



SOUTHEAST ALASKA SUBSISTENCE REGIONAL ADVISORY COUNCIL

Meeting Materials

October 4 -6, 2016

Petersburg, Alaska



What's Inside

Page

1	Agenda
3	Roster
4	Draft Council Winter 2016 Meeting Minutes
12	Draft Nonrural Determination Policy
30	Federal Subsistence Board 805c Non-Consensus Action Report
34	FP17-13: Modify the prohibition on the use of nets in streams flowing across or adjacent to the road systems within the city limits of Petersburg, Wrangell and Sitka
40	FP17-14: Allow the use of a sling bow as a legal gear type
46	FRMP Priority Information Needs
51	Revised Draft of Memorandum of Understanding between Federal Subsistence Board and State of Alaska
58	Annual Report Briefing
60	Annual Report Reply
84	Tongass Submerged Lands Proposed Rule
91	Public Comment on Tongass Submerged Lands Proposed Rule
93	Transboundary Mining along the Alaska-British Columbia Border
95	Nomination of Tier 3 Outstanding Natural Resource Water (ONRW) Designation

continues on next page

On the cover...

Panoramic view of the lower reaches of Stikine River



USFS photo

What's Inside

- 101 Alaska Department of Environmental Conservation Thank You Letter to Yakutat Tlingit Tribe Council
- 103 Alaska Department of Environmental Conservation Outstanding National Resource Waters Frequently Asked Questions
- 104 Tongass Transition
- 106 Winter 2017 Council Meeting Calendar
- 107 Fall 2017 Council Meeting Calendar
- 108 Council Charter

SOUTHEAST ALASKA SUBSISTENCE REGIONAL ADVISORY COUNCIL

ANB-ANS John Hanson Hall
Petersburg, Alaska

October 4 – 6, 2016 9:00 a.m. – 5:00 p.m.

TELECONFERENCE: call the toll free number: 1-866-560-5984 , then when prompted enter the passcode: 12960066

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.

AGENDA

*Asterisk identifies action item.

- 1. Call to Order (Chair)**
- 2. Invocation**
- 3. Roll Call and Establish Quorum (Secretary)..... 4**
- 4. Welcome and Introductions (Chair)**
- 5. Review and Adopt Agenda* (Chair) 1**
- 6. Review and Approve Previous Meeting Minutes* (Chair) 5**
- 7. Reports**
 - Council Member Reports
 - Chair’s Report
 - Regional Subsistence Fisheries Summary and Review of FY16 Special Actions (*Jeff Reeves*) Supplemental
 - Fisheries Resource Program Project Summary (*Ben VanAlen*) Supplemental
- 8. Public and Tribal Comment on Non-Agenda Items (available each morning)**
- 9. Old Business (Chair)**
 - a. Draft Nonrural Determination Policy* (*Office of Subsistence Management*)..... 12
 - b. Federal Subsistence Board 805c Non-Consensus Actions Report..... 30

10. New Business (Chair)

a. Fisheries Proposals*

FP17-13: *Modify the prohibition on the use of nets in streams flowing across or adjacent to the road systems within the city limits of Petersburg, Wrangell and Sitka*..... 34

FP17-14: *Allow the use of a sling bow as a legal gear type* 40

b. FRMP Priority Information Needs* (*Terry Suminski*) 46

c. Revisions to MOU with State* 51

d. Identify Issues for Annual Report* (*Robert Larson*) 58

e. Charter review* (*Robert Larson*) 108

f. Feedback on All Council Meeting (*Robert Larson*)

g. Tongass Submerged Lands Proposed Rule* (*DeAnna Perry*) 84

Public meeting: 3:00 p.m. October 4 for receiving testimony on the Proposed Rule

h. Transboundary Mining Update (informational item)..... 93

i. Subsistence Use of Facilities in Dry Bay (*National Park Service*) Supplemental

j. Outstanding National Resource Waters (informational item) 95

12. Agency Reports

Tribal Governments

Native Organizations

USFS

NPS

ADF&G

OSM

13. Future Meeting Dates*

Confirm Winter 2017 meeting date and location (*Saxman, March 14-16, 2017*)..... 106

Select Fall 2017 meeting date and location 107

14. Closing Comments

15. Adjourn (Chair)

To teleconference into the meeting, call the toll free number: 1-866-560-5984, then when prompted enter the passcode: 12960066.

