

YUKON-KUSKOKWIM DELTA

Subsistence Regional Advisory Council



USFWS photo

Kisaralik River, Yukon Delta National Wildlife Refuge

Meeting Materials
February 27–28, 2013
Bethel, Alaska

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Yukon-Kuskokwim Delta Subsistence Regional Advisory Council

Yupit Piciryarait Cultural Center
420 Chief Eddie Hoffman Highway
Bethel, Alaska

February 27 – 28, 2013

9:00 A.M. – 5:00 P. M. each day or until meeting is concluded

DRAFT 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. Contact staff for the current schedule. Evening sessions are at the call of the chair.

*Asterisk identifies action item.

- 1. **Call to Order (Chair)**
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- 6. **Review and Adopt Agenda*(Chair)**
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 - C. Secretary
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- A. Confirm date and location of fall 2013 meeting on September 25-26, 2013, in Saint Mary’s, Alaska*
- B. Select date and location of winter 2014 meeting*

16. Closing Comments (Council)

17. Adjourn (Chair)

To teleconference into the meeting, call the toll free number: 1-877-638-8165, then when prompted enter the passcode: 9060609

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 Seward Peninsula Subsistence Regional Advisory Council Coordinator Alex Nick at 907-543-1037 or contact the Office of Subsistence Management at 1-800-478-1456 for general inquiries.

REGION 5—Yukon-Kuskokwim Delta Regional Advisory Council

Seat	Yr Apptd <i>Term Expires</i>	Member Name & Address
1	2004 2013	William Frank Brown Eek, Alaska
2	1997 2013	James Aiagiak Charles Tuntutuliak, Alaska
3	2010 2013	Noah M. Andrew Tuluksak, Alaska
4	2010 2013	Evan Kus Polty Sr. Pilot Station, Alaska
5	1996 2014	Lester Wilde (Sr.) Hooper Bay, Alaska Chair
6	2011 2014	Paul J. Manumik, Sr. Nunam Iqua, AK
7	2011 2014	Andrew Brown, Sr. Mountain Village, AK
8	1993 2014	Harry O. Wilde Sr. Mountain Village, Alaska
9	1999 2014	Mary M. Gregory Bethel, Alaska
10	2012 2015	Raymond J. Oney Alakanuk, Alaska
11	2003 2015	Greg J. Roczicka Bethel, Alaska
12	2003 2015	Robert E. Aloysius Kalskag, Alaska
13	2006 2015	David Bill, Sr. Toksook Bay, Alaska

**YUKON-KUSKOKWIM DELTA SUBSISTENCE REGIONAL ADVISORY
COUNCIL**

Meeting Minutes
February 23, 2012
Bethel Moravian Church Fellowship Hall
Bethel, Alaska
9:00 a.m.

Meeting was called to order by Lester Wilde, Chair.

Roll Call by John W. Andrew, Secretary

Members Present:

Lester Wilde, Chairman
Robert E. Aloysius
John W. Andrew
Noah M. Andrew
Andrew Brown, Sr.
William F. Brown
James A. Charles
Mary M. Gregory
Paul J. Manumik, Sr.
Evan K. Polty, Sr.
Greg J. Roczicka
Aloysius J. Unok
Harry O. Wilde, Sr.

Members Absent:

Note: Mr. Noah M. Andrew was excused part of the morning session.
This note is intended to clarify roll call record results at the start of the meeting.

Meeting Participants:

Alex Nick, Carl Johnson, Tom Kron, Dr. David Jenkins, Don Rivard, OSM; Gerald Mashmann, USFWS; Dan Sharp, BLM; Patricia Petrivelli, Glenn Chen, BIA; Nicholai J, Alexie, Kwethluk; Gene Sandone, Yukon Delta Fisheries Association/Kwikpak Fisheries; LaDonn Robbins, Kuskokwim Native Association; Dave Runfola, ADF&G Subsistence Div. Fairbanks; George Pappas, Chuck Bazil, Alissa Joseph, Travis Elison, Eric Newland, Jody Lozori, ADF&G; Gene Peltola, Tom Doolittle, Louie Andrew, Robert Sundown, Dan Gillikin, James Sipary, Paul Crane, Darryl Sipary, Anthony Vlak, Yukon Delta NWR; Jackson Williams, Akiak; Sandra Nicori, Kwethluk; Jason Hale, Yukon River Drainage Fisheries Association; Tina Hile, Court Report;

Invocation

Harry O. Wilde, Sr. provided an invocation.

Welcome and Introductions

Chair Lester Wilde informed audience that public comments and concerns are welcome and that the comment form must be filled out. There will not be any time limit for public comments as there are not many agenda items to take care of. The Chair explained the proper procedures for each Federal regulatory proposal review.

Housekeeping items

Alex Nick provided housekeeping items and introduced two new Council members: Mr. Andrew Brown, Sr. from Mountain Village and Paul J, Manumik, Sr. from Nunam Iqua. Mr. Nick apologized about a memo that was sent to the Council members with wrong date and he informed Council that called Council members about it. He informed the Council the winter meeting location has been moved to Bethel after a meeting cost analysis was done. Meeting location was moved to Bethel because it would cost less to meet in Bethel. He informed Council and audience about the eating places in town. He informed the Council that the Council Operations Manual that is being revised and that a copy will be provided when it becomes available for distribution. He reminded Council members to stay within their travel plans as there were some problems with at least one airline ticket during travel to meeting location. He advised Council members to contact him or OSM travel staff should travel problems occur or travel changes are needed. He provided his contact information as well as OSM travel staff contact numbers.

Review and Adoption of Agenda

After a brief discussion and additional agenda topics were added to draft agenda, the Council took following action.

Motion

James Charles made a motion to adopt agenda as amended. Motion was seconded by Robert Aloysius. Motion carried.

Election of Officers

Chair Lester Wilde turned the Chair over to Alex Nick for election of a Chair. Results of Council officer elections are as follows:

Chair: Lester Wilde from Hooper Bay
Vice Chair: Greg J. Roczicka from Bethel
Secretary: Robert E. Aloysius from Kalskag

Coordinating Fisheries Committee (CFC) and Kuskokwim River Salmon Management working Group membership appointments

After discussion of current CFC and KRSMWG members, Council appointed following members.

Lower Yukon

Aloysius Unok from Kotlik
Evan K. Polty, Sr. from Pilot Station

Lower Kuskokwim

Robert E. Aloysius from Kalskag
James A. Charles from Tuntutuliak

Kuskokwim River Salmon Management Working Group

Robert E. Aloysius from Kalskag

Review and approval of Minutes from September 29-30, 2011

The Council waived approval of the draft minutes from its last meeting because they just received copy of their books at the start of the meeting. The Council did not had a chance to read through the draft minutes and review the actions recorded along with its action justifications. Council wanted to make certain actions recorded are correct before Council votes on approval of the minutes.

Reports

Alex Nick provided an update on the 805(c) Report which needs to be signed by the Chair before it's distributed to the Council.

Tom Kron informed Council the Federal Subsistence Board Chair has not signed 805(c) letters yet. Copy of the Federal Subsistence Board actions along with justifications were handed out to Council members for their information. Chair Lester Wilde read the Board actions into record and for Council's information. Mr. Kron provided clarifications on the ptarmigan harvest limit and season. He explained the Federal season is longer than the State's ptarmigan season. The Federal Subsistence Board adopted State limit on the ptarmigan harvest.

Mr. Don Rivard provided an update on the customary trade status and noted that Mr. David Jenkins was going to be presenting customary trade topic. Mr. Jenkins gave an update on this topic during fall meeting. Mr. Rivard stated there are no changes he is aware of since last update. This is the start of the Federal fisheries proposal cycle so Council could plan on submitting its proposal between now and end of March 2012.

Tom Kron added Mr. Rivard covered the report well and this is the time for Council to provide its comments on this issue. Mr. Kron said Mr. Jenkins is going to be presenting the customary trade issue and a wildlife proposal later during the Council meeting. Lower Yukon Council members participating in this meeting were invited to provide their comments on this issue. A Council member asked about the status of the customary trade proposal Council submitted during the last Federal fisheries cycle. The Board deferred that proposal to the Tri-Council customary trade subcommittee to come up with its recommendations for action. Mr. Kron said he understood the Tri-Councils will be submitting Federal regulatory change proposals during the current fisheries cycle. The Board is asking for actual Federal fisheries proposal relating to the customary trade this cycle. The Yukon River Drainage Fisheries Association addressed this issue during its Board meeting a week ago. When Federal fisheries proposals are submitted to the Board, the Council and the public will have an opportunity to comment on the proposed changes to the regulations. Mr. Kron advised the Council that it should hold off before it works

on its proposal until Mr. David Jenkins is given opportunity to report on the customary trade subcommittee recommendations to the Councils.

George Pappas with ADF&G informed the Council that the customary trade subcommittee met and came up with two recommendations to the Councils. The subcommittee will ask Council to review their recommendations on the options for Council action.

Greg Roczicka reported there has not been any Kuskokwim River Salmon Management Working Group meeting this winter. On March 27 and 28, 2012 there will be Kuskokwim Fisheries Interagency Meeting followed by Kuskokwim River Salmon Management Working Group Meeting in Anchorage.

Ms. Patricia Petrivelli (BIA) reported last meeting she gave an update on bear claw proposal and answered some questions about the customary and traditional use determinations (C&T). She noted that she had incorrectly answered a question relating to this proposal, saying that it applied to the region. She stated that Mr. Charles had previously been correct when he said the proposal does not apply to anyone in the Yukon-Kuskokwim Delta region.

Mr. Gene Sandone with the Yukon Delta Fisheries Development Association and Kwikpak Fisheries gave a report on the background of the Yukon River mesh size restrictions. In 2010 the Alaska Board of Fisheries enacted a regulation to limit the maximum mesh size of gillnets used in the Yukon River from large mesh to 7.5 inches effective with the 2011 summer season. He reported the Mountain Village test fishery uses 7.5 inch mesh while 2 ¾ inch all the way up to 8.5 inch mesh is used in Pilot Station test fishery. The Kaltag and Rapids subsistence test fisheries use 7.5 inch gear. The Eagle Sonar passage test fishery use 6.5, 7.5, and 8.5 inch mesh gear. Mr. Sandone noted that he runs the Little Salmon Escapement project in Canada and goes to the spawning streams and collects the age, sex, and size information from the fish that spawns in that river. Mr. Sandone provided much information about test fisheries results from the mouth of the Yukon River all the way up to Canada. He answered Council's questions about different harvests by different mesh sizes such as 8.5 inch versus 7.5 inch gillnets including age and gender compositions. Council followed Mr. Sandone's Powerpoint presentations closely and Council members asked Mr. Sandone to go back to the certain pages when they have any questions about the subjects discussed. Mr. Sandone's presentation was well taken by the Council.

Mr. David Runfola with ADF&G Division of Subsistence from Fairbanks answered some questions about test salmon fishery harvest distributions in the communities.

Public comment

Mr. Jackson Williams from Akiak provided public comments stating he was very young when his late father took him along and taught him about subsistence fisheries and activities. One time his late father did not harvest very much Chinook salmon so he

brought him farther downriver from Akiak area to Akiachak area to fish for salmon. He stated the subsistence fisherman in the Kuskokwim River are knowledgeable about fishing because they learn how to tell whether or not there would be some fish in the river by their personal observations of weather conditions, river water levels, and other indicators. One thing community of Akiak did in the past when ADF&G met in the community and proposed a weir project in the Kiseralik River for fishery research, the community of Akiak was very much opposed that idea. His late father was opposed to any kind of fishery projects because he was very concerned about salmon escapements to the appropriate salmon spawning streams. About five years ago he was setting a gillnet on the Kiseralik River, as soon as gillnet was stretched out the net immediately caught Chinook salmon. When a net bouy started to sink he was checking the net and he had caught about 70 Chinook salmon already. When he fished for about a day he harvested over 100 Chinook salmon and that number of salmon was enough for the winter supply. Mr. Williams said this last spring, there was a lot of Chinook salmon migrating upriver. He went out subsistence salmon fishing between 4:00 – 500 a.m. and he harvested many Chinook salmon in just a short time. Other person who went out earlier made a drift before he did that person harvested about 30-40 Chinook salmon in just one drift. Last summer he made a great effort to subsistence fish for salmon because he learned from the community meeting with ADF&G what was to come and he harvested just a few fish at that time. He noted that approximately 12-13 day salmon fishing closures adversely affected subsistence salmon fishing last year. Mr. Williams also expressed concerns about the Bering Sea salmon bycatch issue.

Customary Trade

David Jenkins updated the Council on the subcommittee recommendations on customary trade. The subcommittee, which is made up of representatives from the Yukon-Kuskokwim Delta Subsistence Regional Advisory Council, the Western Interior Regional Advisory Council, and the Eastern Interior Regional Advisory Council, came up with two recommendations:

1. The customary trade of Yukon River Chinook salmon may only occur between Federally-qualified rural residents with a current customary and traditional use determination. (Preferred recommendation)
2. Preclude customary trade of Yukon River Chinook salmon between rural residents and others and establish a \$750 limit per household per year and to require a recordkeeping form and a receipt form.

Mr. Jenkins said the Yukon-Kuskokwim Delta Subsistence Regional Advisory Council could submit a proposal to change customary trade regulation for Yukon River Chinook salmon. A Council member asked who would be responsible for recordkeeping files. Mr. Jenkins answered that the recordkeeping form and the receipt would be distributed and that exact type of recordkeeping forms are not yet decided. There are examples from Bristol Bay and Copper River that can be used as a sample to develop recordkeeping documents. A Council member indicated if \$750 worth of fish were sold it would be too cumbersome to keep separate records and receipts.

The Council discussed potential proposals that put the subsistence use for personal and family consumptive needs over customary trade.

Jason Hale with the Yukon River Drainage Fisheries Association (YRDFA) gave an update on what the YRDFA Board did a week ago. A resolution was passed by the YRDFA Board last week when they met in Galena. Mr. Hale read YRDFA's resolution into the record and for the Council's information.

One of the Council members asked if previously submitted customary trade proposal Council submitted last fisheries cycle is now a dead proposal. Answer is that it was deferred by the Board to the Tri-Councils customary trade subcommittee to work on the issue and to come up with subcommittee recommendations. YRDFA's resolution would only apply when there are poor Chinook salmon returns to the river.

Greg Roczicka offered to draft two of the Federal customary trade regulatory change proposals and was given a go forward permission by the Council.

After a much discussions of the customary trade issues and potential proposals, clarifications of the customary trade issues, and discussing information exchanges, the Council took following actions.

Motion

Mr. Greg Roczicka made a motion the Council should submit a proposal reflecting tri-Council recommendation number one as a proposal. Draft or sponsor a second proposal prioritizing subsistence use of the Yukon River Chinook being personal and family consumptive over customary trade. And third proposal requesting the Federal Subsistence Board develop enforceable definitions of significant commercial enterprise. Motion was seconded by Ms. Mary M. Gregory. Motion carried.

Motion

Greg Roczicka made a motion Council sponsor a proposal to prioritize use of personal and family consumptive needs over all other uses. Motion was seconded by Mr. James A. Charles. Motion carried unanimously.

A Council member noted that it was an ongoing problem that the resource management agencies are not accountable to the subsistence priority and added the Federal Subsistence Board should be held responsible to the subsistence priority and apply it also to the Wilderness Act and other issues that were referenced in the Unimak Decision that were elevated to an equal status.

