

Federal Subsistence Board Annual Report Reply Process Review and Revision Guided Discussion

During the Federal Subsistence Board's (Board) August 2021 work session, the Interagency Staff Committee (ISC) briefed the Board on the annual report reply process and possible revisions to improve responsiveness to Regional Advisory Council concerns. This ISC briefing is part of a larger ISC effort to improve workload efficiencies within the Federal Subsistence Management Program. The Board reviewed and discussed the report reply process and agreed to forward this topic to the Councils for your input on the suggested revisions, including possible ideas of your own.

As you are aware, ANILCA, Section 805, authorizes the Councils to prepare an annual report containing information related to important subsistence resource issues within their region. These reports are invaluable as they provide the Board with a broad, holistic picture of local resource conditions, and the most up-to-date subsistence issues facing communities across rural Alaska. With this knowledge, the Board can make informed decisions.

Historically, the Board has strived to provide responses to every topic listed in annual reports, regardless of its authority to address the issues raised. However, it is unclear if Board responses on all annual report topics are helpful to the Councils, while also taking considerable staff time to complete.

The ISC has suggested process revisions, 1.) to maintain annual reports to *inform* the Board of local conditions, issue, and needs, and 2.) propose letter writing to request a response from the Board on topics of concern. We recognize that Councils already write letters to the Board and other agencies outside of the annual report process. Under the ISC scenario, the only change is how the Board responds to issues within your annual report. This change might allow for more substantive and timely responses from the Board on topics of critical concern to the Council. For example, a separate letter requesting Board response could be written and submitted to the Board more quickly than including the issue in the annual report, as the annual report requires a longer time for both preparation of the report as well as for preparation of the Board's response.

These suggested revisions are not intended to diminish the ability of the Councils to communicate with the Board. The Board relies upon your knowledge and expertise, and annual reports are a way to ensure the Board remains up-to-date on important developments in your region.

To that end, we are asking you to think about what you want from the Board in response to your annual report. To help guide your discussion, OSM suggests the Council (1) review the

ISC suggestions, (2) open the floor to questions and Council discussion, and then (3) take action – developing Council comments to forward to the Board.

Receiving Public Testimony Protocol – Guided Discussion

All 10 Subsistence Regional Advisory Councils were formed under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) and chartered under the Federal Advisory Committee Act.

ANILCA gives each Regional Advisory Council an authority to:

- (a) 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 within the region;
- (b) encourage local and regional participation pursuant to the provisions of Title VIII of ANILCA in the decision-making process affecting the taking of fish and wildlife on the public lands within the region for subsistence uses.

The Federal Advisory Committee Act stipulates that any member of the public is permitted to file a written statement with the advisory committee (§102-3.140 (c)) and may speak to or otherwise address the advisory committee if the agency guidelines so permit (§102-3.140 (d)).

During each regulatory cycle there are several opportunities for the public to provide their oral and written comments to the Federal Subsistence Board (Board) and to the Councils.

1. *First opportunity* commences after the call for the proposals (officially known as the proposed rule) is published in the Federal Register. This is an opportunity to submit proposals or any significant comments to the Board. The first comment window is open anywhere from 45 up to 90 days or longer.
2. *Second opportunity* for public comments on submitted proposals begins when the proposal submission window closes and validated proposals are published on the Federal Subsistence Management Program website.
3. *Third opportunity* for public comments on proposals is during the Council meetings.
4. *Fourth opportunity* for public comments on proposals is during the Board regulatory meetings. These comments are used by the Board in their decision making process.

I will explain the third opportunity for public comments on proposals during Regional Advisory Council meetings in more detail because this is the subject of our guided discussion today.

- The public comments on proposals accepted at the Council public meetings are for use by the Councils in making their recommendations to the Board. The Council Chair or your Council Coordinator presents the Council recommendations and any supporting data to the Board at its regulatory meeting.
- This round of public comments on proposals are part of the record for the Council meeting, not the Board meeting.
- Public comments on proposals are accepted after the presentation of each proposal analyses. These include oral comments provided by the public attending the meeting and written comments provided by the public during the meeting, the latter will be read or summarized to the Council. Again, these comments are for the Council and will not be included in the Board proposal analyses.