Reasonable Accommodations

The Federal Subsistence Board is committed to providing access to this meeting for all

participants. Please direct all requests for sign language interpreting services, closed captioning, or other accommodation needs to Robert Larson, 907-772-5930, robertlarson@fs.fed.us, or 800-877-8339 (TTY), by close of business on September 27, 2016.

REGION 1

Southeast Alaska Subsistence Regional Advisory Council

Seat	Year Appointed <i>Term Expires</i>	Member Name and Community
1	2015 2016	Steve K. Reifentstahl Sitka
2	2004 2016	Frank G. Wright Jr. Hoonah
3	1993 2016	Patricia A. Phillips Pelican
4	2000 2016	Michael A. Douville Craig
5	2002 2016	Harvey Kitka Sitka Secretary
6	2014 2017	Robert F. Schroeder Juneau
7	2014 2017	Albert H. Howard Angoon
8	2002 2017	Donald C. Hernandez Point Baker
9	2013 2018	Kenneth L. Jackson Kake
10	2015 2018	Raymond D. Sensmeier Yakutat
11	2010 2017	John A. Yeager Wrangell
12	2003 2018	Michael D. Bangs Petersburg Chair
13	2009 2018	Cathy A. Needham Juneau Vice Chair

MINUTES OF THE MARCH 10-11, 2016 SOUTHEAST ALASKA SUBSISTENCE REGIONAL ADVISORY COUNCIL MEETING

Location of Meeting:

William A. Egan Civic and Convention Center, Anchorage, Alaska.

Time and Date of Meeting:

March 10-11, 2016; 1:30 p.m. starting time on March 10, adjourned 3:00 p.m. March 11, 2016.

Call to Order:

The winter, 2016 meeting of the Southeast Alaska Subsistence Regional Advisory Council was called to order Thursday, March 10 at 1:30 p.m. All Council members were present and remained throughout the meeting. Staff and public introduced themselves.

Review and Adopt Agenda:

The Council **approved a motion** to adopt the agenda as a guide (13-0) with the addition of the following items: a report on the designated hunter program, an update on the council's customary and traditional use letter, an update on the Board policy for non-rural determinations, an update on the petition to list the Alexander Archipelago wolf as a threatened and endangered species, a discussion regarding designating the Yakutat forelands as a Tier III natural area, and consideration of a joint council letter.

Attendees:

The following persons attended some portion of the Southeast Alaska Council meeting either in person or by teleconference, in addition to the Council members.

Amee Howard	Anchorage	OSM
Barbara Cellarius	Copper Center	NPS
Ben VanAlen	Juneau	USFS
Brie Darr	Sitka	USFS
Clarence Summers	Anchorage	NPS
Jennifer Hardin	Anchorage	OSM
Gene Peltola Jr.	Anchorage	OSM
Glenn Chen	Homer	BIA
Harold Robbins	Yakutat	Public
Jake Musslewhite	Juneau	USFS
Jeff Reeves	Craig	USFS
Jim Capra	Yakutat	NPS
Joshua Ream	Juneau	ADF&G
Justin Koller	Sitka	USFS
Lee Wallace	Saxman	Organized Village of Saxman

Melinda Hernandez Burke	Juneau	USFS
Orville Lind	Anchorage	OSM
Pat Robbins	Yakutat	Public
Pippa Kenner	Anchorage	OSM
Robert Cross	Sitka	USFS
Robert Larson	Petersburg	USFS
Susan Oehlers	Yakutat	USFS
Suzanne Worker	Anchorage	OSM
Terry Suminski	Sitka	USFS
Tom Kron	Anchorage	OSM
Tom Whitford	Anchorage	USFS
Wayne Owen	Juneau	USFS

Election of Officers

Mr. Bangs was elected Chair, Ms. Needham vice-Chair and Mr. Kitka as Secretary by unanimous consent.

Review and Approve Previous Meeting Minutes:

The Council **approved a motion** to accept the October 27-29, 2015 Council meeting minutes (11-0) as corrected. Edits include correcting the name of the Angoon Community Association and adding “at least” to item 1 in the annual report and “at this time” to item 5.