During discussion of another potential proposal Council recalled the first customary trade proposal this Council submitted in the past and placed a limit of \$750 per household on customary trade of salmon. Council discussed fuel and other costs associated with subsistence fishing. Some members thought \$750 is a bit too high while others indicated

the people they represent said that \$750 is too low and they would agree with \$1,500 limit.

Alex Nick, Council Coordinator for the Yukon-Kuskokwim Delta Subsistence Regional Advisory Council (YKDSRAC) and the Seward Peninsula Subsistence Regional Advisory Council (SPSRAC), noted that the SPSRAC was in support of customary trade because they trade salmon with the people from the Yukon River.

After a lengthy discussion about a salmon customary trade dollar limit, the Council took following action.

Motion

Aloysius J. Unok made a motion to place \$750 limit per household on the Yukon River drainage customary trade of salmon. Mary Gregory seconded the motion. Motion carried with a vote of 11 for, one against, and one abstaining.

Regulatory proposals - WP10-69(Deferred)

David Jenkins with OSM presented the analysis for proposal WP10-69, which requests the recognition of customary and traditional use of moose in Unit 21E for residents of Lower Kalskag, Upper Kalskag, Aniak, and Chuathbaluk. The proposal was submitted by the Kuskokwim Native Association.

Motion

Robert E. Aloysius made a motion to support proposal WP10-69 with original modifications to include only the area of Unit 21E south of Paimute Slough. Motion was seconded by Greg J. Roczicka.

Ms. Vivian Changsak from Lower Kalskag provided public comments on behalf of the Lower Kalskag tribe. The community of Lower Kalskag and the people living in the area do hunt moose within the proposed area. The people in the proposed area have some concerns about whether moose populations might decline if C&T is granted to the Kuskokwim communities. There are just a few people that hunt in the proposed area. Local people believe they have a traditional right for the resources within the proposed area. The Kuskokwim Moose Moratorium caused local people to utilize wetlands outside of the Kuskokwim Moose Moratorium to hunt moose. In Unit 19A there are hardly any moose left. Ms. Changsak is a moose hunter but she and others have not harvested any moose for a six year period due to State Tier II situation in Unit 19A. Local people get their meat supply from AC Store located in Aniak. This has caused a hardship to some of the local people.

The Council supported the original deferred proposal.

The motion passed with a vote of 11 for, and one abstaining.

Agency reports

Don Rivard with OSM gave an announcement for a call for proposals to change Federal fisheries subsistence regulations. He also provided a chum salmon bycatch update. The North Pacific Fishery Management Council (NPFMC) is going to meet in Anchorage on March 26, 2012 to review and revise analysis of chum salmon bycatch in the Bering Sea and Aleutian Islands area. NPFMC plans to finalize its recommendations to the Secretary of Commerce for its June, October, or December 2012 meeting.

Mr. Paul J. Manumik asked about possibility to submit a proposal for customary and traditional use determinations in the Norton Sound fishery district near St. Michael. Mr. Rivard informed Mr. Manumik the Yukon River communities do not have a customary and traditional use determination in St. Michael area. Mr. Manumik stated many of the young subsistence salmon fishers from lower Yukon are planning to fish for Chinook salmon in the Norton Sound Fishery District near St. Michael this summer.

Motion

Ms. Mary M. Gregory made a motion to direct Council Coordinator draft a customary and traditional use determination proposal requesting Lower Yukon River communities be granted C&T for Chinook salmon in the Norton Sound District near St. Michael. Seconded by Mr. Paul J. Manumik, Sr.

Ms. Pat Petrivelli explained customary and traditional use determinations and she explained where there is no specific C&T determination, all rural residents are eligible to fish in that area.

Alex Nick informed Council that a proposal would become a crossover proposal between the Seward Peninsula Subsistence Regional Advisory Council and the Yukon-Kuskokwim Delta Subsistence Regional Advisory Council. This would depend on the fishery management jurisdiction and if area is in marine waters.

Mr. George Pappas with ADF&G explained that if area of interest is in marine waters, all State residents would be eligible to fish in the area

Mr. Gene Sandone said he is familiar with that area from previous work experience. Yukon River bound Chinook salmon are harvested in that area because it is within Yukon bound Chinook migration route. Sometimes Yukon bound Chinook salmon are harvested in Unalakleet area. If people from Yukon fishes in the marine waters for Chinook salmon, they are fishing in compliance with the State regulations, not Federal regulations. So residents of the State are eligible to fish for salmon in that area of interest.

The motion carried with vote of 11-2-0

Yukon Delta National Wildlife Refuge

Robert Sundown, Subsistence Resource Specialist with the Yukon Delta National Wildlife Refuge, reported the Board adopted a proposal to reduce the caribou season by a

couple of weeks. The Refuge had submitted a special action request to reduce caribou season by two weeks on Federally managed lands south and east of the Kuskokwim. The bull ratio is approaching the bottom end of the management objectives. Approximately 50-100 snowmachines hunting caribou were noted last year toward the end of caribou season.

Council asked whether or not moose hunting in Unit 18 would be extended should caribou season be reduced. Gene Peltola, Refuge Manager answered that is an option that could be considered which was not considered by Refuge staff. Last couple of years, moose season has been liberalized in conjunction with the State season. Mulchatna caribou herd comes to winters in the Yukon Delta and the herd's population has been declining from approximately 200,000 animals in the past to about 30,000 animals which is bottom end of the management regime established for the herd. Mr. Peltola shared information how the U. S. Fish and Wildlife Service participates in the census of caribou with the Alaska Department of Fish and Game. There have been some discussions about initiating Mulchatna Caribou Herd Working Group again, but it is not known at this time as to when or if that will happen.

Public comment

Mr. Jackson Williams commented about four or five years ago he saw many caribou. He never saw so many wolves in the area before. He shared information about people observing increased number of wolves.

Mr. Nicholai Alexie provided public comments stating there should be a special action request to decrease caribou season and he provided some options to consider and a special action request to extend the moose season in Unit18 remainder.

After a lengthy discussion with Refuge staff and additional information provided to them the Council took following action.

Motion

Aloysius J. Unok moved to support a special action to reduce caribou season by two weeks in Unit 18. Caribou season in Unit 18 would close on the last day of February. Motion was seconded by Greg Roczicka.

The motion carried on a vote of 7-4-2.

Robert Sundown stated that regardless of FSB action on this special action request to reduce caribou season, the Refuge would consider going forward with an extension for Unit 18 remainder winter moose season. Council's support of a moose season extension in Unit 18 remainder would assist Refuge staff in moving forward with a special action to extend winter moose season in Unit 18 remainder.

Motion

Greg J. Roczicka moved to support a special action request to extend Unit 18 remainder winter moose season additional 15 days. The motion was seconded by Mary M. Gregory.

Council members stated they were hopeful the Yukon Delta National Wildlife Refuge would co-sponsor a special action request to extend Unit 18 winter moose season for additional 15 days. The Council noted its preference that an extension start from the time the Federal Subsistence Board adopts a special action request to extend moose season in Unit 18 remainder.

The motion passed unanimously.

Togiak Refuge Bulletin

Alex Nick informed Council the Togiak Refuge Bulletin is included in the workbook.

ADF&G Board Support – Bethel

Ms. Alissa Joseph, Coordinator with ADF&G Board Support gave an update on the Board Support and also represented Youth of the Yukon-Kuskokwim Delta as well. Ms. Joseph will be coordinating the Western, Southern, and possibly Arctic region by year 2013. Ms. Joseph discussed a proposal process and she answered the Council's questions relating to the open State proposal cycle; proposal forms have been distributed. Ms. Joseph updated the Council about the Conference of the Young Alaskan in 2012 consisting of approximately 143 students. Youth of the Yukon-Kuskokwim Delta participants came up with some questions that asked what will happen in the next 50 years from now in terms of subsistence resources. Ms. Joseph did not sign some of the proposals this group compiled because she did not agree with some of them relating to safety, policies, and regulations affecting subsistence. She touched some areas such as globalization of advertisements about the Yukon River Chinook salmon on global salmon market. Issues relating to the natural resources including Bering Sea Pollock fisheries were on the table for their discussions. She indicated the Youth of the Yukon-Kuskokwim Delta plans to do something about enhancing salmon returns for the future generation's benefit. The group plans to address declining salmon population issues for their future involvement in fisheries management issues. Ms. Joseph is going to work on their plans for the next year's school cycle working with the regional schools leadership team.

U.S. Fish and Wildlife Service (USFWS) - Fairbanks

Mr. Gerald Mashmann provided an update on the Yukon River salmon fisheries. Stocks have experienced a decline in production over the last few years. Current run sizes are about half of the historic levels making it difficult to meet escapement goals and to provide for subsistence uses on the river. Conservation measures will be required in an effort to meet escapement goals and share the available subsistence harvest. Area managers need the Council's continued support carrying out management strategies and options for 2012. During this winter and spring State and Federal fisheries managers will attend several meetings to inform fishers and user groups about the 2012 outlook and receive input on the management options for the summer season. In 2009 managers limited fishing in the Yukon River in the Federal waters to Federally qualified users. This option was not implemented in 2010 and 2011. Mr. Fred Bue, Yukon River fisheries

manager would like Council's input on this as he is consider implementing these options in 2012 season.

National Park Service

No report

Bureau of Land Management (BLM)

Mr. Dan Sharp updated the Council on its proposed Guide Concession Program on its website they were working on since 2007. Guide use areas were found unconstitutional in 1988. Since then there hasn't been a coherent guide program for big game on BLM managed lands. BLM is the only Federal agency that does not have a guide capacity number for lands the agency manages. BLM will be in compliance with the requirements of the National Environmental Policy Act (NEPA, including an open comment period of 60 days. BLM has heard areas of concern regarding some areas such as the Squirrel River and the Dalton Highway for sheep.

Joint Fisheries Update

An update was provided by Mr. Dan Gillikin, fisheries biologist with the Yukon Delta National Wildlife Refuge and Mr. Chuck Brazil, with ADF&G. Last season on the Kuskokwim River the salmon return outlook was for a poor return of salmon And in the past, a number of tributaries had not achieved escapement goals. The U.S. fish and Wildlife Service is working with the Alaska Department of Fish and Game and the Kuskokwim River Salmon Management Working Group to come up with some preseason management strategies to restrict subsistence salmon fishing. Some include: closing Chinook salmon fishing with rod and reel and gillnets on the Kwethluk River, Kiseralik River, Kasigluk River, Kuskokuak Slough and the Tuluksak River. Bethel test fisheries also continued to indicate that there is a poor salmon run based on catch per unit effort (CPUE) results. The total run last year was about 135,000 Chinook salmon. Preliminary subsistence harvest currently estimate about 59,250 Chinook salmon.. Commercial salmon fishing in the Kuskokwim River last year did not occur until 90 percent of the Chinook salmon run had passed on 5th of July. Total harvest was about 60,000 fish. Salmon run was approximately 40% t less than the previous years. In the future people will be asked to be conservative while fishing. Subsistence harvest was significantly lower than the 10-year average which was about 73,000. They reported on sockeye, chum salmon, and Coho salmon returns and other harvest information. Based on outlook information for Chinook salmon, there is going to be sufficient and reasonable Chinook salmon subsistence opportunity and the summer season will start with a 7 day per week season. Mr. Gillikin and Mr. Brazil also answered the Council's questions about previous year season and enforcement activities on the river and tributaries. Mr. Eric Newland and Ms. Lori Lozori with ADF&G gave an update of the Yukon River summer season fishery management status. Ms. Lozori is a Pilot Station Sonar project leader. Ms. Lozori stated the sonar monitors approximately 150 meters out from the shore. As for the improvements, ADF&G used side scan sonar that is deployed from the boat. Side scan is just a feasibility project because ADF&G is trying to add a new technology to improve salmon passage estimates. The side scan has experienced some problems because there is some silt near the left bank where this is being used. Example

of problems with silt in the water is as if a snowmachine driver driving in a snow storm could hardly see which direction he is going.

Mr. David Runfola provided an updated regarding the index community baseline study conducted on the Yukon River. The purpose of the study is to develop a method of estimating subsistence harvest in an area by obtaining samples from communities and conducting a comprehensive survey of resources. The survey includes large and small game, salmon, non-salmon, freshwater fish, birds, eggs, edible plants, and other subsistence resources. In 2011 the survey was completed in five Yukon villages including Marshall and Mountain Village. The Donlin Creek Mine Subsistence Baseline Project is a large multi-year project funded by Donlin Gold LLC. The purpose of the project is to document subsistence harvests and related traditional knowledge, economic and demographic data in the Yukon and Kuskokwim communities. The Subsistence Harvests in 8 Communities in the Central Kuskokwim River Drainage was completed in 2009 which is phase I. Phase II covers communities of Tuluksak, Akiak, Kwethluk, and Oscarville and was completed in 2011. There were concerns in Unit 19A communities surveyed where moose hunting is closed because of population declines in the area. A subsistence resource harvest survey in Bethel will start on March 8, sampling about 474 households. Approximately 10 local individuals will be hired as temporary employees to complete the survey work.

Public Comment

Mr. Nicholai Jacob Alexie representing Kwethluk Incorporated provided public comment regarding 2011 subsistence salmon fishing season closures on Kwethluk River, Kiseralik River, and Kuskokuak Slough. Subsistence fishers had no choice but to travel below Bethel to harvest needed fish. It posed hardship on subsistence fishers in terms of spending money, time, and hardly filled drying racks. He recommended that in the future should closures occur, the entire Kuskokwim should be closed from the head waters to Kuskokwim Bay. Subsistence uses has to come first before any commercial or sportfishing occurs. When there was closure in Kethluk area, subsistence fishers came downriver to harvest more fish trying to put away fish while drying weather was good.

Ms. Sandra Nicori from Kwethluk commented on the hardship they endured last summer regarding closures. Whenever resource managers close one area, all areas should be closed for harvest of resources. She used an example of a certain crime committed and procedures for enforcement and citation for that crime is used. A person indicated during community meeting that windowed subsistence fishing schedule was acceptable a few years ago. When restrictions are placed and a short fishing season is allowed, it becomes chaotic. Fishing areas are crowded and people hardly harvest what they need. People and subsistence resource managers needs to work together to solve these problems.

A Council member suggested when agenda is put together, public comments should be up front so people don't have to wait too long to provide public comments on issues.

Mr. Greg J. Roczicka, Director of Natural Resources with Orutsarmiut Native Council (ONC) gave a brief report on regular projects ONC plans to conduct. The ONC inseason projects have been in place for several years with activities such as bio sampling as well

as working with the Bethel Test Fishery. ONC has a program to provide fish to the Senior Center in the community.

Ms. LaDonn Robbins with the Kuskokwim Native Association (KNA) gave an update of the KNA projects representing Mike Thalhouser who could not attend. KNA has a program to hire high school and college students as interns. KNA is working with Kuspuk School district to put together lesson plans that can be used by Kuspuk School teachers. Lessons would be used in schools without educator or biologist presence in schools. KNA will be working on a new project for the location, migration timing, and description of the Kuskokwim Bering cisco spawning origins. This project will commence this summer.

Mr. Jason Hale with the Yukon River Drainage Fisheries Association (YRDFFA) gave a report on YRDFFA programs. Preseason planning meetings have been conducted during the first week of April annually and may discontinue due to lack of funding. A mail-out will go to every tribal entity in the Alaska portion of the Yukon River drainage asking for a representatives and giving topics of discussion for them to talk about at their next tribal council meeting. Mr. Hale asked for YKDSRAC representative, and Mr. Andrew Brown, Sr. was appointed to attend April 4th meeting in Anchorage. YRDFFA is working with fisheries management agencies and organizations to put together Yukon River King Salmon Management Plan because of the recent decline of Yukon River Chinook salmon. Last year YRDFFA put together a resolution requesting a unified king salmon conservation plan. Mr. Evan K. Polty, Sr. was appointed to participate in the committee meetings. Mr. Hale read into record the things that were brought up by the group but were not totally agreed upon by the group. Mr. Hale distributed a form for Council members to fill out and picked up completed forms to indicate which of the four ideas are supported.

