference, which states in part:

The Senate amendment to the House bill provided for the protection of the Native peoples' interest in and use of subsistence resources on the public lands. The conference committee, after careful consideration, believes that all Native interests in subsistence resource lands can and will be protected by the Secretary through the exercise of his existing withdrawal authority. The Secretary could, for example, withdraw appropriate lands and classify them in a manner which would protect Native subsistence needs and requirements by closing appropriate lands to entry by non-residents¹ when the subsistence resources of these lands are in short supply or otherwise threatened. The Conference Committee expects both the Secretary and the State to take any action necessary to protect the subsistence needs of the Natives.²

Further, Congress considered the subsistence priority for Alaska Native peoples prior to the 1994 addition of Alaska's Tribes to the Federally Recognized Tribal List Act (added by BIA in 1993, affirmed by Congress in 1994), and; therefore, the political designation for Tribal citizens did not yet exist for Indigenous peoples in Alaska. It does now exist, and the political distinction is a legally critical and necessary distinction in the law.

The Council realizes this guarantee of Indigenous access to traditional areas could change the way subsistence is practiced throughout the State; however, it sees that this process would be a continuation of the evolution of the law and implementation of Title VIII. ANILCA is remedial

¹ *Emphasis added by underline*

² *H.R. Conf. Rep. 92-746 (1971) House Conference Report, Joint Statement of the Committee of Conference, see C(2) on page 4*

legislation and as such it should be given a broad sweep and liberal interpretation in favor of continuing the subsistence priority. This may be an adequate resolution to meet the motivation behind KIC's proposal to rescind the nonrural determination of Ketchikan.

Request to the Board:

- 1) The Council requests that the Board clarify the distinction between 'rural' and 'nonrural' as it pertains to nonrural determination proposal requests. A better definition of 'rural community' to aid Councils in determining rural characteristics is needed in the Board's Nonrural Determination Policy. The Council understands that all communities are rural unless designated nonrural, but additional, more definitive direction is necessary for Councils to sufficiently consider 'rural characteristics.' The Council would appreciate the Board's focused attention on this request for a definition and specific guidelines for the evaluation of communities when future requests to rescind nonrural determinations are submitted and processed.*
- 2) The Council requests that the Board advocate for a process to be undertaken to define 'rural' in Title VIII and take whatever appropriate actions are necessary to officially make this change.*
- 3) Additionally, the Council requests the Board to consider whether a rule change request would be necessary to meet the intent of ANILCA and protect the subsistence needs of Alaska Natives. It should also contemplate the intent reflected in the Congressional Record in its exploration of remedies. In particular, the Council would like to see: (1) the Secretary of the Interior review the original purpose and intent of Title VIII; and (2) explore actions that could provide Tribal citizens access to their traditional subsistence resource lands without changing the nonrural designation status of that area.*

Response:

At the direction of the Secretary in 2010, we began a formal public process of review and engagement with the Councils and members of the public that led to the current nonrural determination policy. The current policy is a result of extensive comments that led to a more open process reflective of each unique region in Alaska. Ketchikan was the second nonrural determination proposal addressed under the new policy.

We understand the Council wishes to explore ways to extend the rural subsistence priority to Tribes and Tribal members in nonrural areas. Additionally, the Council suggested that the term "rural" be defined more clearly in ANILCA. Changes to the definition of rural and who is eligible for Federal subsistence preference, as defined in ANILCA, can only be made through an amendment to ANILCA by Congress. The Board's powers and duties do not extend to lobbying Congress to change statute. An amendment to the definition of "rural" could be proposed to subpart A definitions ([50 C.F.R. 100.4](#)), which would require submission to and approval by the Secretaries, not the Board.

3. Unit 4 Deer Monitoring

During the last regulatory cycle, the Board approved three wildlife proposals that closed three areas in Unit 4 for ten days to the harvest of deer by non-federally qualified users. These proposals were submitted to provide a meaningful priority to federally qualified subsistence users and to ensure the continuation of subsistence uses of deer.

During the vote on WP24-04 (Angoon), the Bureau of Land Management (BLM) Acting Board member noted that this closure would be subject to the Board's closure policy, which states that when a closure is no longer needed, the Board will reopen the affected Federal public lands and waters as soon as practical (FSB 4/4/2024, p. 241).

During the vote on WP24-05 (Hoonah), the Bureau of Indian Affairs Board member requested that the effects of the closure be monitored following its implementation to evaluate the benefits it will have on the affected federally qualified subsistence users (FSB 4/4/2024, p. 269), and the BLM Acting Board member reiterated his general comments from WP24-04.

During the vote on WP24-06 (Pelican), the Forest Service Board member recognized from the votes on the two previous proposals that there was a desire, once regulations were put in place, to monitor metrics to understand how to move forward on this issue (FSB 4/4/2024, p. 295). The BLM Acting Board member reiterated that the closure review process will serve as a means to evaluate the effectiveness of this closure and whether or not those closures continue to be needed (FSB 4/4/2024, p. 296).

Request to the Board:

The Council would like to know if any surveys or other monitoring will be done in addition to the closure reviews to assess the effectiveness of these closures and determine the benefits to local Unit 4 subsistence users. The Council requests the Board to explore ways to adequately fund any monitoring efforts.