Council Reports:

Mr. Schroeder suggested that there will be significant challenges to the subsistence program due to effects of climate change. He believes that mining in Canada on streams flowing into Southeast Alaska is a serious threat to the region’s fisheries resources and the Council should remain aware of the situation.

Mr. Howard is concerned that the residents of Angoon are losing their ability to harvest food. Agencies listen to the resident’s concerns but nothing is changed or improved. The Green Creek mine tailings should be discharged on the Juneau side of Admiralty Island instead of the Angoon side; they enjoy the benefits and should deal with the potential problems. The issues at the heart of the Extraterritorial Jurisdiction Petition are still present and the Council should be ready to address them again.

Mr. Douville reported there were significant numbers of tuna near Noyes Island last summer. The deer population on Prince of Wales seems to be healthy but he is concerned with the low numbers of sockeye returning to local streams, particularly Hetta, Sarkar and Klawock. He is pleased with the way the ESA Petition regarding wolves in the region was resolved.

Ms. Phillips reported that she had attended the International Pacific Halibut Commission meeting in Juneau and made comments to the American Delegation and the Conference Board. She suggested that the Council should be kept informed of efforts to address halibut bycatch, especially during the next couple of years when the North Pacific Fisheries Management Council is planning on addressing this issue. There have been unusually intense wind and rain events in Pelican this year and few sockeye available in Hoktaheen.

Mr. Wright commented on the unusual lack of snow at low elevations this winter. The State Board of Fisheries closed an area to commercial Dungeness fishing, which was very much appreciated by residents of Hoonah. Sea otters are continuing to expand but are discouraged from remaining near town. There is a new cruise ship dock in Hoonah which will be a significant boost to the local economy.

Mr. Kitka remains concerned for the local herring spawning stock. The expanding sea otter population is a concern to all subsistence users in the region.

Mr. Sensmeier is concerned that the presence of cruise ships near Hubbard Glacier may be having a negative effect on survival of harbor seal pups. He is a member of the Tribal Transboundary Mining Work Group and traveled to Canada with State Lt. Governor Mallott to meet with the Canadian Deputy Prime Minister and the Mining Minister to express Tribal concerns with transboundary mining.

Mr. Jackson reported that low employment is the most significant problem in Kake. There is a concern with low number of sockeye returning to local streams. Sport fishermen are allowed to take six fish per person per day all summer but a subsistence fisher can only take 10 or 20 fish per family per year; that doesn't seem to make any sense. Deer numbers are improving and the moose population seems to be healthy. Mr. Jackson is communicating with other residents of Kake regarding the importance of reporting harvest numbers.

Mr. Hernandez is concerned with the possible negative effects of mining and noted there are several new prospects being investigated in the region for future development. The Forest Service has done a poor job of representing subsistence users in the new Tongass Land Management Plan revision. There were hearings in many communities in the region but none in his local area.

Ms. Needham agrees that a changing climate will present many different and unknown challenges in managing subsistence resources. She reported that the Central Council Tlingit and Haida Indian Tribes of Alaska has a grant from the Bureau of Indian Affairs to do water quality monitoring on the Stikine, Unuk and Taku Rivers. She feels the joint council session was very valuable and the breakout sessions informative.

Mr. Reifentstahl reported that the winter troll fishery has caught more fish than usual for this time of year but the fish were significantly smaller than normal. The Northern Southeast Regional Aquaculture Association has plans to purchase and operate the hatchery property in Kake so that will be some help with the economy in Kake.

Mr. Bangs reminded the council that they submitted a proposal to provide annual bag limits for salmon in the sport fishery during the past two fisheries cycles. The State Board of Fisheries did not approve either of them but he suggested the issue is important enough to continue to work with the Board for action at their next meeting.

Public and Tribal Comments:

Mr. Harold Robbins, a resident of Yakutat, provided written and oral testimony that asked for the Council's assistance in allowing use of cabins at Dry Bay for subsistence purposes that were permitted for commercial

fishing purposes. Commercial use begins 30 days prior and 15 days after anticipated commercial fishing openings, generally May 1 to November 1. Mr. Robbins has had a cabin in Dry Bay since 1978 and believes there are four other cabin owners that are affected by the National Park Service restriction on use of these cabins outside of the commercial fishing use window.