Old Business

Draft 2011 Annual Report

The Council wanted to review the document before they take action. After a brief discussion of draft 2011 annual report, the Council decided to review it after the meeting and agreed to provide additional issues to the coordinator after their review of the draft document.

Motion

Robert E. Aloysius made a motion the Council take home the Draft 2011 Annual Report, review and provide additional issues to the Council Coordinator. Greg J. Roczicka seconded the motion.

Motion passed unanimously.

New Business

Gates of the Arctic – Hunting Plan Recommendation 11-01

Carl Johnson with OSM presented the Gates of the Arctic National Park Subsistence Resource Commission (SRC) recommendation on page 70 of Council workbook. The GOA SRC recommended to the Secretary of the Interior an increase in the per diem for

State of Alaska Subsistence Resource Commissions and the Federal Regional Advisory Councils. The request does not request a specific amount and it is uncertain if an increase is possible due to budget concerns. The The Seward Peninsula Subsistence Regional Advisory Council did not take any action on this request.

Motion

Robert E. Aloysius made a motion to support SRC's Hunting Plan Recommendation 11-01. The motion was seconded by Aloysius J. Unok.

Motion carried.

Association of Village Council Presidents special Convention

Robert E. Aloysius informed the Council that the Association of Village Council Presidents (AVCP) is having special convention on the state of our salmon March 6- 8. Mr. Aloysius encouraged the Council to provide a representative. Mr. Aloysius wanted to know if it would be possible to allow one of the four Kuskokwim River Salmon Management Working Group members who are on this Council providing it is affordable. Information on the state of our salmon was provided by Don Rivard with OSM, Dan Gillikin with Yukon Delta NWR, and Ms. Eva Patton with Orutsararmiut Tribal Council. After discussion about the convention and information exchange, Council took following action.

Motion

Ms. Mary M. Gregory made a motion to approve two Council members attend AVCP Special Convention March 6- 8. The motion was seconded by Mr. Robert E. Aloysius.

Motion carried.

Tribal Consultation

The Council and staff discussed the Draft Tribal Consultation Policy during the last Council meeting. The Federal Subsistence Board is asking for Council's input on the draft tribal consultation policy.

Future meetings

October 10-11, 2012 in Quinhagak

February 27-28, 2013 in Bethel

Closing comments

- Mary Gregory welcomed Mr. Andrew Brown, Sr. to the Council membership. She made special a mention about Ms. Alissa Joseph who made her presentation earlier about ADF&G and Youth Group. She asked everyone to encourage more people in the villages to get involved in Council meetings because some of the current Council members will not be Council members very much longer.

Current Council needs people to take over Council's responsibilities and should not be afraid to bring up any issues affecting subsistence and bring forward challenges to achieve goals.

- Mr. William F. Brown stated there should be better planning for the Council meetings. Last minute Council meeting preparations have some disadvantages..
- Mr. Robert E. Aloysius expressed concern about one day Council meetings.
- Mr. Paul J. Manumik, Sr. appreciates Mr. Aloysius's comment about one day meeting and he truly agrees because meeting and presentations are not prepared very well. The Council needs to receive all of the Council meeting materials in advance to review them and be prepared.
- John W. Andrew brought up his concerns and his disappointments about not receiving Council meeting books a couple of weeks earlier. He commented about travel issues. He said he talked in the past to Alex Nick for years about this issue and he asked if it's possible to choose their own airlines to travel with because Council members knows which airlines serves their villages better. Whenever he travels and is in the airports he sees sport fishers transporting salmon out of the area. There is same information disseminated all over such as in Fairbanks area where his relatives travel to or lives. He does not have any problem with anyone bartering resources but he has problems with the customary trade of subsistence caught salmon. He went on and pointed out areas where the issues are statewide. Biggest problems occur with trawl fishery which harvests salmon incidentally. Salmon do not return to the spawning areas like Kwethluk River, Tuluksak River, Kiseralik River and other spawning streams. He also mentioned predator control. There are too many wolves and wolves mainly prey on the caribou herd. Other predators are bears. Bears not only prey on big game, bears also raid important subsistence fish campsites. Other areas of concern he brought up are mineral mining operations in the area such as in NYAC, Platinum, and Red Devil. These mining operations affect freshwater like sheefish, whitefish and northern pike. Freshwater resources are affected and contaminated because of mercury and arsenic presence in the water.
- Mr. Noah M. Andrew would like to know the status of moose calves in the Yukon River. Mr. Andrew indicated the wolves are all over and something needs to be done about wolves. There are so many wolves and sometimes moose are driven to villages of Akiak and Tuluksak. Even tundra hare are moving into the village boundaries because of wolves. There were some problems with weir salmon passage in the past. Salmon were unable to pass over the weir and as a result salmon mortalities occurred in Tuluksak River. Weirs need to be modified so there will not be any salmon floating down the river below weir operations. Local people who worked for the weir project in the Tuluksak River have spoken to the local elders about salmon mortality they witnessed in the past.

- Mr. Aloysius J. Unok thanked Council for supporting Yukon-Kuskokwim Rivers dealing with regional fishery issues. The Council's support for Unit 18 is very much appreciated.

Adjournment

Meeting was adjourned at 8:00 p.m.

First draft minutes from February 23, 2012 was completed by Alex Nick, Council Coordinator on July 23, 2012.

Draft
Yukon-Kuskokwim Delta Subsistence Regional Advisory Council
Meeting Minutes
October 10-11, 2012
Yupiit Piciryarait Cultural Center
Bethel, Alaska
9:00 a.m.

Meeting was called to order by Robert E. Aloysius, Acting Chair

Roll call by Alex Nick, Council Coordinator

Members Present

Robert E. Aloysius
James A. Charles
Evan K. Polty, Sr.
Mary M. Gregory
Harry O. Wilde, Sr.
Noah M. Andrew
John W. Andrew
William F. Brown
Lester Wilde
Greg J. Roczicka

Members Absent

Andrew Brown, Sr. excused
Paul J. Manumik, Sr. excused

Meeting Participants

Alex Nick, David Jenkins, Don Rivard, Chris McKee(online, Trent Liebich (online),OSM; Merideth Downing, Court Reporter; Gerald Maschmann, FWS; Patricia J. Petrivelli (ISC), Gene Burton, Director BIA; Steve Kessler (ISC), Nancy Swanton (ISC) NPS; Tim Towarak, FSB Chair; Jill Klein, YRDFA; LaDonn Robbins, KNA; Casie Stockdale AVCP; Jeff Estenson, Chris Sheldon, Phillip Perry, Jeff Park, Travis Elison(online), ADF&G; Steve, Miller, Robert Sundown, Spencer Rearden, Louie Andrew, USFWS; Steve Kessler,USFS (ISC); Roberta Chavez,ONC; Kevin Bartley

Invocation

Invocation was given by Mr. James A. Charles.

Welcome and Introduction

Mr. Robert Aloysius welcomed everyone to Bethel. Mr. Aloysius also welcomed Mr. Tim Towarak, Chair of Federal Subsistence Board, to Bethel.

Review and Adoption of Agenda

Council reviewed draft agenda and added Jill Klein's report just before Board of Fisheries proposals at 9C. Alex Nick informed the Council member Greg Roczicka would like to be part of escapement goals discussion when he returns on the second day.

Motion

Mr. James Charles moved to adopt agenda as revised. Motion was seconded by Ms. Mary Gregory. Motion carried.

Review and Approval – Previous Meeting Minutes

Alex Nick suggested the minutes be reviewed after Chair Lester Wilde arrives. Council felt Chair Wilde may have some comments or discussion relating to the minutes so they decided to table review of draft minutes until later.

Motion

Ms. Mary Gregory moved to suspend reading of the minutes until later. Motion was seconded by Noah Andrew. Motion carried.

Reports

David Jenkins and Alex Nick informed Council that 805(c) letter has not yet been signed.

Acting Chair Robert E. Aloysius did not have any report to give.

Mr. James Charles gave a report about Kuskokwim River Salmon Management Group meetings over the past summer. He indicated that at the start of the meeting he did not see any agency staff present at the meeting. He acknowledged Robert Sundown and Don Rivard for their presence. He mentioned agency staff involved with the Kuskokwim River Salmon Management Group should provide information to the Council.

Ms. Mary Gregory indicated she did not have any report about the Bear Claw Committee because she has not attended any recent meetings of the committee.

Public and Tribal Comments on Non-Agenda Items

Mr. Paul Jenkins of Bethel provided comments relating to the historical salmon fishing in the Kuskokwim River. Mr. Jenkins used examples of Lower 48 farmers who scatter seeds in their farms and in Alaska, indigenous people in much of the same way prepared to harvest subsistence resources in similar fashion by putting away everything dried for winter food supply. In springtime indigenous people would harvest everything they could and dry everything as supplemental food from the northern area all the way to the Aleutian Islands. He noted that in the old days they would follow Chinook salmon migration when they missed the big run. At this point and time he said his family harvested hardly any Chinook salmon and had already almost run out.

2012 Fishing Season Review Yukon and Kuskokwim Rivers (ADF&G and USFWS

Mr. Gerald Maschmann with USFWS gave an update about the past summer Lower Yukon River salmon fisheries.

2012 Fishing Season Review Yukon and Kuskokwim Rivers

Gerald Maschmann with USFWS and Jeff Estensen with the Alaska Department of Fish and Game provided an update on the lower Yukon River salmon fisheries and the Kuskokwim River salmon fisheries.

Review and Actions on 2013-2015 Federal Fisheries Proposals

FP13-01

Mr. Don Rivard, USFWS, provided the analysis of FP13-01 Federal fisheries proposal. Mr. Jeff Estenson with the Alaska Department of Fish and Game pointed out where to find ADF&G comments for the proposal in the Council work book. The analysis starts on page 71, line 8 in the transcripts.

Motion

Mr. James Charles made a motion to support proposal FP13-01. Motion was seconded by Mr. Robert Aloysius.

The Council was in agreement with the Office of Subsistence Management's staff analysis and conclusion.

Motion carried with vote of 7-0.

FP13-02

Don Rivard provided analysis of the proposal and Mr. Estenson read ADF&G comments. Analysis of the proposal starts on page 78, line 5 in the transcripts.

Motion

Robert Aloysius made a motion to support proposal FP13-02. Motion was seconded by James Charles.

A Council member needed some clarifications on the removal of lobes and how far down lobes would have to be cut.

Council was in agreement with the Office of Subsistence Management's staff analysis and conclusion.

Motion carried with vote of 7-0

FP13-03

Don Rivard provided analysis of the proposal and Mr. Estenson read ADF&G comments into record.

Motion

Robert Aloysius made a motion to support proposal FP13-03. Motion was seconded by James Charles.

The Council discussed the proposal as follows. When subsistence users travel a long distance to harvest what they need for their food supply, it is not considered sport fishing. Subsistence fishers want to harvest as many as they could and sometime they return on a same day. Subsistence fisherman travels a long distance to harvest what they need and at times remains in the area for 5, 6, or even up to 10 days. To travel a long distance costs subsistence fishers a lot of money in consideration of costs for gasoline, supplies and food.

Motion failed with vote of 0 for, 7 against.

FP13-06, FP13-07, and FP13-08

Dr. David Jenkins with the Office of Subsistence Management provided analysis of proposals FP13-06, 07, and 08. Mr. Estenson provided ADF&G comments for proposal 06, 07, and 08.

Motion

Mr. Robert Aloysius made a motion to support proposals FP13-06, FP13-07, and FP13-08. Motion was seconded by Mr. James Charles.

Council was in agreement with Office of Subsistence Management's staff analysis and conclusion found on page 77 of the Council's workbook.

Motion carried with vote of 7 for and 0 against.

FP13-09 and FP13-10

Dr. David Jenkins provided analysis of proposal 09 and 10. Mr. Estenson provided ADF&G comments on proposal 09 and 10.

FP13-09

Motion

Robert Aloysius made a motion to support proposal FP13-09. Motion was seconded by Mr. James Charles. Motion carried with vote of 5 for, and 2 against.

FP13-10

Motion

Mr. Robert Aloysius made a motion to support proposal FP13-10. Mr. William Brown seconded the motion.

A Council member expressed concern as to who would monitor customary trade activities. After a brief discussion and clarifications of these proposals, it was decided Council would take separate actions for these proposals.

Original reasons for submitting these proposals are in Council's workbook on page 88 and serves as the Council's justification for supporting the proposal.

Motion carried with vote of 5 for, and 2 against.

FP13-11

Dr. David Jenkins provided analysis for the proposal. Mr. Estenson read ADF&G comments into record.

Council heard proposal analysis and supports the proposal. Original reason for this proposal is in Council's workbook on page 98.

Alaska Department of Fish and Game (ADF&G) provided a new comment on proposal FP13-11. ADF&G supported the intent of the proposal and deferred monetary amount to the Regional Advisory Councils.

FP11-08

Council took no action on proposal FP11-08. Motion was made to support the proposals but died due to lack of a second.

Coordinator's note on FP11-08:

When Federal Subsistence Board (FSB) deferred this proposal in January 2011, FSB wanted to form tri-council subcommittee to deal with this issue and that the Regional Advisory Councils members take part in the subcommittee functions. It is important to note Federal Subsistence Board amendment at that time changed the word "salmon" to "Chinook salmon".

Interagency Staff Committee (ISC) comment was that, ISC wanted to know what "insufficient run" meant and ISC felt this needs clarification.

Ms. Patricia Petrivelli asked for clarifications for the justifications of Council actions she recorded for the customary trade proposals. The differences of the proposals Council made recommended on for adoption by FSB are different because for 06, 07, and 08, Council recommended the Federal Subsistence Board adopt these proposals as modification by OSM. Council recommended proposals 09 and 10 be adopted while OSM conclusion is to reject these proposals because these proposals were not the same. After a brief discussion Council decided not to change its justifications on Council actions for these proposals.

Yukon River Drainage Fisheries Association (YRDFA)

Ms. Jill Klein provided an update on Yukon River salmon fisheries and she shared information about YRDFA teleconference information and participating communities in the Yukon River. Ms. Klein updated the Council the YRDFA Chinook Salmon Management Plan and what YRDFA Board of directors did.

Summary of Council Comments on Board of Fisheries Proposals

Don Rivard with the Office of Subsistence Management assisted and guided the Council on discussions of Board of Fish proposals specific to the Yukon and Kuskokwim regions. The Council spent great deal of time reviewing and discussing the State Board of fish proposals with agency staff and other organization staff. Council took action on each of the Board of Fish proposals list below. Council recommendations were as follows:

PROPOSAL 104 Review amounts reasonably necessary (ANS) for subsistence for salmon in the Kuskokwim River drainage.

Support the intent of the proposal to determine amounts necessary for subsistence, not proposed ANS numbers.

PROPOSAL 105 Update and clarify *Kuskokwim River Salmon Rebuilding Management Plan* and strategies

Take no action because subsistence fisherman are regulated while trying to harvest fish.

PROPOSAL 106 Adopt drainage wide optimum escapement goal (OEG) for king salmon in the Kuskokwim River, adjust tributary goals accordingly, and add pre-season and in-season management tools

Supporting the proposal is appropriate.

