



# United States Department of the Interior

## OFFICE OF THE SECRETARY

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October 5, 2010

Dear Interested Party:

As you know, the Secretary announced a review of the federal subsistence program last October. Comments were solicited, and a number of meetings with stakeholders were held across the state. Updates on the review and a summary of comments received were posted on a Departmental website. Last spring comments and recommendations were analyzed, and provided to the Secretary for his review and possible action.

Unfortunately, due to events in the Gulf of Mexico, recommendations from the review were not finalized until recently. On August 31, 2010, the Secretary along with the Secretary of Agriculture announced actions to be taken pursuant to the review. They also announced the appointment of Tim Towarak as the new Chair of the Federal Subsistence Board.

A public report on the review and the detailed actions to be taken is now available. The press release and the report can be accessed through the Department's website at <http://www.doi.gov/whatwedo/subsistencereview>.

Thank you for your interest and participation in this review. If you have any further questions, please feel free to contact this office.

Sincerely,

Pat Pourchot

Special Assistant for Alaska Affairs

Attachment

# REVIEW OF FEDERAL SUBSISTENCE MANAGEMENT PROGRAM, ALASKA

U.S. Department of the Interior

September, 2010

## **Summary**

In 1992 the federal government took over the management of subsistence wildlife uses on federal lands when the State of Alaska did not meet the requirements of Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) for the granting of a preference to rural residents. After a court judgment in 1998 the federal government took over subsistence fishery management on certain navigable waters.

After nearly two decades, action by the State to regain management is not being pursued, and it is assumed that federal subsistence management will continue in the foreseeable future. The Secretary believed it was timely that the program be reviewed to see if the program established in 1992 is best meeting the letter and spirit of Title VIII of ANILCA and serving rural Alaskan residents. The Secretary announced his intention to conduct a review of the federal subsistence program in Alaska, in October of 2009 at the Alaska Federation of Natives Convention in Anchorage.

On August 31, 2010, the Secretary and the Secretary of Agriculture announced the findings of the review and actions that they were taking to address concerns raised in the review. Changes to the federal program included the addition of two rural subsistence users on the Federal Subsistence Board (FSB), increased deference to the recommendations of the Regional Advisory Councils (RACs), review of the Memorandum of Understanding (MOU) with the State, review of current regulations governing customary and traditional uses and rural/nonrural determinations, involvement of the FSB in the subsistence budget process, and a review of minority and diversity hire issues. Some public recommendations for statutory and legal changes were not recommended at this time.

In addition to program changes, the Secretaries announced the appointment of a new Chair of the FSB, Tim Towarak.

## **Background**

Title VIII of ANILCA mandates a preference for “rural residents” in the taking of fish and wildlife for subsistence purposes. The State of Alaska initially implemented ANILCA Title VIII on state and federal lands but, after nearly a decade of state management, the Alaska Supreme Court ruled in 1989 that the state constitution does not allow a priority for “rural residents.” As a result, the Department took over management

of the subsistence priority for wildlife on federal lands in 1992. In 1998, following further court action, federal management was extended to fish taken for subsistence purposes from certain navigable waters in or adjacent to federal lands.

Title VIII of ANILCA makes the subsistence priority a Secretarial responsibility. By regulation, the FSB runs the subsistence program. The FSB is comprised of the Alaska Directors of the Fish and Wildlife Service (FWS), Bureau of Land Management, National Park Service, Bureau of Indian Affairs, the Regional Forester for the U.S. Department of Agriculture (USDA), and a public chair appointed by the Secretary with the concurrence of the Secretary of Agriculture.

The FSB must be responsive in its rule-making functions to the 10 RACs, composed of a super majority of subsistence users. The FSB shall consider the recommendations of the RACs and can only choose not to follow RAC “taking” recommendations if they are not supported by substantial evidence, violate recognized conservation principles, or are detrimental to subsistence needs. This substantial power, granted the RACs in Title VIII, codifies a ‘bottom-up’ management approach that ensures subsistence users have a substantial say in the subsistence management program.