Mr. Pat Robbins agrees with Harold Robbins that the actions of the Nation Park Service are an unreasonable restriction on use of the cabins in Dry Bay. Cabin owners are subsistence users and economic necessity requires flexibility in living in and using remote areas.

Mr. Lee Wallace, a resident of Saxman, thanked the Council for their support of maintaining Saxman as a rural community. He is in favor of the new non-rural direct final rule. He is concerned that council chairs may not understand Tribal issues and encourages them to attend Tribal consultations. He believes there should be a subsistence use representative on the North Pacific Fisheries Management Council and there will be challenges due to climate change.

Old Business:

National Park Service Proposed Rule on Subsistence Collections: Barbara Cellarius, subsistence coordinator for the Wrangell-St. Elias National Park and Preserve reviewed the new proposed rule allowing the collections of horns and non-edible fish and animal parts for creating handicrafts that can be used for barter or sale, generally prohibiting the collections of live wildlife and limiting the types of bait that can be used for bear hunting. The most important change to the regulations responds to requests from subsistence users to authorize the customary practice of using plants and non-edible animal parts for handicrafts. There is currently a prohibition on the use of these materials and the proposed rule would allow the subsistence use. The Council commented that asking the Park Superintendent for written permission to pick up some grass or antlers is a very high bar and probably not necessary. The Council is also concerned that the regulations should allow collection by one person and manufacture of handicrafts by another. The Council **approved a motion** to send a letter to the NPS supporting the collection of plants and non-edible fish and wildlife parts for use as handicrafts.

Wrangell-St. Elias Subsistence Resource Commission Appointment: the Council **approved a motion** to appoint Mr. Ray Sensmeier to serve on the Wrangell-St. Elias Subsistence Resource Commission. It was noted that Mr. Sensmeier maintains good relations with the Tribe and other residents of Yakutat.

Stikine River subsistence fishery update: Mr. Robert Larson provided a briefing document and an oral report regarding the Stikine River subsistence fishery. The subsistence fishery remains an important activity for residents of Wrangell and Petersburg with the greatest harvest of Sockeye Salmon to date occurring in 2015. The pre-season estimate for Chinook Salmon was large enough to allow a Chinook Salmon subsistence fishery to open by regulation. The authorization for a subsistence fishery is contained within the U.S./Canada Pacific Salmon Treaty, which is currently being renegotiated. The new Treaty will be implemented in 2019. The Council **approved a motion** to send a letter to the Pacific Salmon Commission restating the Council's position regarding the directed fishery status for Chinook Salmon and removing the guideline harvest levels for Chinook, Sockeye and Coho Salmon from Treaty language.

Non-Rural Determination Timeline: Mr. Tom Kron, Office of Subsistence Management, provided the Council with an oral report and supplemental materials with an anticipated time-line for non-rural determination rule making. The Council will likely have a draft regulation to review at their fall meeting.

Designated Hunter Program: Mr. Terry Suminski, USFS, provided an oral and written summary of the designated hunter program for the Southeast Alaska region. Supplemental materials included how many hunters were involved, proportion of designated hunters by community and the total designated harvest of deer, goats and moose. There was a comparison between the Federal designated hunter program and the State proxy hunter program in addition to the comparison of the designated hunter harvest to total harvest.

New Business:

Federal Fish Regulatory Proposals: the Council proposed one regulatory change for the fishery regulatory cycle, amending the prohibition on the use of nets on the road systems connected to Sitka, Wrangell and Petersburg. This regulatory change was thought appropriate because there are no longer city limits in Wrangell or Petersburg, they are now boroughs. The Council **approved a motion** to submit the following as the proposed regulatory change:

§ .27(i)(13)(ix) No permits for the use of nets will be issued for the salmon streams flowing across or adjacent to the road systems ~~within the city limits~~ of Petersburg, Wrangell, and Sitka.