PROPOSAL 107 Allow subsistence taking of 10 or more king salmon only for drying and cold-smoke use in the Kuskokwim River Area.

Oppose the proposal. Some subsistence fisherman fish for multiple families.

PROPOSAL 108 Require a permit and reporting requirements for all subsistence-caught salmon transported out of the Kuskokwim Management Area

Support the proposal. Unknown and unlimited number of salmon leaves Bethel area.

PROPOSAL 109 Allow for sale of subsistence-taken finfish in the Kuskokwim River Area

Support the proposal. This proposal follows proposal 108. \$500.00 figure comes from Kuskokwim while other figures like \$250.00 originates from Norton Sound area.

PROPOSAL 110 Remove the option for gillnet mesh to be up to 8 inches in District 1 of the Kuskokwim River Area

Support the proposal. This proposal will allow additional escapements of salmon.

Old Business

Memorandum of Understanding

Steve Kessler provided information on the Memorandum of Understanding between the Federal Subsistence Board and the State of Alaska. Council provided its comments and took action following its comments.

Council needed further clarifications on the predator control, issuing special actions or emergency orders, and needed clarifications of 75% Regional Advisory Council approval information.

Council expressed its appreciation to the agency staff for using laymen terms instead of scientific terms in the document provided.

Some of the Council members stated they do have some difficulty understanding written scientific terms especially those who spoke English language as second language.

Council appreciated the way MOU is written, although some parts of the MOU may not be fully understood by Council members with limited English proficiency.

The word “local” in the document was stricken from the document. Credit should be given as appropriate to a group of people, community, or region. Those who share their knowledge should get credit for sharing Traditional Ecological Knowledge (TEK).

Scientific knowledge is not widely used or available in some communities. The term “local” is difficult to define in some areas because fish and wildlife are migratory. Scientific and local knowledge does not cover all areas of knowledge applicable to subsistence users.

After Council comments were provided, Council took following action.

Motion

Robert Aloysius made a motion to support the Memorandum of Understanding between Federal Subsistence Board and the State of Alaska as modified as of October 10, 2012. Ms. Mary Gregory seconded the motion.

Motion carried with vote of 9 for and 0 against.

Tuntutuliak Community Resolution

Alex Nick brought to the Council’s attention a resolution hand carried by ADF&G staff from Tuntutuliak. The resolution requested ADF&G place a regulatory marker change in the lower Kuskokwim River. Alex Nick read the “Now therefore be it resolved” part of the resolution into record.

New Business

Regulatory Cycle Review

David Jenkins updated the Council on Regulatory Cycle Review. He informed Council several Regional Advisory Councils wanted the fall meeting window expanded to a later date. After a brief discussion Council took following action.

Motion

Greg Roczicka moved the fall Council meeting window be extended to month of November. Motion was seconded by James Charles. Motion carried with one opposition.

David Jenkins presented second issue, the date of the Federal Subsistence Board meeting. Should FSB meeting be moved to a later date in the calendar? Council discussed winter activities such as dog races including religious feast days that occur in early and latter part of January. There were discussions about State wildlife cycles and Federal wildlife cycles that are not aligned. After discussions Council took following action.

Motion

Greg Roczicka made a motion the Federal Subsistence Board meeting be held last week of January to no later than April and avoid State Board of Fish and Board of Game meetings. Motion passed.

Annual Reply

Dr David Jenkins referred to page 154 FSB Annual Report Reply. He asked the Council review annual reply.

Fisheries Resource Monitoring Program Priority Information Needs

Don Rivard with the Office of Subsistence Management provided 2014 Fisheries Resource Monitoring Program (FRMP) needs. After discussions of the priority needs the Council identified three issues to add to the FRMP priority information needs. Don Rivard made a note of those issues.

Annual Report Topics

Council discussed 2012 annual report topics and provided following items.

1. Federal Subsistence Board accountability and responsibility for management of resources within Federal lands
2. Subsistence salmon fishery closure affecting salmon harvest by subsistence fishers
3. Kuskokwim salmon test fishery location

Council Charter

Council reviewed its Charter and there were no changes recommended by the Council.

Agency Reports

Office of Subsistence Management

Staff Update

Dr. David Jenkins referred to page 180 for staff update.

Budget update

The budget update starts on the bottom of page 180. As discussed before OSM continues to face problems with its budget. This year there is approximately 30% budget reductions.

Council member application/nomination update

Dr. David Jenkins informed the Council about 1500 applications were sent out and application period closed on February 18, 2012. A total 67 applications were received and in some regions there are low numbers of applications.

Rural determination process and method review

Dr. David Jenkins informed the Council that the Secretary directed the Federal Subsistence Board to review the rural determination method and process. The Federal Subsistence Board decides which areas of Alaska are rural in order to provide subsistence priority. This process may take four to five years and the Board has directed its staff to begin work.

Tribal/ANCSA Consultation

Dr. David Jenkins informed the Council and its audience that Tribal consultation occurred on September 18, 2012, with ANCSA Corporation consultation on September 19, 2012, for fisheries proposals and related issues. Two Federal Subsistence Board members participated, Mr. Tony Christianson for Tribal consultation and Sue Masica of the National Park Service for ANCSA Corporation consultation.

U.S. Fish and Wildlife Service

Mr. Spencer Rearden, wildlife biologist with the Yukon Delta National Wildlife Refuge, gave an update on moose populations in Unit 18. He gave an update on lower Yukon River moose which numbers rose from 418 in 2002 to approximately 3000 in 2012. Mr. Rearden gave great deal of information on moose status from the lowest reaches of the Yukon River all the way up to Paimute area. When asked, Mr. Rearden indicated the Yukon Delta National Wildlife Refuge has not done any work on moose habitat information. Mr. Phillip Perry, from the Division of Wildlife Conservation with ADF&G, handed out document showing twinning rates information for Unit 18. From Mountain Village up to Paimute area last few years, twinning rates was about 50%. The lowest Yukon below Mountain Village twinning rates has been about 50-60 percent. Calf survival in these areas has been high.

Togiak Refuge

Alex Nick informed the Council that Togiak National Wildlife Refuge provided a refuge bulletin that was included in the Council meeting book.

Kenai Fisheries

Mr. Steve Miller with U. S. fish and Wildlife Service gave an update on Kenai Fisheries projects. Projects he operates consist of six projects and priority needs were already mentioned. Tuluksak Native Community was concerned about videography with the Tuluksak weir project. Videography gave 24/7 was put in in 2010 and Kethluk videography in 2012. Another study they are looking at is the Kuskokwim Ichthyophonous project to study parasites in Chinook salmon. Another study Frank Harris is doing is microchemistry looking at population structure. He also shared information on whitefish report.

Building Effective Collaborative Management in Western Alaska

Mr. Kevin Bartley introduced himself and reported to the Council that he is planning to do a study in the Yukon-Kuskokwim region working and interviewing Council members and others. In June 2012 he started to observe working groups and other committees and was greatly influenced by concerns he heard. He developed a research project for funding by the U.S. fish and Wildlife Service. With council's support he plans to work with the Council and others and gather information for his project.

Alaska Department of Fish and Game

Phillip Perry gave a brief report on the Kuskokwim in addition to Spencer Rearden's report. During the Kuskokwim drawing permit hunt, there were approximately 1500 permits issued. ADF&G is in the middle of hunt reports, but ADF&G has received 1100 reports, leaving over 200 hunters who have not reported their hunt status. There is quota of 81 animals on State managed lands and 19 animals on Federally-managed lands. Perry also gave a report on Mulchatna caribou herd. In the next few months, there will be analysis of the caribou population numbers. Mulchatna caribou calving occurred near the boundaries of Unit 18 and 19B and 17B.

Jeff Park gave an update on Subsistence Division projects. In 2011, the Subsistence Division started an index community project. Five community projects, including Marshall and Mountain Village, were done in 2011. Another project is the Donlin Creek Mine subsistence project. Past winter they were in Bethel and began the Lower Kuskokwim survey.

Mr. Chris Sheldon gave an update on commercial fisheries and read couple of excerpts from the summary he distributed on the previous day. He shared an interdivisional escapement goal review team recommendation for the Kuskokwim management area that recommended a model-based, drainage-wide sustainable escapement goal of 65,000-120,000 be established for Kuskokwim River Chinook salmon.

Kuskokwim Native Association

Ms. LaDonn Robbins with the Kuskokwim Native Association gave an update on George River and Tatlawiksuk River weir project. KNA was able to acquire interns for both of these weir projects. She also gave an update on Kalskag fishwheel/sockeye run reconstruction project. This summer was last year for this

project.

Future Meetings

Council discussed its future meetings and their desire to meeting in remote communities when or if approved by OSM lead staff. OSM staff explained budget and cost to hold meetings in a remote and nonhub communities is concern. After Council discussed possibilities to hold meeting in non-hub communities, Council set its future meetings and locations and following dates and locations were confirmed.

Winter 2013

February 27-28, 2013 in Hooper Bay

Fall 2013

September 25-26, 2013 in St. Mary's

Closing comments

- Ms. Mary Gregory commented the past summer she felt like victim of abusive treatment by agency staff for second year in a row. To make things worse, her and her husband's boat was stolen from their yard by someone else's grandchildren. Also during the course of the summer she was also victim of her associates who supposed to assist her to keep her way of life. She was deprived of exercising her inherent right as a Native person to subsistence fish in the river as her ancestors did. She felt emotional from these unfortunate experiences as people in the Kuskokwim do not have the luxury of what Yukon River people have. Ms. Gregory asked the agency managers to allow elders live their way of life to the fullest and not limit it. She accepts everyone as they appear no matter who they are.
- Mr. James Charles thanked everyone and Tim Towarak and said the work everyone is doing is for the benefit of the people they serve in the Yukon and Kuskokwim Delta. The Council also is subsistence users and wants to make resources available. Big game, small game, and other resources are important to users. Fishery resources are also important. Tools used for subsistence are loaned to those who do not have them in small communities. He appreciates those who make it possible to establish rules and regulations. Unlike in the old days, today there are so many regulations to comply with.
- Mr. Evan Polty used an example of food shortage that could occur when there is emergency situation such as that of 9/11 incident. During that time because of security concerns there were no bypass mail that carries groceries to the small communities. All available groceries in his community for example were sold. Small communities are dependent upon small retail stores for supplemental western food supply. Mr. Polty was also concerned about Federal and State of Alaska disaster declarations to benefit large cities. He asked what about remote area much needed disaster declarations.

- Mr. Noah Andrew acknowledged the Federal Subsistence Board and Chair Tim Towarak. Mr. Andrew call to remember the past summer incident when resource managers and enforcement personnel went beyond what is necessary to enforce incidents and did damage to personal property. He does not want to see a repeat of cutting up personal equipment for subsistence users.
- Harry Wilde provided his comments and shared his knowledge about this region and Norton Sound region. Mr. Wilde has been involved with the regional issues since he was young and as young man he did not quite know what resource stewardship was. Now he is an elder and local people looks up to him for advise on subsistence decisions. He was a provider and now the younger family members like his grandchildren are taking over. He appreciates agency staff for their cooperation on resource management decisions.
- Robert Aloysius has been Council member for about nine years and it has been exciting. He thinks because of bureaucratic regulations Council's desire for achievement is hindered. He is thankful for all bountiful resources made available for subsistence harvest of wildlife, fish, edible plants, berries, roots, and air. Land must be respected and there has been harmful pollutants disposed that could also be harmful to humans. Despite information overload that makes it difficult, he thinks about how he was brought up and raised by two grandmothers and he was given good direction regarding subsistence activities.
- Mr. John W. Andrew thanked the staff, Fish and Game staff, especially Tim Towarak for attending Council meeting. Yukon-Kuskokwim Delta Subsistence Regional Advisory Council consists of mostly elders. He advised staff presentations be done in a simple language so elders could understand. He thanked Lester Wilde and Harry Wilde for working with him.
- Mr. William Brown felt the salmon fisheries that experience decline in numbers should be dealt with same as the moose moratorium in the Kuskokwim River. Cooperation is the key for successful management of the resources while paying attention to the elders.
- Mr. Lester Wilde acknowledged his childhood friend Mr. Tim Towarak, Chair Federal Subsistence Board. He is thankful for the opportunity to work with everyone during these tough times. He also acknowledged Mr. Gene Virden, Federal Subsistence Board member and director of BIA.

Adjournment

Meeting was adjourned at 7:18 p.m.

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.

Yukon-Kuskokwim Delta Subsistence Regional Advisory Council
c/o U.S. Fish and Wildlife Service
Yukon Delta National Wildlife Refuge
Office of Regional Council Coordinator
P.O. Box 346
Bethel, Alaska 99559
Phone: 907-543-1037 or 1-800-621-5804, Fax: 907-543-4413

Mr. Tim Towarak, Chair
Federal Subsistence Board
1011 E. Tudor Road, MS 121
Anchorage, Alaska 99503

Dear Mr. Towarak:

The Yukon-Kuskokwim Delta Subsistence Regional Advisory Council (Council) appreciates the opportunity to submit this annual report to the Federal Subsistence Board (Board) under the provisions of Section 805(a)(3)(D) and Section 805(c) of the Alaska National Interest Lands Conservation Act (ANILCA). At its public meeting in Bethel, Alaska on October 10-11 2012, the Council identified concerns and recommendations for its FY 2012 Annual Report. The Council then finalized and approved the report at its February 27-28, 2013 meeting in Bethel. The Council understands and supports the importance of addressing fish and wildlife resource topics annually, expressing its concerns, and addressing long term planning needs that are not addressed through the regulatory cycles throughout the year. The Council looks forward to your continued guidance and support on the topics listed below.

Issue 1: Federal Subsistence Board's Accountability and Authority

The Federal Subsistence Board does not hold accountability and authority on the management of fish and wildlife subsistence resources as required in part, in 50 CFR Ch I Subpart B – Program structure. The Council has reminded The Federal Subsistence Management Program Staff this issue prevents the Federal Subsistence Board to use its authority and accountability relating to the subsistence harvest needs of fish and wildlife resources as mandated under ANILCA Title VIII.

The Council has expressed the desire to see the U.S. Fish and Wildlife Service bring forward subsistence resource management actions to satisfy subsistence harvest needs without impacting subsistence uses of the resources. The Secretaries retained their authority to restrict or eliminate hunting, fishing, or trapping activities which occur on lands or waters other than public lands when such activities interfere with subsistence hunting, fishing, or trapping on the public lands to such an extent as to result in failure to provide the subsistence priority.

Recommendation:

Council recommends the Federal Subsistence Board take appropriate actions to protect subsistence priority as it is authorized in 50 CFR Subpart B and consider Council recommendations to the Federal Subsistence Board over other agency /organization

recommendations because Council is authorized to make its appropriate recommendations for Federal Subsistence Board actions as it is authorized in part, in 50 CFR §100.11(c) (vi) (C), (D); §100.14 (b), §100.17 (a),(b) (1)-(3). The Board should not overlook the Council's recommendations while deliberating to take actions that are important to subsistence users especially what subsistence user needs for winter food supply. The Council has witnessed through its participation, news media, and other sources that other agencies such as the Alaska Department of Fish and Game override Council recommendations.