- Public comments on non-agenda items are accepted at the start of each day of a Council meeting.

In the past, when the Council meetings were held in person, the public brought their written public comments to the meeting, to be distributed to the Council members and other meeting participants. During the fall 2021 meeting cycle, since all the meetings were held via teleconference, the OSM leadership deemed it necessary to establish a temporary procedure for the submission of written public comments during the Council meetings. The public was directed to submit written comments to the centralized OSM email **during** the meeting as it was indicated in that year's proposed rule published in the Federal Register. The OSM staff read these comments into the record verbatim during the meeting.

This was an interim procedure. Now prior to the Councils fall 2022 meeting cycle, when the Councils are going to discuss fisheries proposals and closure reviews, we are requesting the Councils' input on how the Councils would prefer to receive written public comments submitted to them after the proposed rule deadline. These are comments the Council may want to consider in formulating their recommendations to the Board. Once OSM receives input from the Councils on permanent guidance, we will then update the written framework accordingly.

This is not an action item, but the Council's discussion is encouraged. For the Council's feedback, OSM developed several questions and would like the Council's responses. Please remember that these questions are only about the written public comments submitted only to the Council. These comments are used by the Councils to make their recommendations to the Board. The comments themselves will not be shared with the Board. The OSM's questions to the Council are:

1. In the Council's opinion, what are the best ways to encourage public feedback to the Councils?
2. Would the Council prefer to receive comments from the public orally or in writing?
3. Would it be helpful to the Council if OSM requests the written public comments to be submitted to your Council Coordinator prior to the meeting within the certain time period and the Coordinator, in turn, will summarize the comments and present them to the Council during the meeting?
4. Is it better for the Councils if received public comments are read verbatim into the record or summarized?
5. Do you have any other suggestions regarding the ways of improving written or oral public testimony procedure during the Council meetings?

Briefing and Council comments on proposed actions to automate Federal subsistence permits

One of the many governing statutes that cover the Federal Subsistence Management Program is the Paperwork Reduction Act, commonly referred to as the PRA. This law requires all Federal departments and agencies to gain approval through the Office of Management and Budget (OMB) prior to the collection of information from the public. In regard to our Program, this collection of information can be the information you provide on your permits, the data supplied to be nominated to serve or to continue your service on the Regional Advisory Councils, but it also covers the signage used for fish wheels, nets and buoy markers. Even the requirements to submit a lower moose jaw, the sealing of untanned animal skins, and other biological submissions are covered under this statute.

This law was designed to the public from unreasonable requirements to provide data and/or personal information without justification. The process to gain approval to collect information from OMB generally takes a year but can be as long as 18 months. An agency must, in short, provide the reasons this information will be collected, what it will be used for, how it may be used outside of the original intent, who will have access to the information, and how it will be stored. This clearance is valid for three years and must be resubmitted prior to the expiration date.

Another governing statute that covers our Program is the E-Government Act. The purpose of this law is to improve the management and promotion of electronic government services and requires using Internet-based information technology to improve citizen access to government information and services. This is seen in the Program webpage, news releases, meeting materials and other information, and in the use of social media which allows for the swift notifications regarding special actions, meetings, and submission of regulatory proposals. OSM's webpage and social media sites are monitored by DOI 24/7 to ensure it meet all requirements of the law and departmental policies.