The FSB and the RACs are supported by the Office of Subsistence Management (OSM) with a staff of 41. The OSM is headed by a FWS Assistant Regional Director and is lodged administratively within the FWS. Other Department of Interior (DOI) bureaus and Forest Service staff also work within their respective agencies on subsistence issues.

### **The Conduction of the Review**

Beginning in November 2009, the review was conducted by the Alaska Affairs Office within the Office of the Secretary. Comments were solicited from a wide range of individuals and groups having an interest and involvement in the federal subsistence program. Meetings were held with over 45 different stakeholder groups in 13 different communities throughout Alaska. Comments were received from over 115 different groups and individuals (Attachment A). Comments were categorized, posted on a Departmental website, and recommended programmatic changes analyzed. Draft recommendations were prepared for internal review (including USDA/Forest Service) and consideration by the Secretary and the Secretary of Agriculture.

### **Findings**

A wide variety of comments was received on various aspects of the federal subsistence program. While most comments targeted Title VIII provisions of ANILCA or specific elements of the federal subsistence program, some comments focused on other federal laws, such as the Marine Mammal Protection Act, which deal with other subsistence-related programs and issues. From subsistence users, several broad themes were conveyed, including:

- The FSB is not knowledgeable and responsive to rural needs because subsistence users are under-represented on the FSB;
- State managers of fish and game exercise too much influence on behalf of non-subsistence users in federal subsistence management decisions;
- The FWS managers exert too much influence on Secretarial responsibility for the subsistence program due to the administrative location of the program within FWS;
- The RACs authorities and effectiveness have been reduced due to budget constraints and the interpretation by the FSB of what decisions require deference to the RACs;
- Many regulations adopted initially from the State's regulations are not working effectively, do not reflect the intent of Title VIII of ANILCA, and are in need of revision.

From non-subsistence users, including the State of Alaska, there were several broad categories of comments including:

- Federal subsistence managers need to work more cooperatively with the State of Alaska to reconcile conflicts inherent in the dual federal/state management responsibilities;
- The FSB process should be more open;
- The FSB implementation of Title VIII subsistence priority is often too "liberal" in its decisions, thereby constraining harvest opportunities by other users and threatening conservation principles.

### **Recommended Actions**

All of the changes being directed can be implemented by the Secretary of the Interior, or by the Secretary with concurrence of the Secretary of Agriculture, or by the FSB. Most can be accomplished as a matter of Secretarial directive or policy. However, some would be regulatory changes requiring a formal rule-making process.

The following actions are called for by the Secretary of the Interior with the concurrence of the Secretary of Agriculture:

- Add two public members representing subsistence users to the FSB after input from the RACs (subject to regulatory procedures);
- Direct the FSB to expand deference to RAC recommendations other than just “takings” decisions;
- Direct the FSB 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);
- Direct the FSB, with RAC input, to review customary and traditional use determination process to provide clear, fair, and effective determinations in accord with Title VIII goals and provisions (changes would require new regulations);
- Direct the FSB to commence a review, with RAC input, of the rural/non-rural determination process for use in determinations pursuant to the 2010 census (changes may require new regulations);
- Direct the FSB to review written policy on executive sessions and minimize the use of such sessions;
- Direct the FSB to immediately review, with RAC input, the December 2008 MOU with the State to determine either the need for the MOU, or the need for potential changes to clarify federal authorities for the subsistence program;
- Direct the FSB to ensure the Secretaries are informed when non-DOI/USDA rule-making entities develop regulations that may adversely affect subsistence users.
- Direct the FSB to review and submit recommendations for Departmental (DOI and USDA) consideration the annual budget(s) for the federal subsistence program.
- Direct the FSB to participate in the hiring of the Director of the Office of Subsistence Management (OSM) when the position is vacant, and participate in the annual evaluation of the Director;

In addition the following actions are called for by the Secretary of the Interior:

- Establish an Interior line item for the core subsistence program budget;
- Consider when building the annual budget: periodic meetings of the FSB in rural areas; reinstatement of the one-year cycle for fish and wildlife rule-making by the

FSB; increased support and training for the RAC members; and increased capacity within the OSM for research and analysis;

- Direct an Interior or interagency task force evaluation of the OSM and related agency subsistence budgets, organizational issues and diversity issues;
- Encourage the FSB, OSM, and DOI agencies to utilize contracting and use of Section 809 cooperative agreements with local tribes and other entities to fulfill program imperatives;
- Direct FSB DOI directors to prioritize their responsibilities for subsistence management; attend FSB meetings whenever possible, while also allowing designation of high-ranking, knowledgeable alternates.