Issue 2: Subsistence Salmon Fishery Closures Affecting Harvest

Salmon fisheries closures which occurred over the past summer were viewed as abusive management actions toward the subsistence salmon fisherman by the joint Federal and State fisheries management teams. Management actions were viewed as such because salmon was not allowed for harvest by subsistence users that usually make all efforts necessary to stock up the winter food supply. While subsistence for salmon harvest was restricted in the Kuskokwim River, sport fisherman in the Kuskokwim River tributaries and spawning streams were allowed to harvest salmon for sport throughout the subsistence salmon fisheries closer. The Council, serving as representatives and voice of the subsistence salmon fisherman, wants to see subsistence harvest of salmon allowed in 2013 and beyond whenever sport fishers are allowed to take salmon elsewhere in the Kuskokwim River and its tributaries.

Recommendation:

The Council recommends the Federal Subsistence Board work with Federal fisheries managers to allow for use of average annual subsistence harvest of salmon information as a tool to allow and manage for subsistence harvest of salmon, considering limited restrictions of subsistence harvest of salmon. It is apparent salmon closures do cause adverse affect on subsistence users whenever those closures occur. Causing adverse affect on subsistence fisherman is not compliant with ANILCA. Allowing other user groups such as sport fishing under the State regulations is also apparently viewed by subsistence users as noncompliance with the ANILCA purposes and intent of ANILCA legislation.

Issue 3: Kuskokwim Salmon Test Fishery

The Bethel, Alaska test fishery in Kuskokwim River has been in the same location since the early 1980s. Kuskokwim River channel have frequently changed over the past years due to silt buildup and as a result of the changes fish migration route in the river has also changed. Often times channel changes occur and the areas that used to be deep channel changes to shallow channel causing usual salmon migration route to change. The Council recognizes and understands these channel changes has affected salmon fisheries information data gathering adversely in the past. The Council wishes to recommend that set gillnets be considered as part of the method for data gathering and that set gillnets be put in place as part of the salmon test fishery methods and means for more accurate fisheries information data in the future.

Recommendation:

Council hereby recommends the Federal Subsistence Board direct its Staff to work closely with the Alaska Department of Fish and Game Staff and to start allowing use of set gillnets as part of the methods and means for the salmon test fishery near Bethel. The Council believes that use of set gillnets would enhance salmon migration and information gathering of crucial fishery

passage data in the lower Kuskokwim River. Enhancing salmon fishery data gathering would benefit fisheries managers to obtain crucial information of salmon passage and estimates of salmon entry into important spawning areas.

If you have questions about this report, please contact me via Alex Nick, Regional Council Coordinator, with the Office of Subsistence Management at 907-543-1037 or 1-800-621-5804.

Sincerely,

Lester Wilde, Chair
Yukon-Kuskokwim Delta Subsistence Regional Advisory Council

cc: Federal Subsistence Board
Yukon-Kuskokwim Delta Subsistence Regional Advisory Council



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

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



U.S. FOREST SERVICE

SEP 12 2012

FWS/OSM 12059.CJ

Mr. Lester Wilde, Sr., Chair
Yukon-Kuskokwim Delta Subsistence
Regional Advisory Council
P.O. Box 155
Hooper Bay, Alaska 99604

Dear Mr. Wilde:

This letter responds to the Yukon-Kuskokwim Delta 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: Salmon Transported from the Yukon-Kuskokwim Delta Region

The Council continues to be concerned that Chinook salmon and other salmon species important to Yukon-Kuskokwim Delta (YK Delta) subsistence users are being transported outside of the region by subsistence users from other parts of the State. Conservation managers have failed in the past to keep track of the amounts of Chinook and other salmon that have been harvested and shipped out of the YK Delta region. The Council and members of the public attending its meetings have expressed concerns regarding unaccounted amounts of salmon leaving the region on a continuous, daily basis during the summer season. As a result of apparent overharvest by qualified subsistence users from other parts of the State, as well as other users, subsistence salmon fishing has been unnecessarily restricted and has caused an impact on much-needed subsistence salmon harvest for the winter food supply.

Recommendation: *There is an immediate need to conduct research to determine the amount of salmon, and what species of salmon, is being removed from the YK Delta region each summer.*

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The Board has jurisdiction to regulate salmon harvest on Federal waters within Federal public lands and boundaries. Under 50 CFR §100.17 (a), “the Federal Subsistence Board shall establish a priority among the rural Alaska residents after considering any recommendation submitted by an appropriate Regional Advisory Council.” Given the breadth of its jurisdiction in the region as a result of the Yukon Delta National Wildlife Refuge and the Togiak National Wildlife Refuge, the Board can take action necessary to protect subsistence users in the region. The Council hereby strongly recommends the Board to direct staff to research and analyze the extent of the salmon exports from the YK Delta and how such exporting practices can be curtailed.

Response

To address this issue, which has been a long standing concern of the Yukon-Kuskokwim Delta Regional Advisory Council, the amount of salmon – by species – being harvested by subsistence users and then removed and exported from the Yukon-Kuskokwim Delta region (Kuskokwim River) each summer will be included as a priority information need in the 2014 Request for Proposals for the Fisheries Resource Monitoring Program.

The Council could also submit a proposal to the Board to obtain a preference for regional users under Section 804 under the Alaska National Interest Lands Conservation Act (ANILCA). This could trigger an analysis that would consider closing Federal public lands to other users and then, if necessary, make restrictions among federally qualified subsistence users by examining (1) customary and direct dependence upon the populations as the mainstay of livelihood; (2) local residency; and (3) the availability of alternative resources. The Board would follow its Policy on Closures to Hunting, Trapping, and Fishing on Federal Public Lands and Waters in Alaska adopted in 2007 before making a closure to other users.

Issue 2: Abandoned Beaver Dams

Abandoned beaver dams have been an issue of concern with the Council annual reports in the past and the Council has vowed not to give up on this issue because the people of this region continually raise concerns about abandoned beaver dams. Abandoned beaver dams cause adverse impacts and multiple incidents in the field. They impede subsistence activities in the summer such as berry picking, gathering edible plants, and hunting. They damage rubber boats and canoes, and cause dents or damage to any small boats used for summer subsistence activities such as Lund boats. In the winter season, abandoned beaver dams cause damage to snowmachine parts like tracks, belly, and skis. Abandoned beaver dams also have the potential to cause fatal accidents to snowmachine passengers in a sled.

In the past several years, the Council has submitted abandoned beaver dam and related issues in its annual reports and has been dissatisfied with past Board replies to those reports.

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Recommendation: *The Council recommends that both Federal and State agency staff work with the Council to identify appropriate and acceptable tools to remove abandoned beaver dams without further delay.*

Response

State regulations already exist that describe the permitted methods for removing beaver dams. The Alaska Department of Fish and Game, Division of Habitat is the agency responsible for issuing permits for beaver dam removal (Fish Habitat Permits). If a beaver dam (active or abandoned) is removed using only hand tools, a permit is not needed. However, if mechanized means are used (such as a backhoe or front end loader) then a permit will be needed. Beaver dams are an important part of the Yukon Delta Refuge ecosystem and provide a net ecological benefit. However, the Board recognizes the risks they may sometimes pose to Federally qualified subsistence users while they are engaged in subsistence activities.

The Board encourages individuals to contact the Division of Habitat before beaver dam removal to discuss the location of the dam in question and to discuss methods of removal. Interested parties should refer to the Division's website (<http://www.habitat.adfg.alaska.gov>) for information on the Division of Habitat's statutory authority with regard to beaver dam removal.

Issue 3: Control Customary Trade of Salmon

Chinook salmon on the Yukon River must continue as a subsistence and commercial fishing resource. However, some Customary Trade practices have impaired the health of the Chinook population. Working with other affected Councils in the Yukon River, the Council has attempted to deal with the Customary Trade issue to increase Chinook numbers on the Yukon River. There can be management conflicts when agencies are attempting to both conserve Chinook salmon populations while simultaneously providing for the Customary Trade of Chinook salmon. These conflicting approaches could lead to possible depletion of the Yukon River Chinook salmon stocks. Greater control of salmon Customary Trade would provide for an increase of Chinook salmon returns to the Yukon River for future generations.

Recommendation: *That the Board strongly urge, even compel, the Customary Trade Subcommittee to complete its assigned task to deal with Customary Trade issues on the Yukon River. The Board should impose a timeframe for the Subcommittee to complete a Customary Trade resolution in order to enhance conservation of Yukon River Chinook salmon. In addition, the Council urges the Board to adopt any customary trade proposals submitted in the regulatory cycle that could enhance and improve Chinook salmon returns.*

Response

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) recognizes customary trade as a subsistence activity (ANILCA Sec. 803). Although undefined in ANILCA, the term "customary trade" was later defined in the implementing regulations as the

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“...exchange for cash of fish and wildlife resources regulated in this part, not otherwise prohibited by Federal law or regulation, to support personal or family needs, and does not include trade which constitutes a significant commercial enterprise” (36 CFR 242.4 and 50 CFR 100.4).

In January 2011, the Federal Subsistence Board reviewed three proposals which attempted to establish regulations pertaining to customary trade of salmon in the Yukon River drainage. FP11-05 was withdrawn at the Board meeting; no action was taken on FP11-09; and FP11-08 was deferred. Discussion of proposals FP11-05, FP11-08, FP11-09 led the Board to establish a Tri-RAC customary trade subcommittee to further discuss customary trade issues and to provide recommendations on customary trade regulations for Yukon River Chinook salmon to the Board (76 FR 12564 March 8, 2011).

The Tri-RAC subcommittee, composed of three members from the Yukon-Kuskokwim Delta Regional Advisory Council, three from the Western Interior Regional Advisory Council, and three from the Eastern Interior Regional Advisory Council, met on May 18-19, 2011, in Anchorage and again on August 23-24, 2012, in Fairbanks. At both meetings, subcommittee members agreed that low runs of Yukon River Chinook salmon require conservation efforts to extend to customary trade practices. If Yukon River Chinook salmon runs return to prior levels, then limits to customary trade may no longer be warranted.

Based on its discussions, and on a careful review of public responses to suggested regulatory changes, the subcommittee developed two recommendations, which were later presented to the Regional Advisory Councils for review. The subcommittee strongly preferred the first recommendation, but developed the second to address the issue of a “significant commercial enterprise.”

- 1) Customary trade of Yukon River Chinook salmon may only occur between federally qualified rural residents with a current customary and traditional use determination.
- 2) Preclude customary trade of Yukon River Chinook salmon between rural residents and others.
 - a. Establish a \$750 limit per calendar year per qualified household;
 - b. Require customary trade recordkeeping and receipt form.

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The subcommittee believes that in times of low abundance, Yukon River Chinook salmon should remain within the Yukon River drainage for subsistence uses. It also believes it is important to curtail large customary trades involving Chinook salmon which are reported to occur in urban areas of Alaska and may rise to the level of a significant commercial enterprise, contrary to federal regulations. By allowing customary trade only between federally qualified rural residents with a customary and traditional use determination for Yukon River Chinook salmon, the subcommittee hopes that the cultural practice of customary trade will continue, but at a lower level, recognizing the need for conservation. This was the intent of the subcommittee's preferred recommendation.

There are currently seven customary trade proposals focused on Yukon River Chinook salmon. The Yukon-Kuskokwim Delta Regional Advisory Council will be presented analyses of these proposals at its fall 2012 meeting.

Issue 4: Information Exchange Between Council Members and the Office of Subsistence Management (OSM)

There is a need to improve communications between the Council and OSM staff and in disseminating important information regarding fish and wildlife resources such as Chinook salmon.

***Recommendation:** The Board should direct its staff to improve the dissemination of information relating to fish and wildlife and related issues. This would enhance the Council's recommendations to the Board as to what actions should be taken to better serve subsistence user groups.*

Response

The Board appreciates the Council's expressed need for better communication between Council members and OSM staff. Under the Federal Subsistence Management Program, the Council Coordinator is the primary liaison between OSM and the Councils. Each regional Council Coordinator should and shall consult with his or her Councils regarding their particular information needs. That consultation should reveal where any particular information deficits exist. In addition, our regular processes of circulating information from Special Action Requests to in-season management decisions should include Council chairs where required as well as the Council Coordinator. We acknowledge, however, that there have been times where some of the information sharing has been less than ideal. To ensure that information sharing is improved, we have been implementing some changes at the staff level at OSM. Specifically, two new Council Coordinators have been hired, which will ensure that each Council's needs are being met. There have been additional staffing changes at OSM that will improve service to Councils, and you will be briefed on those changes at your fall meeting.

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Issue 5: Impact of Subsistence Salmon Fishery Closures

In the YK Delta, some family members fish for salmon on behalf of multiple family members and households. Not everyone owns an outboard motor and boat to fish for salmon on their own during the summer season. As a result, those who are able to assist other family members often fish for up to seven households. Once the commercial fishing seasons are complete, there is hardly any fish left for subsistence users to harvest. Users cannot harvest much fish when they only catch 5-10 salmon on each drift.

Recommendation: *The Board should work closer with respective conservation unit managers to lessen adverse impacts on subsistence users due to harvest closures or related issues. For most subsistence users, subsistence harvested food is the primary source of nutrition and purchased food is supplemental.*

Response

The Board recognizes the great importance of salmon as a subsistence food resource for the people living along these two river drainages, and will continue to work closely with Federal and State fisheries managers on the Yukon and Kuskokwim Rivers to ensure that Federal subsistence users are accorded priority in taking salmon over the taking of salmon for other purposes by other users.

When in-season restrictions or closures are put in place they are done with the intent to have the least impact possible on subsistence users. However, the Board realizes that restrictions and/or closures can pose a hardship for many families along the river. Please be assured that any restrictions or closures are done only as a last resort to help conserve the populations that will hopefully lead to future improvements and more subsistence opportunities.

Issue 6: Annual Report Replies

The Board appears to not be able to adequately reply to the annual reports submitted by this Council. The Council believes that it is not that the Board is incapable of addressing an issue, but rather that the Board chooses to not provide a concise or direct reply.

Recommendation: *The Federal Subsistence Board needs to work harder in understanding where the Council is coming from, especially when the Council has to repeat annual report issues year after year. If there is confusion or misunderstanding as to the meaning or purpose behind issues raised in annual reports, then the Board should work more directly and cooperatively with Regional Advisory Councils on responding to those issues.*

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Response:

The Board agrees that better communication lies at the heart of an effective and meaningful annual report and reply process. When reviewing annual report issues in the past, it has been very helpful to OSM staff when the Council members have discussed in detail on the record the specific issues of concern that are included in the annual report. It is also very helpful when there is meaningful dialogue and interaction between the Council, Chair and Council Coordinator on the specific language of the annual report.

The annual report process is set forth in Section 805 of ANILCA, and provides the Councils the opportunity to report to the Board issues related to fish and wildlife subsistence resources as well as recommendations regarding management strategy, policies, standards, guidelines and regulations. Often, the Councils choose annual report issues that are already addressed in existing policies, such as predator control. Thus, in many cases, the reply on those issues may merely be a reiteration of the policy. In some instances, the policies have been restated in multiple replies because the policies have not changed. If there is uncertainty about the policy, it would be helpful to know specifically if the Council is unclear about the stated policy, the reason for the stated policy, or the application of the policy. Other times, the response may be tempered by issues such as ongoing litigation or the limits of the Board's jurisdiction over the issue raised. In those instances, the response should indicate what limits there are on the Board's ability to respond and what other agencies may have jurisdiction.

Ultimately, the Board endeavors to fully respond to all annual report topics. If there is a response in particular that the Council has been dissatisfied with in the past, please identify what the issue is.