After the most recent OMB clearance to collect information from the public, OMB contacted OSM and tasked us with exploring the use of automated permits within our Program. Many issues would accompany the use of automated permits and must be addressed before any attempt is made to use internet permits. OSM is asking the Councils and the public for ideas as to how the issuing of permits might look in the future. Any and all ideas are welcome. There are several overriding factors that must be understood, *all Federal permits must be issued by a Federal agency and cannot be delegated to a non-federal entity such as a local or State entity or a Tribal government*. The cost must be considered, the Program has a limited budget and excessive costs cannot be absorbed to the detriment of Board and Council meetings or the Fisheries Resource Monitoring Program (FRMP). A paper permit will still have to be carried into the field for proof when addressing LE or field staff.

Some of the issues that must be addressed:

- How can we verify a person is a Federally qualified user?
- How do we address the lack of or substandard infrastructure in rural communities if internet permits are used?
- How will managers address quotas, and/or limit the amount of permits issued in the case of conservation concerns?

- How will managers deal with the lack of reporting of harvest results in the case of power failures or lack of the internet? Especially when reporting requirements are listed as 48 or 72 hours due to severe conservation concerns?
- How would this possible change effect subsistence users?
- What method of issuing permits would be preferred by subsistence users?

While this is not a formal request for comments, we ask that any comments be sent to subsistence@fws.gov by November 15, 2022. More information will be provided to the Councils as this process moves forward.

Briefing on the Secretarial regulations proposing the inclusion of identified submerged lands in the Tongass National Forest

This is an informational brief only and no action is required on the part of the Council. This is the second rulemaking on this subject. The first taking place with the publication of a proposed rule in June, 2016 and the final rule in May, 2018.

To comply with a court order, *Peratovich et al. v. United States and the State of Alaska*, 3:92-cv-0734-HRH (D. Alaska), the Secretaries were directed to initiate regulatory proceedings to identify those submerged lands within the Tongass National Forest that did not pass to the State of Alaska at statehood and, therefore, remain Federal public lands subject to Federal subsistence provisions (this task was forwarded to the Federal Subsistence Board by the Secretaries). This proposed rule would add to the list of submerged parcels in the Federal subsistence regulations that have been identified through agency review. The purpose of this proposed rule is to complete regulatory proceedings addressing submerged public lands within the Tongass National Forest, as directed by the Court.

The majority of these submerged lands are low-water lines, reefs, rocks and very small islands (100 yards to half a mile in length).

This document is expected to be published in the Federal Register in February, 2022 and will have a 60 day comment period. The exact dates will be announced by news release and social media.

If the Council or the public desires to comment on this proposed rule, it **may submit comments by one of the following methods:**

- Electronically: Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter the docket number FWS-R7-SM-2018-0013. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment.”
- By hard copy: Submit by U.S. mail or hand delivery: Public Comments Processing, Attn: FWS-R7-SM-2018-0013; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: PRB (JAO/3W); Falls Church VA 22041-3803.

OSM report for winter 2022 Council meetings

Teleconferences

OSM is holding all 10 winter 2022 Regional Advisory Council meetings via teleconference. The DOI guidelines advise that people avoid travel and refrain from meeting in person to minimize risk and help prevent the spread of COVID-19. OSM received direction from the Department of Interior that no Federal Advisory (FACA) Committees meetings would be held in person in the fiscal year 2022, and all Regional Advisory Councils are FACA committees. The Federal Subsistence Management Program recognizes that in-person meetings are preferable; however, until we can ensure the safety of all participants, we will follow current guidance and hold all meetings via teleconference. OSM thanks the Councils again for being willing to participate in the lengthy teleconference and appreciate the Councils' patience as we deal with the various technical issues that arise from the poor telephonic connections, the vast distances involved, and differing communication systems throughout the State of Alaska.