FY 2015 Annual Report: the Council **approved a motion** to send the Board the fy2015 Annual Report with the following concerns:

1. Maintaining funding for the Fisheries Resource Monitoring Program at least at current levels
2. Transboundary mining activities have the potential for significant negative affects
3. Is the solution to the Petition for Extraterritorial Jurisdiction effective
4. Restrictions on subsistence use of cabins on National Preserve land
5. Sea otter expansion and the negative effects on subsistence resources
6. The customary and traditional use determination process and regulations
7. Maintaining terminal area salmon escapements sufficient to have subsistence fisheries
8. Salmon and halibut interception and bycatch
9. Subsistence use representation on the North Pacific Fishery Management Council

Priority Information Needs for Fisheries: the Council met as a working group prior to the council meeting. Ms. Needham and Mr. Reifstahl provided the Council with a summary of the working group findings. The Council reviewed the work group report and **approved a motion** to forward a list of all streams with past subsistence harvest to the Office of Subsistence Management (not prioritized) as the Council's Priority Information Needs for fisheries. The Council will have an opportunity to review and prioritize that list at the fall council meeting.

Update on Unit 2, Prince of Wales wolf management: Jeff Reeves provided an oral summary and distributed a briefing document on management of wolves on Prince of Wales Island for the 2015-16 season. The State and Federal programs worked cooperatively to close the season when the quota was taken. Wolf population assessment studies are ongoing with the emphasis shifting from radio collars to DNA analysis.

Joint Council letter: the Council reviewed and **approved a motion** to sign the all council letter to the Board.

Review of Council's customary and traditional use determination letter: the Office of Subsistence Management is in the process of reviewing the letter and will provide a response at the fall Council meeting.

Agency representation by subsistence users: in response to the Council's inquiry it was made clear that agencies cannot delegate authority to a member of the public to act as their representative.

Yakutat forelands Tier III designation: the Council was interested in having additional information regarding the Tier III natural area designation and requested an update on this program at the fall meeting.

Agency Reports:

National Park Service, Use of cabins for subsistence in the Glacier Bay National Preserve: Jim Capra, NPS Dry Bay Ranger, distributed a briefing document to the Council and provided an oral report detailing the regulations and policies used to address use of cabins in the Preserve. Mr. Capra will coordinate with the Glacier Bay Park superintendent and provide additional information on this topic at the fall council meeting.

U.S. Forest Service: Tom Whitford reported that the Tongass Nation Forest is completing a forest plan revision that will aid the agency in transitioning to young growth management. There were over 150,000 comments and a final decision is expected by mid-December. The Council was concerned with the process used to contact subsistence users for the Section 810 hearings and **approved a motion** to write a letter to the USFS concerning that issue. The USFS is working on a black bear population assessment cooperative project with ADF&G in Prince William Sound. Terry Suminski reported that there was sufficient budget carryover from FY15 to fund an additional Fisheries Resource Monitoring Program project. Melinda Hernandez Burke was recently appointed as the Regional Tribal Liaison.

Office of Subsistence Management: the Council was provided an opportunity to review the Charter and decided not to recommend any changes.

Future Meeting Dates

The Council confirmed meeting in Petersburg on October 4-6, 2016 for the fall 2016 meeting. The Council selected Saxman on March 14-16, 2017 for their winter meeting.

The Council meeting adjourned at 3:00 p.m., March 11, 2016.

I hereby certify that, to the best of my knowledge, the foregoing minutes are accurate and complete.

/s/ Robert Larson

May 10, 2016

Robert Larson, DFO, USFS Subsistence Management Program

/s/ Mike Bangs

May 10, 2016

Mike Bangs, Chair, Southeast Alaska Subsistence Regional Advisory Council

These minutes will be formally considered by the Southeast Alaska Subsistence Regional Advisory Council at its next meeting, and any corrections or notations will be incorporated in the minutes of that meeting.

DRAFT

POLICY ON NONRURAL DETERMINATIONS

FEDERAL SUBSISTENCE BOARD

Adopted _____, 2017

PURPOSE

This policy clarifies the internal management of the Federal Subsistence Board (Board) and provides transparency to the public regarding the process of making or changing nonrural determinations of areas or communities for the purpose of identifying rural residents who may harvest fish and wildlife for subsistence uses on Federal public lands in Alaska. This policy is intended 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

Title VIII of the Alaska National Interest Lands Conservation Act (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 situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses” (ANILCA Section 801). Rural status provides the foundation for the subsistence priority on Federal public lands to help ensure the continuation of the subsistence way of life in Alaska. Prior to 2015, implementation of this section and making rural determinations was based on criteria set forth in Subpart B of the Federal subsistence regulations.