Issue 7: Muskoxen Moratorium

The Council has worked with the Alaska Department of Fish and Game and Roger Seavoy, past Wildlife Conservation Manager in Unit 18, on the possibility of establishing a muskoxen moratorium modeled after the Lower Yukon Moose Moratorium. The Council wanted to begin by educating local villages to conserve muskoxen so future generations will have an opportunity to harvest musk ox.

In the past, the Council brought up this issue and wanted to work with appropriate agencies to establish a Muskoxen moratorium in the Yukon-Kuskokwim Delta. There are more and more muskoxen showing up inland and this is the prime time to establish a muskoxen moratorium to supplement red meat for the region's people.

Recommendation: *The Council hereby requests the Board's support to consider muskoxen as important subsistence resource in the Yukon-Kuskokwim Delta region and to take appropriate action to protect the resource.*

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Response

Thank you for bringing this issue to the Board's attention. Currently, there is no Federal muskox season in Unit 18 and the only muskox harvest allowed under State regulations is on Nunivak and Nelson Islands by State permit. Therefore, for the majority of Unit 18, since there is no season or a harvest limit, a moratorium technically exists for the species. There are several steps that would need to be taken in order to move toward the moratorium that you have suggested. Primarily, the U.S. Fish and Wildlife Service would need to work on a cooperative management plan with the State. Additionally, the Council could submit a proposal for a positive customary and traditional use determination for Musk Ox until such a management plan is in place. If the Council wishes to submit such a proposal, OSM staff could assist in preparing one for submission during the winter 2013 meeting cycle, when the wildlife proposal period opens.

Issue 8: Tribal Involvement on Council Membership

The Council believes there is a need to involve Tribal councils or their representatives on Council membership. Allowing tribal membership on the Council would enhance reporting to and from the tribal government on the resource issues within the region.

Recommendation: *The Board should support Tribal council membership or representation on the Regional Advisory Councils. A Council that includes Tribal representatives would increase Council membership interest in younger generations.*

Response:

The Board appreciates that the Council is interested in improved and enhanced involvement of Tribal governments in the Regional Advisory Council process. However, the specific request of having designated Tribal representation on the Councils would not be permitted under Title VIII of ANILCA for two reasons. First, Section 801 of ANILCA states that the Federal subsistence management program is intended to benefit both Native and non-Native residents. Second, Section 805 states that Council membership shall consist of regional residents, but does not directly provide for membership based on Tribal status. Rather, the more appropriate avenue for Tribal involvement in the Federal subsistence program is through government-to-government relations pursuant to the Tribal Consultation Policy.

With that said, Tribal councils are encouraged to nominate someone from their Tribe for appointment on a Council. Any person or organization can nominate a particular individual whom they feel has the potential to positively contribute to the Federal Subsistence Management Program through Council membership. But, like any other Council member, the nominated individual would be appointed by the Secretaries of Interior and Agriculture not to represent his or her Tribe, but to represent either subsistence users or commercial/sport users as a whole within their region as required under the Federal Advisory Committee Act, which governs the administration of the Councils. However, the Board recognizes that many Council members are

Mr. Lester Wilde, Sr.

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also Tribal members and the Board would ask that we work together to help bridge this gap between Tribes and the Federal Subsistence Management Program.

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 Yukon-Kuskokwim Delta region are well represented through your work.

Sincerely,

/S/

Tim Towarak, Chair
Federal Subsistence Board

cc: Yukon-Kuskokwim Delta 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 Coordination Division Chief, OSM
Alex Nick, Council Coordinator, OSM
Administrative Record

FEDERAL WILDLIFE CLOSURE REVIEW
WCR12-07

Current Location: Units 17A and 17C—Caribou

Current Federal Regulations

Units 17A and 17C—that portion of 17A and 17C consisting of the Nushagak Peninsula south of the Igushik River, Tuklung River and Tuklung Hills, west to Tvativak Bay—up to 2 caribou by Federal registration permit. Public lands are closed to the taking of caribou except by residents of Togiak, Twin Hills, Manokotak, Aleknagik, Dillingham, Clark’s Point, and Ekuk hunting under these regulations. The harvest objective, harvest limit, and the number of permits available will be announced by the Togiak National Wildlife Refuge Manager after consultation with the Alaska Department of Fish and Game and the Nushagak Peninsula Caribou Planning Committee. Successful hunters must report their harvest to the Togiak National Wildlife Refuge within 24 hours after returning from the field. The season may be closed by announcement of the Togiak National Wildlife Refuge Manager.

*Aug. 1–Sept. 30.
Dec. 1–Mar. 31.*

Closure Dates: Aug. 1–Sept. 30, Dec. 1–Mar. 31

Current State Regulations

Species and Bag Limits – Caribou	Permit/Ticket Required	Open Season
<i>Unit 17A, all drainages east of Right Hand Point— one caribou</i>	<i>Harvest</i>	<i>may be announced</i>
<i>Unit 17C remainder—one caribou</i>	<i>Harvest</i>	<i>may be announced</i>

Note: The purpose of the “may be announced” season under State regulations is to provide a possible opportunity to harvest Mulchatna caribou, should they migrate into adjacent areas without mixing with Nushagak caribou.

Regulatory Year Initiated: 1994

Regulatory History

In 1994, Proposal 42 established a Jan. 1–Mar. 31 harvest season on the Nushagak Peninsula Caribou Herd (NPCH) in portions of Units 17A and 17C, and instituted a closure to all users except residents of Togiak, Dillingham, Manokotak, Twin Hills, Aleknagik, Clark’s Point, and Ekuk (FSB 1994). The newly established season started on January 1, 1995. Prior to the Board’s action, there had been no harvest season for the reintroduced Nushagak caribou population. Special Action S95-06 extended the season from Jan. 1–Mar. 31 to Dec. 1–Mar. 31 for the 1995/1996 regulatory year. When the Board adopted Proposal 34 in 1996, the season extension was adopted into Federal regulations and a fall season (Aug. 1 – Aug. 30) was established in the affected area (FSB 1996). In 1997, the Board adopted Proposal 47, which increased the harvest limit from one to two caribou on the Nushagak Peninsula portions of Units

17A and 17C, as there was a harvestable surplus of caribou and the previous year's harvest was well below the management objective (FSB 1997). In 1998, the Board approved Special Action 97-10, which extended the fall season from Aug. 1–Aug. 30 to Aug. 1–Sept. 30, and this extension became permanent when the Board adopted Proposal 39 in 1999 (FSB 1999).

There have also been a number of requests to changes the methods and means for harvesting Nushagak caribou that the Board has not adopted. In 1997, the Board rejected Proposal 48 that would have removed the same day airborne harvest restriction for caribou in Units 17A and 17C on the Nushagak Peninsula (FSB 1997). The issue was then resubmitted as Proposal 56 in 1998 and subsequently rejected by the Board (FSB 1998a). In 1998, Proposal 57 requested allowing NPCH caribou to be harvested from a snowmachine while it is in motion. The Federal Subsistence Board rejected the proposal for several reasons: harvesting caribou from a snowmachine in motion would have increased the likelihood of wounding animals; chasing with snowmachines could have caused undesirable physiological stress and decreased meat quality; and it would have caused misalignment between State and Federal regulations (FSB 1998b).

Closure last reviewed: 2008 — WCR08-07.

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;

Caribou were reintroduced to the Nushagak Peninsula in February 1988 after an absence of over 100 years. The reintroduction was a cooperative project between the U.S. Fish and Wildlife Service, Alaska Department of Fish and Game (ADF&G), and the villages of Togiak, Manokotak, Dillingham, and Choggiung Limited, with the goal of reestablishing a caribou population large enough to sustain a reasonable harvest, while still allowing the herd to grow.

A subsistence hunt was established in 1994, and Federal public lands were closed to the harvest of Nushagak caribou by all users, except by residents of Togiak, Dillingham, Twin Hills, Manokotak, Aleknagik, Clark's Point, and Ekuk. Community studies conducted in four of the seven villages slated to participate in the Nushagak caribou harvest indicated that caribou were an integral component of the seasonal round of wild resource harvest activities.

The closure was established and has been maintained since the caribou population is not large enough to allow for uses other than subsistence uses.

Council Recommendation for the Original Closure

The Bristol Bay Subsistence Regional Advisory Council supported the establishment of the hunt as well as the closure to non-Federally qualified users by stating that “[Togiak National Wildlife Refuge] will be able to monitor the hunt fairly closely with the Traditional Councils administering the permits; there's a real ownership with the people in this herd and in the management. The State will keep it closed on the State side so they can honor the original agreement” (FWS 1994:340).

State Recommendation for the Original Closure

The State supported Proposal 42 in 1994, stating that they had been part of the Nushagak Peninsula Caribou Management Planning Committee and agreed with its recommendation (FWS 1994:340).

Biological Background

In February 1988, 146 caribou from the Northern Alaska Peninsula Herd were transplanted to the Nushagak Peninsula (FWS 1994). The Nushagak Peninsula Caribou Herd (NPCH) has since experienced six phases of growth, with the most pronounced being a large population increase ($r = 0.32$) from the 1988 introduction through 1994 (Hinkes et al. 2005, Aderman and Lowe 2012) (**Figure 1**). This period of population growth exceeded the maximum theoretical potential for exponential population growth for caribou ($r = 0.30$) estimated by Bergerud (1980). Factors attributed to this dramatic growth may have included a high percentage of females in the herd, high calf production and survival, pristine range condition, few predators, and that no hunting was allowed on the herd from 1988–1995 (Aderman and Lowe 2012). The NPCH herd peaked at 1,399 caribou in February 1998 (FWS 1999), subsequently declined to a low of 462 caribou in July 2007, and then began increasing again.

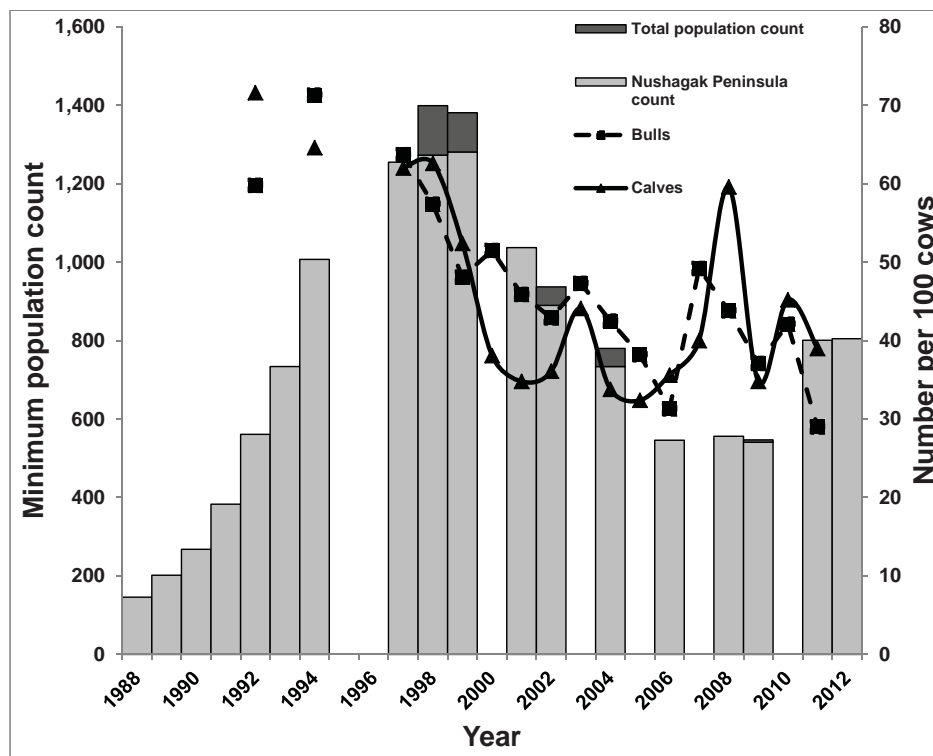


Figure 1. Estimated pre-calving minimum population counts (bars) and fall bull- and calf-to-cow ratios (lines) for the Nushagak Peninsula Caribou Herd, 1988–2011 (Aderman and Lowe 2012).

The most recent pre-calving survey was conducted in February 2012 and a minimum of 805 caribou were counted on the Nushagak Peninsula, which was similar to the 2010 survey results (**Figure 1**). In July 2012, the NPCH was estimated to contain a minimum of 902 caribou based on post-calving aerial surveys (Aderman 2012, pers. comm.), which is at the upper end of the Nushagak Peninsula Caribou Management Plan's population objective (to maintain a population of 400–900 caribou). The recent results also indicate the NPCH increased from a minimum of 859 caribou in July 2011 (Aderman and Lowe 2012). The herd is managed according to the guidelines of the management plan, which was prepared by personnel from the Togiak National Wildlife Refuge, ADF&G, and the Nushagak Peninsula Caribou Management Planning Committee (Committee). The Committee is made up of representatives from traditional councils of Togiak, Twin Hills, Manokotak, Aleknagik, Clark's Point, and Dillingham as well as the Nushagak Fish and Game Advisory Committee, Choggiung Limited, the Bristol Bay Native Association, Alaska Department of Fish and Game, and the Togiak National Wildlife Refuge.

Population composition surveys are conducted for the NPCH in early to mid-October. These surveys estimated 42 bulls:100 cows and 45 calves:100 cows in 2010 (Aderman and Lowe 2012) and 29 bulls:100 cows and 39 calves:100 cows in 2011 (Aderman 2012, pers. comm.). The average estimates from 1997 to 2010 were 46 bulls:100 cows and 36 calves:100 cows (**Figure 1**). At the time of reintroduction, the initial herd composition was heavily female biased, with 82.2% females, 9.6% males (12 males:100 females) and 8.2% calves (10 calves:100 females) (Aderman and Lowe 2012).

The causes of the decline between 1999 and 2009 are not clearly understood, and are almost certainly multi-factored (Aderman and Lowe 2012). The most likely explanation for the decline is that the exceptionally high growth through 1998 produced large annual cohorts of females that survived until a relative old age, at which time they declined in productivity. This high proportion of unproductive females, combined with high harvest years in 2001 and 2002, changed the population trajectory from an increasing trend to a decreasing trend, where it remained until the ultimate replacement of old, unproductive females with younger, productive females. Changing nutritional conditions (both short-term, such as those associated with drought or winter icing; as well as longer-term changes, such as lowered overall carrying capacity due to continuous grazing on the Nushagak Peninsula since 1988) underlay and exacerbated this decline, but were not likely the primary drivers. Wolf predation could be a factor in the decline; however, a study of wolf predation from 2007–2011 found that wolf predation was not a primary driver of Nushagak Peninsula caribou population dynamics (Walsh and Woolington 2012, report in progress). Brown bears are common on the Nushagak Peninsula and likely have learned to exploit the caribou population, but their impact on the NPCH is not known (Aderman and Lowe 2012).

Harvest History

Only Federally qualified subsistence users are allowed to harvest caribou from the NPCH. A Federal registration permit is required to harvest caribou on the Nushagak Peninsula in Units 17A and 17C and users are required to report their harvests to the Togiak National Wildlife Refuge within 24 hours of harvest. Reported harvest increased during the eight years after the season was established in 1994/1995 (**Table 1**). Unreported harvest can be high, similar to other rural areas in Alaska, and illegal take of NPCH caribou has been documented (Aderman and Lowe 2012). Most harvest occurred during the winter season, February and March, because of improved hunter access to the herd via snow machines (Aderman and Lowe 2012).

The NPCH Management Plan sets a harvest level of no more than 10 percent of the population when the population is over 600 caribou. In 2011, the Committee reviewed the management plan and updated the harvest strategy to make it more responsive to a dynamic caribou population. The updated strategy

Table 1. Reported harvest of caribou, by month, harvested on the Nushagak Peninsula during regulatory years 1994/1995 to 2011/2012 (Aderman and Lowe 2012; Aderman 2012, pers. comm.).