OSM Staff Changes

OSM is very pleased to announce the following OSM staffing changes that have occurred since your last Council meeting in fall 2021. Scott Ayers was hired as the OSM Fisheries Division Supervisor in January. Scott worked for 3 years as a Fisheries Biologist for OSM several years ago before he took a job with the USFWS Wildlife and Sport Fish Restoration program. We welcome Scott back to OSM. Jarred Stone and Cory Graham have both been promoted with the Fisheries Division, while two additional Fisheries Biologists are being hired now. In January, Sherri Gould-Fehrs, OSM Administrative Support Assistant was temporarily promoted to the ARD Secretary position. Kayla Mckinney stepped up to temporarily serve as Subsistence Outreach Coordinator. In December and January, Liz Williams and Jason Roberts were hired as OSM Anthropologists. Liz worked for OSM about 12 years ago and is returning. Welcome back Liz. OSM is pleased to welcome three newly hired Subsistence Council Coordinators: Nissa Bates Pilcher, Leigh Honig, and Brooke McDavid, all with the wealth of knowledge and experience in working with rural users and communities, as well as Alaska subsistence issues. OSM also had departures through retirement and new opportunities. OSM bids a fond farewell to Administrative staff Catherine Avery and Ricky Cabugao. The OSM team continues to work on rebuilding our capacity and hope to advertise positions in our regulatory and administrative support functions soon.

DOI & USDA Conduct Listening Sessions on Federal Subsistence Policy

The U.S. Departments of the Interior and Agriculture conducted virtual listening sessions and Tribal consultations on January 10, 20, 21, and 28, 2022 on Federal Subsistence Policy. The Secretaries requested input from Tribes, Tribal consortia, and Alaska Native Organizations and Corporations. The DOI Senior Advisor for Alaskan Affairs and Strategic Priorities met with Federal Subsistence Board members prior to the consultations to introduce Board members and Department of Interior leadership and to provide Board members with an update on DOI activities related to subsistence management.

Real ID for Travel to Council Meetings

Over the past two plus years, OSM have been reminding Council members about the change in requirements for IDs at airports. Beginning May 3, 2023, every air traveler will need to present a REAL ID-compliant driver's license, or other acceptable form of identification (e.g. passport), to fly within the United States. This is applicable even when you fly on small bush carriers. Please note that all Council

members will need to make sure that they have the required Real ID for travel to the fall 2023 Council meetings.

Lawsuit from the State of Alaska

As the Council was previously briefed, on August 10, 2020, the State of Alaska filed a lawsuit against the Federal Subsistence Board after it adopted Emergency Special Action WSA19-14. This special action allowed the village of Kake to engage in a community harvest of up to four bull moose and ten male Sitka black-tailed deer. Also included in the lawsuit was Temporary Special Action WSA20-03, which closed Federal public lands in Units 13A and 13B to moose and caribou hunting by non-Federally qualified users for the 2020-2022 regulatory cycle. As part of the lawsuit, the State asked the Court to issue two preliminary injunctions -- one to prevent the Unit 13 closure from taking effect and another vacating the Kake hunt and prohibiting the Board from allowing any additional emergency hunts related to the impacts of COVID-19.

On December 3, 2021, the U.S. District Court denied the State's request for declaratory and permanent injunctive relief, finding in favor of the Federal Subsistence Board on both matters. The Court found that: 1) it lacks jurisdiction over the issues associated with the Kake hunt because that portion of the State's claims are moot; and, 2) the FSB's decision to close Units 13A and 13B to non-subsistence users was both legally permissible and supported by the information on record. The State recently filed an appeal of the District Court's decisions, but the Ninth Circuit has not yet set a schedule for briefing.

Subsistence Student Art Contest

The Federal Subsistence Management Program is sponsoring its annual art contest for all students in Alaska grades K-12. Deadline for submission is April 1, 2022. This year, entries may focus on either subsistence wildlife or fish, and two winners will be selected. The winners' artwork will be published on either the cover of the 2022-2024 Subsistence Management Regulations for the Harvest of Wildlife on Federal Public Lands in Alaska book or the 2023-2025 Subsistence Management Regulations for the Harvest of Fish and Shellfish on Federal Public Lands in Alaska book, both distributed statewide. The art contest offers an exciting opportunity for students to express their talent and creativity while sharing their knowledge of subsistence resources. Directions for submitting art and additional information can be found at our website: www.doi.gov/subsistence.