Response:

The Hoonah Indian Association (HIA) is leading the North Unit 4 Deer Working Group through Southeast Alaska Sustainability Strategy (SASS) funding by the USDA Forest Service (USFS). The funding was secured by Hoonah Indian Association in late 2022 and the group has the following primary goals:

- Complete annual community surveys on deer harvest and use by training people in the community to do the work
- Understand if/how competition is impacting subsistence use of deer on North Chichagof Island

- Collect deer population demographic trend data using camera traps in overwintering areas
- Host meetings where managers, and community and non-community members can discuss their needs around deer harvest
- Increase community understanding of how harvest reporting is used in management with the goal of increasing community reporting

The Unit 4 Deer working group meetings are attended by members of the public and staff from HIA, Alaska Department of Fish and Game (ADF&G), OSM, and USFS. Recently, the working group developed a community survey aimed at assessing the efficacy of the Unit 4 deer closure in Hoonah. The community survey is expected to be expanded to Angoon and Pelican.

We relied on public testimony and expertise of the Council when considering the implementation of Unit 4 deer closures. In addition, we will consider any new information, such as that from the North Unit 4 Deer Working Group surveys to determine the efficacy and continued need for Unit 4 deer closures.

We support the idea of surveying and monitoring to inform Council recommendations and our decisions. However, our authority, powers, and duties are limited to regulatory matters and do not extend to exploring funding streams or determining if programs are adequately funded.

4. Use of Data for Southeast Alaska Fish and Wildlife Status Reports

The Council routinely shares the regional reports it receives on the status of fish and wildlife populations in its Annual Report so that the Board can understand current populations and harvests in Southeast Alaska. You will find the latest reports attached.

The Council believes it would be beneficial to incorporate additional information for the status reports it receives, including proportions of harvest by federally qualified subsistence users versus harvest by non-federally qualified users. Additionally, it would be helpful if this information was broken down by geographic area where possible. This would assist the Council in identifying important trends so that they can make regulatory decisions based on federal or state data specific to user groups.

Request to the Board:

The Council understands that these reports can only include the information that the creator receives, and that the data received may not be categorized as referenced above. The Council asks the Board to encourage the State of Alaska to respond to requests for information submitted by Federal staff in a timely and complete manner and to entertain requests for data under specific parameters (such as by user group and geographic area), if such data is available in that way. The Council would appreciate this extra effort as it is important to have as much information as possible for the Council to make comprehensive recommendations to the Board.

Response:

We understand the need for comprehensive data to base recommendations on. As noted by the Council, staff present the data made available to them but are limited by survey frequency and data sharing between agencies. Federal staff rely heavily on harvest and population survey data provided by ADF&G. Further, agency policies guide the types and quantity of data that may be shared publicly. State and Federal staff are currently working on guidance that should improve data sharing between state and federal agencies. However, necessary data sharing restrictions will remain in place to protect harvester privacy. Currently, ADF&G is committed to fulfilling data requests from OSM within 10 business days.

5. Funding for Unit 4 Deer Surveys

Currently, the Hoonah Indian Association is doing subsistence surveys in Unit 4 communities. This was originally funded by the Forest Service under the Southeast Alaska Sustainability Strategy. The group has reported data and information back to the Council, and the Council found the information useful, especially when acting on the Unit 4 Deer proposals mentioned above.

Request to the Board:

If this project does not receive future funding, the Council would like to see the Board support efforts to secure funding. This could be either through a Wildlife Resource Monitoring Project or through other means. It is important to ensure the data can continue to be collected and shared with the Council for consideration should there be issues with Unit 4 deer in the future.

Response:

We understand the importance of up to date information for forming sound regulatory recommendations and decisions and we continue to support agencies funding projects that inform in-season management and harvest closures. The Board agrees that it would be very beneficial for the Program and rural users to have funding for a Wildlife Resource Monitoring Program; however, funding for this monitoring program is unlikely in the near future due to cross-government efforts to reduce spending. Future funding for Unit 4 deer monitoring by the Unit 4 Deer Working Group or alternative monitoring efforts will be assessed by the Forest Service on a project-by-project basis if funding is available.

6. Need for Moose Survey in Yakutat

The Council member from Yakutat informed the Council that it has been approximately six years since a survey for moose in the Yakutat area was conducted. Due to the limited aircraft pilot resources in the area, it has not been possible to get an accurate count of moose in the area.

Request to the Board:

If a Wildlife Resource Monitoring Program is established, the Council would like for the Board to support a Yakutat moose survey as one of the projects. If there are solutions to address the limited air carrier/pilot issue, other than funding an airplane or helicopter at great expense from another part of Alaska, the Council would appreciate knowing of such options.

Response:

We agree that there is a need for updated aerial moose surveys in Unit 5; however, at this time, neither the Board or OSM have available funding for a Wildlife Resource Monitoring Program. Logistical challenges resulting from the loss of local airplane operators and appropriate survey aircraft have resulted in a lapse in Unit 5 moose and mountain goat surveys. It is not anticipated that the availability of aircraft in Yakutat will improve in the near future. However, ADF&G and USFS recreation and subsistence staff successfully collaborated on mountain goat surveys using an aircraft operating in the area in 2023 and continue to look for similar opportunities to conduct moose surveys in the area.

Other Annual Report Topics for Information Purposes Only

The Board thanks the Council for sharing information in your FY-2024 Annual Report on another issue significant to your region and subsistence users, (7) the Tongass National Forest Plan and its revision process, and Council plans of taking a proactive role in participating in the process.

We appreciate and value the traditional knowledge, observations, and expertise you share. With this information, the Board is better prepared to make informed decisions.

In closing, I want to thank you and your Council for your continued involvement in the Federal Subsistence Management Program and the work you do on behalf of federally qualified subsistence users. We appreciate your efforts and are confident that federally qualified subsistence users of the Southeast Region are well represented through your work.

Sincerely,

Anthony Christianson
Chair

Enclosure

cc: Southeast 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
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Administrative Record

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