Regulatory year	Month							Total
	AUG	SEPT	DEC	JAN	FEB	MAR	Unknown	
1994/1995	NS ^a	NS	NS	3	1	25	6	35
1995/1996	NS	NS	3	0	5	43	1	52
1996/1997	5	NS	0	0	2	13	0	20
1997/1998	5	NS	0	2	25	35	0	67
1998/1999	0	2	0	0	0	50	3	55
1999/2000	0	0	0	2	7	54	0	63
2000/2001	0	6	0	0	22	98	0	126
2001/2002	0	3	0	0	9	115	0	127
2002/2003	3	0	0	0	0	0	0	3
2003/2004	2	3	0	0	0	29	0	34
2004/2005	1	0	0	0	0	8	0	9
2005/2006	1	1	0	0	0	9	0	11
2006/2007	NS	NS	NS	NS	0	NS	0	0
2007/2008	NS	NS	NS	NS	0	0	0	0
2008/2009	NS	NS	NS	NS	5	2	1	8
2009/2010	NS	NS	NS	NS	3	14	1	18
2010/2011	NS	NS	NS	NS	18	27	0	45
2011/2012	0	2	NS	NS	20	64	0	86
Total	17	17	3	7	117	586	12	759
% Total	2.2	2.2	0.4	0.9	15.4	77.2	1.6	-

^aNS = No season

annually establishes a harvest goal based on population size and trend, and permits harvest when the population exceeds 200 caribou and is stable or increasing. The Committee also updated the population objective, changing the previous goal of 600 to 1,000 caribou to 400 to 900 caribou. The Committee recommended the Federal registration permits be allocated to eligible communities based on a formula in which each community receives 5% of the total permits, plus additional permits based on a percentage of the aggregate participating communities.

Hunting effort is influenced by travel conditions, availability of and opportunity to take Mulchatna caribou and moose, and economic factors (Aderman and Lowe 2012). Most of the reported harvest has occurred in March (**Table 1**). Very difficult travel conditions limited the harvest in 2002/2003. As prescribed by the management plan, there were no fall hunts in 2006, 2007, and 2008 because the population was below 600 animals. There were a limited number of permits (five) available for the winter hunts in 2006/2007 and 2007/2008, but no harvest was reported (Aderman 2008, pers. comm.). Annual harvests have increased as the population has recovered and increased (**Table 1**). In 2011/2012 120 permits were issued, including two permits for the August and September 2011 season and the remaining 118 permits for the winter hunt (Aderman 2012, pers. comm.). In addition, the harvest limit was increased from one to two caribou for the Feb. 1–Mar. 31, 2012 season (Aderman 2012, pers. comm.).

Harvest reporting has not been completed, but two caribou were reportedly harvested in the fall season, and 84 caribou were harvested during the 2012 winter hunt (Aderman 2012, pers. comm.).

OSM PRELIMINARY RECOMMENDATION

Maintain status quo

Initiate proposal to modify or eliminate the closure

Other recommendation

Justification

The Nushagak Peninsula Caribou Herd has recovered from a recent population low in 2006, and the current population level is within the population objective set forth in the Nushagak Peninsula Caribou Herd Management Plan. The 2011/2012 harvest was 10% of the July 2011 minimum population count, which is the maximum harvest level identified in the Management Plan, and within the range of previous harvest levels (0–127 caribou harvested per year). Therefore, it is unlikely that a harvestable surplus is available beyond the Federal subsistence hunt, and the closure should remain in place. Lifting the closure could increase competition for a limited resource, and additional harvest could negatively impact the NPCH and be detrimental to subsistence users. Close monitoring by Togiak National Wildlife Refuge biologists and application of current regulations allow the Refuge Manager to adjust the harvest limit, to allocate the number of permits available to hunters, and to close the season if necessary.

Maintaining the status quo is necessary to conserve the caribou population and to continue subsistence uses under Section 804 of ANILCA and does not violate the prohibition of ANILCA Section 815(3). The status quo is consistent with sound management principles and the conservation of healthy wildlife populations while providing a preference for subsistence users.

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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

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

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 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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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 with your questions.

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

-###-

2014–2016 Federal Subsistence Wildlife Hunting and Trapping Proposal

(Attach additional pages as needed).

Name: _____

Organization: _____

Address: _____

Phone: _____ Fax: _____

E-mail: _____

**Submit proposals by
March 29, 2013**

Questions?

Call: (800) 478-1456 or (907) 786-3888

E-mail: subsistence@fws.gov

Information on submitting proposals is also available on the Office of Subsistence Management website: <http://alaska.fws.gov/asm/public.cfm>

This proposal suggests a change to (check all that apply):

- | | |
|---|--|
| <input type="checkbox"/> Harvest season | <input type="checkbox"/> Method and means of harvest |
| <input type="checkbox"/> Harvest limit | <input type="checkbox"/> Customary and traditional use determination |

- 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, i.e., sport/recreational and commercial?**

— Please attach any additional information that would support your proposal. —

Implementation Guidelines

for the

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"¹ 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.

Step² 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

¹ Department of Interior Policy on Tribal Consultation

² 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.

Southeast Alaska Subsistence Regional Advisory Council

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.

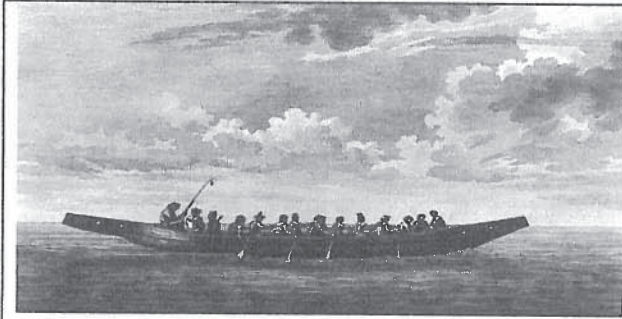
Action:

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. Lester Wilde, Sr., Chair
Yukon Kuskokwim Delta Alaska Subsistence
Regional Advisory Council
P.O. Box 155
Hooper Bay, Alaska 99604

Dear Mr. Wilde:

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.

Mr. Lester Wilde, Sr.

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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

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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,
/S/

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 ¹ 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.

¹ 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



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November 30, 2007

Federal Subsistence Board
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Email: 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.¹ A

¹ 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

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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
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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

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
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, 96th Cong., 1st 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

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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

Dear Mr. ^{Mike}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

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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
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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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Juneau, Alaska 99801-1172
(907) 586-2820
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www.ufa-fish.org

December 7, 2007

Theo Matuskowitz
Federal Subsistence Board
3601 C St., Suite 1030
Anchorage, AK 99503
By email : 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.

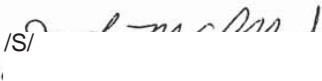
The policy also states that determinations "must be based on a community's long term consistent pattern of use" and that "in all instances, the Board makes a decision based upon the best available information." However, without accountability in the decision making process, it is unclear how the "best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

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.



IN REPLY REFER TO:

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Togiak National Wildlife Refuge
P.O. Box 270
Dillingham, Alaska 99576
Phone 907-842-1063
Fax 907-842-5402

INFORMATION BULLETIN - January 2013

The Roles of Alder and Salmon in Driving Aquatic Productivity Contact: Pat Walsh

In 2010, Togiak Refuge, the University of Illinois, the University of Washington, and ADF&G began a 4-year project to determine the relative role of salmon and alder in controlling productivity in lakes. Both salmon and alder contribute nutrients to lakes: salmon do so via decomposition of carcasses after spawning, and alder does so through nitrifying the soil, and by mobilizing soil nutrients which would otherwise be biologically inaccessible. This project will measure the contribution of nutrients from both sources by analyzing water samples from thirteen Refuge lakes over a four year period. The information that will come from this project will help salmon managers better understand the ecological consequences of harvest. Since 2010, we have installed water quality and quantity monitoring equipment at 13 lakes on Togiak Refuge. We collected and processed water samples in summer and fall 2010, 2011, and 2012 and have begun laboratory analysis for a battery of biological and chemical attributes. We monitored stream discharge in summer and fall at 26 streams entering the study lakes in order to estimate lake water budgets. We performed aerial sockeye salmon surveys at all study lakes and estimated run size in each. We updated an existing landcover map to refine our estimate of alder cover in the study area. A progress report is available.

Cooperative Salmon Escapement Monitoring Projects Contact: Mark Lisac

In 2012 Togiak Refuge provided support to the Native Village of Kwinhagak (NVK) and ADF&G to operate salmon escapement monitoring projects (weirs) on the Kanektok (KRW) and Middle Fork Goodnews Rivers (MFGRW).

On the Middle Fork Goodnews River, ADF&G has monitored Chinook, chum and sockeye salmon escapement since 1980. Escapement goals and management of the commercial fishery are based on salmon escapement at the weir. Togiak Refuge has worked with ADF&G since 1992 to include the coho salmon and Dolly Varden runs in the project operation. ADF&G, Togiak Refuge and the Office of Subsistence Management (OSM) fund the project operation. This weir project also uses an underwater video system which allows the weir to be opened to salmon passage more hours a day. Use of motion sensors and digital recording video can improve fish counting accuracy, especially during periods of high water and poor visibility. The MFGRW was fish tight on 29 June and continued operation 18 September 2012. The weir was not fully operational for 25 of the 82 days due to high water.

On the Kanektok River, ADF&G, NVK and Togiak Refuge have worked cooperatively to monitor salmon and Dolly Varden runs since 2001. This project is currently funded by OSM and Coastal Villages Region Fund. Escapement goal ranges have not been established for the Kanektok River because the weir has not been operational for enough years. This weir operated from 5 July to 15 August. Escapements were

estimated for 10 of 51 days because the weir was not operational.

Preliminary escapement counts to 29 August (MFGRW) and 15 August (KRW) 2012 are:

	Chinook	Sockeye	Chum	Coho	Pink	Dolly V.
MFGRW	513	30,472	10,723	13,679	6,316	798
KRW	1,568	88,800	24,173	4,248	62,141	20,547

Rainbow Trout Population Identification Contact: Pat Walsh

Togiak Refuge, ADF&G Sport Fish, and the Conservation Genetics Laboratory are working together to inventory populations and determine the genetic relationships between populations of rainbow trout throughout Togiak Refuge. Archived genetic material collected from previous investigations were inventoried and assessed for suitability in the current study. A collection plan for unsampled populations was completed and new tissue collections began in the Goodnews, Kanektok, Igushik, Snake, and Wood River watersheds in summer 2009. Collections continued in Ice Creek and the Osviak River in 2012. All collections are now complete, and genetic analysis is underway. A progress report is available.

Chinook Salmon Escapement In The Togiak River Watershed Using Radio Telemetry Contact: Theresa Tanner (Anchorage Fish & Wildlife Field Office)

In 2012 the Anchorage Fish and Wildlife Field Office completed the final year of a five year study funded by OSM to determine Chinook salmon run timing, distribution and abundance in the Togiak River watershed. Chinook salmon were captured and implanted with radio transmitters or were marked with a brightly colored spaghetti tag in the lower river. These fish were tracked using a combination of seven fixed data-logging receiver stations, and intensive aerial and boat tracking surveys to document movement and final spawning destinations. Preliminary analysis indicates that there are significantly more Chinook salmon spawning in the lower river than previously thought; tributary spawners appear to enter the river earlier in the run; all fish hold in the lower mainstem for some time before advancing to spawning areas; and, spawning distribution between tributaries and the mainstem varies from year to year. In 2010 thru 2012 a mark-recapture experiment was attempted by using the known number of Chinook salmon that past a weir on the Gechiak River tributary to extrapolate an escapement estimate for the entire Togiak drainage. The 2012 estimate is not available at this time. The estimate for 2010 was 10,096 fish (95% CI = {5,709 to 18,849}) and for 2011 the estimate was 7,041 fish (95% CI = {4,160 to 14,143}). ADF&G has set the sustainable escapement goal threshold at 9,300 Chinook salmon for the entire Togiak drainage.

Mulchatna Caribou Contact: Andy Aderman

Togiak Refuge assisted ADF&G with telemetry monitoring flights, radiocollar deployment, satellite data acquisition, data entry and database management. Primary calving areas in 2012 were near Lime Village (Unit 19A) and the mid-Nushagak River area (Unit 17C) similar to the past several years. Caribou were also observed calving in the southern Kilbuck Mountains (Unit 18). A photocensus was attempted on July 6 in the eastern portion of the range, and on July 7 in the west. A composition survey in early October 2012 estimated 29.8 calves: 100 cows and is considerably greater than that from the 2010 and 2011 surveys (19.5 and 19.0 calves: 100 cows respectively) and the second highest calf ratio since 1998. The bull:cow ratio for the combined fall 2012 surveys (23.2 bulls: 100 cows) is the highest since fall 2002.

Nushagak Peninsula Caribou Contact: Andy Aderman

Eighty-six caribou were reported harvested during the 2011-2012 hunting seasons. This was the third highest harvest since hunting began on this herd in 1995. Radio collars were deployed on five short-yearling females in early April. During late May 2012, 21 of 25 (84.0%) radiocollared caribou produced a calf. A photocensus conducted on July 7, 2012 found a minimum of 902 caribou. A similar effort in

2011 found a minimum of 859 caribou. Ten caribou permits each were made available in Manokotak, Dillingham, and Aleknagik for the fall hunt. Nine caribou were reported harvested during the fall hunt. A composition survey in early October 2012 estimated 50.2 calves and 52.0 bulls: 100 cows. For the 2012-13 winter hunt, 160 caribou permits were made available in Aleknagik, Dillingham, Manokotak, Togiak, and Twin Hills.

Wolf Predation on Nushagak Peninsula Caribou Contact: Pat Walsh

Using radio telemetry, Togiak Refuge and ADF&G are investigating the seasonality and duration of wolf use of the Nushagak Peninsula, in order to assess whether predation is a likely factor in driving population dynamics of Nushagak Peninsula caribou. From 2007 through 2011, we placed GPS radio transmitters on wolves from two packs located within 30 km of the Nushagak Peninsula. Collars were programmed to record locations every three hours. Tracking flights have been flown monthly to locate wolves and to download location data from the GPS collars. One of the two packs used the Nushagak Peninsula approximately 36% of the year, spending less than 10% of its time on the Peninsula during winter months, and up to 70% during late summer. Since 2008, wolf use of the Nushagak Peninsula increased steadily, although overall wolf numbers remained relatively constant. During this same time, the Nushagak Peninsula caribou population increased from an estimated 579 to 859. We tentatively conclude that wolf predation has not been the primary population driver for this caribou herd during the years of this study, but that the wolf population has responded to increased caribou abundance by shifting the amount of time it spends on the Peninsula. This study continued through spring 2012, at which time collars were removed from wolves. A final report will be prepared in 2013.

Moose Contact: Andy Aderman

In May 2012, 22 of 25 radiocollared cows produced a minimum of 36 calves, or 144 calves:100 cows. Twinning rate was 63.6%. Calf survival from birth to November was 38.9% suggested a fall recruitment rate of 56 calves: 100 cows. Significant progress was made in updating the Moose Management Plan for Unit 17A. Four of the 5 signatories have signed off on the plan as of January 10, 2013. Winter moose population surveys will be conducted in Unit 17A and southern Unit 18 if adequate survey conditions occur.