In October 2009, the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, directed the Board to review the process of rural determinations. On December 31, 2012, the Board initiated a public review of the rural determination process. That public process lasted nearly a year, producing 278 comments from individuals, 137 comments from members of Regional Advisory Councils, 37 comments from Alaska Native entities, and 25 comments from other entities (e.g., city and borough governments). Additionally, the Board engaged in government-to-government consultation with tribes and consultation with Alaska Native Claims Settlement Act (ANCSA) corporations. In general, the comments received indicated a broad dissatisfaction with the rural determination process. Among other comments, respondents indicated the aggregation criteria were perceived as arbitrary, the population thresholds were seen as inadequate to capture the reality of rural Alaska, and the decennial review was widely viewed to be unnecessary.

Based on this information, the Board held a public meeting on April 17, 2014 and decided to recommend a simplification of the process to the Secretaries of the Interior and Agriculture (Secretaries) to address rural status in the Federal Subsistence Management Program. The Board's recommended simplified process would eliminate the criteria from regulation and allow the Board to determine which areas or communities are nonrural in Alaska. All other communities or areas would, therefore, be considered "rural" in relation to the Federal subsistence priority in Alaska.

The Secretaries accepted the Board recommendation and published a Final Rule on November 4, 2015, revising the regulations governing the rural determination process for the Federal Subsistence Management Program in Alaska. The Secretaries removed specific rural determination guidelines and criteria, including requirements regarding population data, the aggregation of communities, and a decennial review. The Board will now make nonrural determinations using a comprehensive approach that may consider such factors as population size and density, economic indicators, military presence, industrial facilities, use of fish and wildlife, degree of remoteness and isolation, and any other relevant material including information provided by the public.

By using a comprehensive approach and not relying on set guidelines and criteria, this new process will enable the Board to be more flexible in making decisions that take into account regional differences found throughout the State. This will also allow for greater input from the Councils, Federally recognized Tribes of Alaska, Alaska Native Corporations, and the public in making nonrural determinations by incorporating the nonrural determination process into the subsistence regulatory schedule which has established comment periods and will allow for multiple opportunities for input. Simultaneously with the Final Rule, the Board published a Direct Final Rule (80 FR 68245; Nov. 4, 2015) (**Appendix B**) establishing the list of nonrural communities, those communities not subject to the Federal subsistence priority on Federal public lands, based on the list of rural communities that predated the 2007 Final Rule (72 FR 25688; May 7, 2007).

As of November 4, 2015, the Board determined all communities and areas in Alaska to be rural in accordance with 36 CFR 242.15 and 50 CFR 100.15 except for the following: Fairbanks North Star Borough; Homer area – including Homer, Anchor Point, Kachemak City, and Fritz Creek; Juneau area – including Juneau, West Juneau, and Douglas; Kenai area – including Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifornsky, Kasilof, and Clam Gulch; Ketchikan area – including Ketchikan City, Clover Pass, North Tongass Highway, Ketchikan East, Mountain Point, Herring Cove, Saxman East, Pennock Island, and parts of Gravina Island; Municipality of Anchorage; Seward area – including Seward and Moose Pass; Valdez; and Wasilla/Palmer area – including Wasilla, Palmer, Sutton, Big Lake, Houston, and Bodenbergs Butte (36 CFR 242.23 and 50 CFR 100.23).

BOARD AUTHORITIES

- ANILCA 16 U.S.C. 3101, 3126.
- Administrative Procedures Act (APA), 5 U.S.C. 551-559
- 36 CFR 242.15; 50 CFR 100.15
- 36 CFR 242.18(a); 50 CFR 100.18(a)
- 36 CFR 242.23; 50 CFR 100.23

POLICY

The Board will only address changes to the nonrural status of communities or areas when requested in a proposal. Any individual, organization, or community may submit a proposal to designate a community or area as nonrural. Additionally, any individual, organization, or community may request to change an existing nonrural determination by submitting a proposal to the Board to change the status of a community or area back to rural. This policy will outline what will be required of the proponent in the submission of a proposal, the administrative process to address a proposal, a general schedule or timeline, and the public process involved in acting on such proposals.

Process

Making a Nonrural Determination

For proposals seeking a nonrural determination for a community or area, it is the proponent's responsibility to provide the Board with substantive narrative evidence to support their rationale of why the proposed nonrural determination should be considered.