### **Recommended Actions Not Being Pursued at This Time**

Some commenters proposed changes requiring significant statutory changes to Title VIII of ANILCA or other federal laws including:

- Redefine in ANILCA the eligibility for a subsistence priority to either “Native only” or “rural residents plus urban Natives”;
- Expand the definition of public lands in ANILCA to allow federal subsistence management on Native-owned lands;
- Exempt the RACs from the requirements of Federal Advisory Commission Act to only permit participation by subsistence users;
- Clarify in statute that Title VIII of ANILCA is “Indian legislation.”

These proposals fall outside the direct authorities of the Secretary of the Interior or Agriculture and are not being proposed at this time. These recommendations will be forwarded to concerned Congressional committees and members for possible consideration. Should action by the Congress be proposed, the Secretaries stand ready to provide further comment.

## **Attachment A**

### **Subsistence Review-- Record of Public Involvement**

**Total Groups and/or Individuals Providing Comments: 115**

#### **Groups Submitting Written or Verbal Comments during the Review**

Ahtna Incorporated

Alaska Department of Fish and Game

Alaska Eskimo Whaling Commission

Alaska Federation of Natives

Alaska Inter-Tribal Council

Alaska Lands Act Coordination Committee (Sierra Club; Denali Citizens Council; The

Wilderness Society; Alaska Wilderness League; Science Now; National Parks

Conservation Association; Defenders of Wildlife; Trustees for Alaska; Alaska

Wilderness League, Audubon Alaska)

Alaska Outdoor Council and Alaska Fish and Wildlife Conservation Fund

Alaska Professional Hunters Association, Inc.

Association of Village Council Presidents

Cenaliulriiit Coastal Resource

Central Council of Tlingit & Haida Indian Tribes of Alaska

Council of Athabascan Tribal Governments

Emmonak Tribal Council

Federal Subsistence Board Staff Committee

Federal Subsistence Regional Advisory Council Chairs

Gates of the Arctic National Park Subsistence Resource Commission

Greater Fairbanks Chamber of Commerce

Gwichi'in Steering Committee

Icicle Seafoods

Kawerak Incorporated

Kenai-Soldotna Fish and Game Advisory Committee

Kenai Sport Fishing Association

Kenaitze Tribal Council

Ketchikan Indian Community

Kivalina City Council

Kotzebue IRA Council Tupiq

Lake Clark National Park Subsistence Resource Commission

Marine Conservation Alliance

Mt. Sanford Tribal Consortium

NANA Regional Corporation

National Park Service Subsistence Resource Commission Chairs

National Parks Conservation Association

Native American Rights Fund

Native Village of Kotzebue

Native Village of Paimiut

Ninilchik Traditional Council

North Pacific Fisheries Management Council

Northwest Arctic Borough

Northwest Arctic Strategy Group

Office of Subsistence Management

Organized Village of Kasaan

Organized Village of Saxman

Orutsararmuit Native Council

Pacific Seafood Processors Association

Petersburg Vessel Owners Association

PWS Eco-Charters

Safari Club International

Sealaska Heritage Institute

Sitka Fish and Game Advisory Committee

Sitka Tribe of Alaska

Southeast Alaska Fishermen's Alliance

Southeast Alaska Regional Dive Fisheries Association

State of Alaska Department of Law

State of Alaska Citizens' Advisory Commission on Federal Areas

State of Alaska Office of the Governor

Stebbins Community Association

Sun'aq Tribe of Kodiak

Tanana Chiefs Conference

Territorial Sportsmen

The Tatitlek Corporation

Tribal Council of Bethel

United Cook Inlet Drift Association

United Fisherman of Alaska

Western Arctic Caribou Herd Working Group

Woody Island Tribal Council

Yukon River Drainage Fisheries Association