Walrus Contact: Michael Winfree

Togiak National Wildlife Refuge monitored Pacific walrus haulouts located at Cape Peirce and Hagemeister Island in 2011-2012. Remote cameras, which take a photo every hour, were installed on haulout beaches at Cape Peirce in 2010 and on Hagemeister Island in 2011. Furthermore, Togiak Refuge worked with Alaska Peninsula/Becharof National Wildlife Refuge and ADF&G to install cameras at Cape Seniavin and Round Island.

There were 15 haulout events documented at Cape Peirce from October 2011-June 2012. No walrus were documented at Cape Peirce from December 24, 2011 through June 2, 2012. The first haulout of 2012 occurred on June 3, 2012. The peak number of walrus hauled out at Cape Peirce was 486 animals on November 17, 2011. Cameras at Hagemeister Island documented 18 haulout events from June 2011-June 2012. The peak count of walrus using the Hagemeister Island haulout was 568 walrus on September 8, 2011.

Cliff-falling mortality events have been documented at Cape Peirce in 1994-1996, 2005, and 2006-2009. Since 2005, these events have coincided with the increased haulout use late in the fall. One factor causing this is erosion of sand dunes that once acted as a barrier between the haulout and the bluff. Walrus travel up the eroded sand dune and are exposed to cliff ledges. A high-tensile electric fence was constructed across the dune to prevent walrus from accessing the bluff in 2010, and for the second

consecutive year zero walrus died at Cape Peirce due to falling off the cliff. Thus, we tentatively accept that the fence is working effectively.

Seabirds Contact: Michael Swaim

Togiak National Wildlife Refuge has monitored seabird populations at Cape Peirce since 1980, making this one of the longest continuously studied seabird colonies in the state of Alaska. During this period, pelagic cormorant populations have remained relatively constant, while black-legged kittiwakes and common murre populations declined.

Eelgrass Monitoring Contact: Michael Swaim

Togiak Refuge has partnered with the USGS Alaska Science Center to map and inventory 23 eelgrass beds along the refuge coastline since 2007. Work was primarily focused on the reacquisition of aerial imagery in Goodnews Bay and Togiak Bay in 2012. The density and distribution of eelgrass will be recorded at select sites via boat-based sampling in 2013.

Water Temperature Monitoring Contact: Michael Swaim

Togiak Refuge has collected continuous water temperature measurements at 18 sites since 1990. The refuge will continue monitoring water temperature indefinitely, since these data provide important baseline information for a variety of other biological and climate-related studies.

Quantifying River Discharge Contact: Michael Winfree

Togiak Refuge and the USFWS Water Resources Branch have worked cooperatively since 1999 to acquire baseline hydrologic data of the flow regime (magnitude, duration, timing, frequency, and rate of change) and water quality. A network of stream discharge gages collected stream flow data from 1999-2005 at 20 locations. A subset of five of these stations continued to collect data through fall 2009, after which three of the five stations were removed. We will continue indefinitely to monitor discharge in the Togiak and Kulukak Rivers. Each gage is instrumented with pressure sensors that measure water level every 15 minutes. Five discharge measurements occurred at each site from October 1, 2011 through September 2012.

Salmon River Water Quality Contact: Michael Winfree

The Salmon River drainage, just south of Platinum, has been the site of a placer mine since the 1930's. Major production by the Goodnews Bay Mining Company stopped in 1976. The mine was sold to Hanson Industries in 1980, who in turn sold it to XS Platinum in 2007. In the summer of 2009, re-mining of the old tailings began. In September 2009, Togiak Refuge installed a continuous water-quality gage on the Salmon River. The gage monitors pH, turbidity, specific conductivity, dissolved oxygen, temperature, and depth. The gage runs continuously, taking a reading every 15 minutes. Baseline value estimates from April 1, 2010 through February 29, 2012 were: temperature = 2.4°C, specific conductivity = 78 µS/cm at 25°C, pH=7.3, turbidity=4.6 NTU, dissolved oxygen= 12.9 mg/L. Baseline values will be further refined with the collection of more data.

Education and Outreach Contact: Terry Fuller

Togiak Refuge has an active education and outreach program including the Migratory Bird Calendar (a Togiak entrant was the state-wide grand prize poster winner) and Junior Duck Stamp contests; National Wildlife Refuge Week; career fairs; production of Bristol Bay Field Notes (aired twice times weekly @ 10 minutes per episode on KDLG); and numerous classroom presentations in 12 villages in the Southwest Region, Lower Kuskokwim, and Dillingham City school districts. Field trips with area students for the 2011-2012 school year included bird walks, animal tracks and ID, archery, salmon life cycles, aquatic resources and bear safety. The refuge website is also a valuable education tool and is available at <http://togiak.fws.gov>. Also, the refuge partners with others to conduct three environmental education

camps described below:

Southwest Alaska Science Academy Contact: Terry Fuller

This past July, Togiak Refuge helped with the 11th year of a summer camp aimed at teaching middle and high school students about fisheries science and the importance of salmon to our ecosystem. Students were selected from the Bristol Bay region. During the camp students worked in the field alongside fisheries professionals. Cooperators with the refuge on this project included the Bristol Bay Economic Development Corporation, Bristol Bay Science and Research Institute, University of Alaska, University of Washington School of Fisheries, the Dillingham City and Southwest Region school districts, and the Alaska Department of Fish and Game.

Cape Peirce Marine Science and Yup'ik Culture Camp Contact: Terry Fuller

Togiak Refuge holds a junior high Science camp at Cape Peirce that is designed to educate area students about seabirds, marine mammals and how field studies are conducted. It also introduces them to a variety of outdoor resource related topics and activities.

Due to poor weather conditions (and two attempts to get to Cape Peirce), the camp was abruptly moved to an alternate location (Lake Nunavaugaluk) during 2012. Some of the activities that the students participated in included wilderness survival skills (water, fire, shelter, first aid), catch and release angling, archery, identification of aquatic organisms and canoeing. Other topics that were discussed included Leave No Trace camping practices, bear safety, stewardship and careers with the USFWS. Traditional councils and school districts from throughout western Bristol Bay are cooperators with this camp.

Summer Outdoor Skills and River Ecology Float Camp Contact: Terry Fuller

The 2012 Float Camp took place on the Pungokepuk and Togiak Rivers. Students learned about river ecosystems and how to enjoy them safely and responsibly while taking part in a float trip. Students observed and learned about the many fish, wildlife and plant species found on refuge rivers and streams. Rafting skills, water safety, different angling methods (Catch and Release), Leave No Trace camping practices and bear safety were topics during the trip. Students also participated in other outdoor activities such as outdoor survival skills, identification of juvenile salmonid species and archery. Other topics of discussion included bear safety, Leave No Trace camping practices and careers with the USFWS. On this particular camp students were also able to assist refuge staff with data collection for a water temperature project. This camp helped students understand the biological diversity of riparian ecosystems and the importance of salmon as a nutrient source, while developing a deeper sense of stewardship for local natural resources. Traditional councils and school districts from western Bristol Bay are cooperators in this camp.

River Ranger Program Contact: Allen Miller

The Refuge River Ranger Program was conceived during the public use management planning process and was first implemented in 1991. The program serves many purposes. River Rangers are the main contact source for sport fishermen and local residents. Information distributed to the public includes Service policies, regulations, resource management practices, State sport fish regulations, bear safety, wilderness ethics, Leave-No-Trace camping, and information about private lands to prevent trespass. Rangers document public use occurring on the river along with the location and timing of activities, conflicts between users, and sport fish catch/harvest per unit effort. Rangers also assist Refuge and ADF&G staff at the Kanektok River and Middle Fork Goodnews River weirs, and assist Refuge staff with biological studies. In addition, Rangers patrol campsites for litter, monitor compliance of sport fishing guides, and offer assistance as needed.

Two River Rangers were stationed in the village of Togiak during summer 2012 and patrolled the Togiak River several times each week. One River Ranger was also stationed in Quinhagak and patrolled the Kanektok River. All three rangers were residents of the villages where they were assigned. Two River Rangers stationed out of Dillingham patrolled the north and middle forks of the Goodnews River, and the Kanektok River using inflatable kayaks. Use of kayaks allowed rangers to access the entire length of the Kanektok and Goodnews rivers, which are inaccessible to power boats during most water levels.



Salmon Bycatch Update

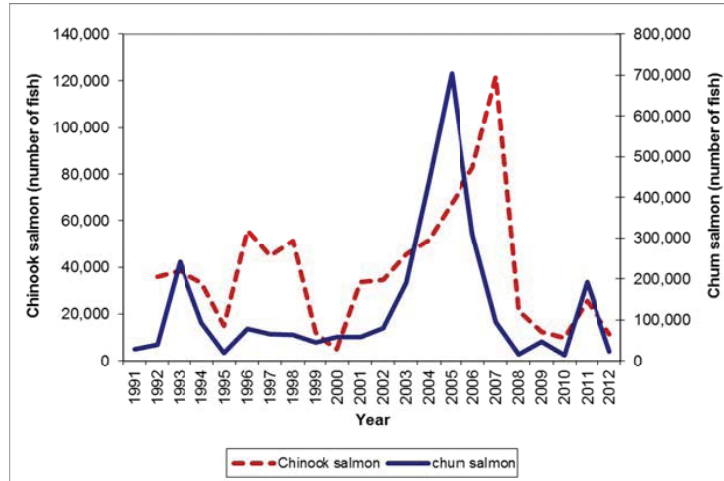
January 2013

BACKGROUND & NUMBERS

Every year, the Bering Sea/Aleutian Islands (BSAI) pollock fishery intercepts Chinook and chum salmon bound for Western and Interior Alaska. **In 2012, 11,350 Chinook salmon and 22,214 chum salmon were caught as bycatch in the pollock fishery.** In 2011, bycatch numbers were 25,500 Chinook salmon and 191,446 chum salmon. After being counted and sampled by observers, this bycatch is either thrown back into the water—dead after hours in the nets—or saved for donation to food banks.

Salmon bycatch in the BSAI pollock fishery increased dramatically in the mid-2000s and has since declined to below historical levels. Chinook salmon bycatch hit a record high in 2007 of over 120,000 Chinook salmon. Chum salmon bycatch peaked in 2005 at more than 700,000 chum salmon. Recent genetic studies of bycatch samples show that on average about 50% of the Chinook salmon bycatch is of Western Alaskan origin. Scale pattern analysis of bycatch samples from the late 1990s show that of the Western Alaska Chinook salmon, approximately 40% are Yukon River stocks. These numbers vary year to year—in 2010 stock composition was 42% Coastal Western Alaska (includes the lower Yukon); 20% Upper Yukon River and 11% Middle Yukon River. Available information indicates that about 15% of the chum salmon bycatch is of Western Alaska origin (including the lower Yukon), and as much as 7% of the total bycatch is chum salmon of middle and upper Yukon origin in recent years.

Chinook and chum salmon bycatch in the Bering Sea pollock fishery 1991-2012



CHINOOK SALMON BYCATCH MANAGEMENT: AMENDMENT 91

The pollock fishery—and salmon bycatch—is managed by the North Pacific Fishery Management Council (the Council) and the National Marine Fisheries Service (NMFS). A new system for reducing Chinook salmon bycatch in the Bering Sea pollock fishery was adopted by the Council in April 2009 and went into effect January 1, 2011. The new program, called Amendment 91, includes an overall cap of 60,000 Chinook salmon if the pollock fishery is participating in approved incentive plans, or an overall hard cap of 47,591 if the industry is not participating in approved incentive plans. If they are

Salmon Bycatch Update

January 2013

participating in approved incentive plans, they may exceed the performance standard of 47,591 in two out of any seven years (but only up to 60,000 Chinook salmon). If they exceed the performance standard in a third year out of any seven the cap drops to 47,591 permanently. The cap is divided between seasons and sectors (Offshore catcher processors, motherships, inshore catcher vessels and CDQ). When a sector reaches its portion of the cap they must stop fishing for the remainder of the season. Amendment 91 also requires that all participants in the pollock fishery must have at least 100% observer coverage: those vessels which were previously required to have 200% observer coverage are still required to do so.

CHUM SALMON BYCATCH MANAGEMENT

The Council is currently considering revisions to chum salmon bycatch reduction measures as well. The alternatives, or options, under consideration include a range of hard caps which would close the fishery when reached, and hard caps applied to June and July only when Western Alaska salmon are caught in higher proportions in the bycatch. The range of hard caps being considered is 50,000 to 353,000 chum salmon.

The alternatives also include an option for the fleet to participate in an updated rolling hot spot program, similar to the current system, with the additional option of a backstop large closure area which would apply in addition to the hot spot system. At the December 2012 meeting, the Council asked the pollock industry to develop a program that will work with the Chinook salmon avoidance measures to decrease chum salmon bycatch while not inadvertently increasing Chinook salmon bycatch, and to present their ideas at the October 2013 meeting. In the meantime, the fleet has adopted a variety of voluntary measures to further reduce chum salmon bycatch.

WHAT YOU CAN DO TO REDUCE SALMON BYCATCH

- ❖ **Ask the Council and the Governor to lower the Chinook salmon cap:** As Chinook salmon numbers have declined dramatically in-river and subsistence users have been restricted, the bycatch cap should be lowered to 30,000 at most.
- ❖ **Attend a Council Meeting:** The Council is scheduled to review Chinook salmon bycatch measures at the Council **meeting in Anchorage, April 1-9, 2013** and chum salmon bycatch at the October 2013 meeting. Meeting agendas are posted on the Council's website: <http://www.fakr.noaa.gov/npfmc/>. Public comment is accepted at every meeting.
- ❖ **Write a Letter to the Council:** In your letter, be sure to talk about the importance of Chinook and chum salmon to you, your family and community, and the impact low runs have had. Also provide your own traditional knowledge about the state of the salmon stocks. Letters for the April Council meeting are **due March 26**. Send letter to:
North Pacific Fishery Management Council Fax: (907) 271-2817
605 West 4th Avenue, Suite 306 E-mail: npfmc.comments@noaa.gov
Anchorage, AK 99501-2252
- ❖ **Sign up for YRDFA's E-news** to learn more and receive updates about opportunities to send in comments: E-mail info@yukonsalmon.org.

725 CHRISTENSEN DRIVE, SUITE 3-B • ANCHORAGE, ALASKA 99501
TELEPHONE: 907-272-3141 • 1-877-99YUKON(9-8566)
AX: 907-272-3142 • EMAIL: info@yukonsalmon.org
WWW.YUKONSALMON.ORG



YUKON RIVER DRAINAGE FISHERIES ASSOCIATION

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

Yukon-Kuskokwim Delta Subsistence Regional Advisory Council

Charter

- 1. Committee's Official Designation.** The Council's official designation is the Yukon-Kuskokwim Delta 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. Make recommendations on determinations of customary and traditional use of subsistence resources.
 - f. Make recommendations on determinations of rural status.
 - g. 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 \$150,000, 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 will terminate 2 years from the date the Charter is filed, unless, prior to that date, it 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 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.

//Signed//

Secretary of the Interior

DEC - 2 2011

Date Signed

DEC 03 2011

Date Filed

Fall 2013 Regional Advisory Council Meeting Calendar

August–October 2013 current as of 10/15/12

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

Winter 2014 Regional Advisory Council Meeting Calendar

February–March 2014 current as of 01/18/13

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>
<i>Feb. 16</i>	<i>Feb. 17</i> HOLIDAY	<i>Feb. 18</i>	<i>Feb. 19</i>	<i>Feb. 20</i>	<i>Feb. 21</i>	<i>Feb. 22</i>
<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>