Submitting a Proposal

To file a request, you must submit a written proposal in accordance with the guidance provided in the Federal Register with a call for proposals to revise subsistence taking of fish and shellfish regulations and nonrural determinations. In addition to the threshold requirements set forth below, all proposals must contain the following baseline information:

- Full name and mailing address.
- A statement describing the proposed nonrural determination action requested.
- A detailed description of the community or area to be considered nonrural, including any current boundaries, borders, or distinguishing landmarks, so as to identify what Alaska residents would be affected by the change in rural status;
- Rationale (law, policy, factors, or guidance) for the Board to consider in determining the nonrural status of a community or area;
- A detailed statement of the facts that illustrate that the community or area is nonrural using the rationale stated above; and
- Any additional information supporting the proposed change.

Threshold Requirements

The Board will accept a proposal to designate a community or area as nonrural only if the Board determines that the proposal meets the following threshold requirements:

- Based upon information not previously considered by the Board;
- Provides substantive rationale for determining the nonrural status of a community or area that takes into consideration the unique qualities of the region; and
- Provides substantive information that supports the provided rationale that a community or area is nonrural instead of rural.

Upon receipt of a proposal to designate a community or area as nonrural, the Board shall determine whether the proposal satisfied the threshold requirements outlined above. If the proposal does not, the proponent will be notified in writing. If the proposal does, it will be considered in accordance with the timeline set forth below.

Rescinding a Nonrural Determination

For proposals seeking to have the Board rescind a nonrural determination, a proposal will be accepted if it is:

- Based upon information not previously considered by the Board; or
- Demonstrates that the information used and interpreted by the Board in designating the community as nonrural has changed since the original determination was made.

Proposals seeking to have the Board rescind a nonrural determination must also include the baseline information and meet the threshold requirements outlined above for nonrural proposals.

Limitation on Submission of Proposals to Change from Rural to Nonrural

The Board is aware of the burden placed on rural communities and areas in defending their rural status. If, under this new process, a community's status is maintained as rural after a proposal to change its status to nonrural is either rejected for (i) failure to comply with these guidelines or (ii) is rejected after careful consideration by the Board, no proposals to change that community's or area's status as nonrural shall be accepted until there has been a demonstrated change in that community's rural identity.

Whether or not there has been a "demonstrated change" to the rural identity of an area or community is the burden of the proponent to show by a preponderance of the evidence.

Process Schedule

As authorized in 36 CFR 242.18(a) and 50 CFR 100.18(a), "The Board may establish a rotating schedule for accepting proposals on various sections of subpart C or D regulations over a period of years." To ensure meaningful input from the Councils and allow opportunities for public comment, the Board will only accept nonrural

determination proposals every other year in conjunction with the call for proposals to revise subsistence taking of fish and shellfish regulations and nonrural determinations. If accepted, the proposal will be deliberated during the regulatory Board meeting in the next Fisheries Regulatory cycle. This schedule thus creates a three- year period for proposal review, analysis, Regional Advisory Council input, tribal and ANCSA corporation consultation, public comment, and Board deliberation and decision.

Decision Making

When acting upon proposals to change the nonrural status of a community or area, the Board will:

- Proceed on a case-by-case basis to address each proposal regarding nonrural determinations.
- Base its determination or changes to a determination on information of a reasonable and defensible nature contained within the administrative record.
- Make nonrural determinations based on a comprehensive application of considerations presented in the proposal that have been verified by the Board as accurate.
- Consider recommendations of the appropriate Subsistence Regional Advisory Council.
- Consider comments from the public, including the State of Alaska.
- Engage in government-to-government consultation with affected tribes or consultation with affected ANCSA corporations.
- Implement a final decision on a nonrural determination after compliance with the APA, if the determination is supported and valid.

As part of its decision-making process, the Board may compare information from other, similarly-situated communities or areas if limited information exists for a certain community or area. The Board also has discretion to clarify the geographical extent of the area relevant to the nonrural determination. The Board will look to the Regional Advisory Councils for confirmation that any relevant information brought forth during the nonrural determination process accurately describes the unique characteristics of the affected region. However, deference to the Councils does not apply.

General Process Timeline

Outlined in Table 1 and Table 2

Table 1. General Process Timeline

1. January to March (Even Year) – A proposed rule is published in the Federal Register with the call for proposals to revise subsistence taking of fish and shellfish regulations and nonrural determinations.
2. April to July (Even Year) – Proposals for nonrural determinations are validated by staff. If the proposal is not valid, the proponent will be notified in writing.
3. August to November (Even Year) –Affected Regional Advisory Council(s) reviews the validated proposals and provides their initial recommendations, which should include relevant regional characteristics, at their fall meeting on the record.
4. November to December (Even Year) – Staff will organize Nonrural Determination proposal presentations.
5. January (Odd Year) – At the Board’s Fishery Regulatory meeting, Board will determine if the threshold requirements have been met. If the proposal does not meet the threshold requirements, the proponent will be notified in writing. If the proposal does, it will be considered in accordance with the timeline set forth here.
6. February (Odd Year) to July (Even Year) (18 months) – For proposals that have been determined by the Board to meet the Threshold Requirements, the Board will conduct public hearings in the communities that will be affected by the validated proposals. During this time period, independent of the fall Council meetings, Tribes/ANCSA Corporations may also request formal consultation on the nonrural determination proposals. Following the Council meeting cycle, public hearings, and tribal/ANCSA consultations, staff will prepare a written analysis for each nonrural determination proposal following established guidelines.
7. August to November (Even Year) –The Council(s) will provide recommendations on the draft Nonrural Determination Analyses.
8. November 2018 to December (Even Year) – Staff incorporates Council recommendations and comments into the draft Nonrural Determination Analyses for the Board.
9. January (Odd Year) – At the Board’s Fisheries Regulatory meeting, Staff present the Nonrural Determination Analyses to the Board. The Board makes a final decision on the Nonrural Determination proposals.

Wildlife & FRMP Cycle	Fishery Cycle	Dates	FSB or Activity	Proposed Nonrural Determination Cycle				
		Council Cycle		Even Years				
Wildlife & FRMP Review Cycle	Fishery Review Cycle	January	FSB FRMP Work Session	1	Nonrural Proposed Rule Jan 2016			
		February March	Fishery Proposed Rule Jan- Mar					
		April July	FSB Meeting	2	Proposal Validation			
		August September October November	Fishery Proposal Review		3	Nonrural Proposal Review by Councils		
		December		Finalize Proposal Presentations for the Board				
		January	FSB Meeting	5		Odd Years - Board determines which proposals meet the Threshold requirements		
		February March	Wildlife Proposed Rule Jan - Mar			6	Odd to Even Years (18 months) - Public Hearings, tribal/ANCSA Corporation Consultation, and Writing of Nonrural Determination Analyses for proposals that meet the threshold requirements as determined by the Board	
		April July						
		August September October November	Wildlife Proposal & FRMP Project Review					
	December							
	January	FSB FRMP Work Session						
	February March	Fishery Proposed Rule Jan- Mar						
	April July	FSB Meeting		1	Nonrural Proposed Rule			
	Fishery Review Cycle	Fishery Review Cycle	August September October November	Fishery Proposal Review	7	Even Years Analysis Review	3	Proposal review by Councils
			December					
			January	FSB Meeting	9	Odd Years – Final Board Decision	5	Odd Years – See 5 above

Table 2. General Process Timeline Comparison with other Cycles

Appendix A – Final Rule – Rural Determination Process

DEPARTMENT OF AGRICULTURE**Forest Service****36 CFR Part 242****DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 100**

[Docket No. FWS-R7-SM-2014-0063;
FXRS12610700000-156-FF07J00000;
FBMS# 4500086287]

RIN 1018-BA62

**Subsistence Management Regulations
for Public Lands in Alaska; Rural
Determination Process**

AGENCIES: Forest Service, Agriculture;
Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Secretaries of Agriculture and the Interior are revising the regulations governing the rural determination process for the Federal Subsistence Management Program in Alaska. The Secretaries have removed specific guidelines, including requirements regarding population data, the aggregation of communities, and a decennial review. This change will allow the Federal Subsistence Board (Board) to define which communities or areas of Alaska are nonrural (all other communities and areas would, therefore, be rural). This new process will enable the Board to be more flexible in making decisions and to take into account regional differences found throughout the State. The new process will also allow for greater input from the Subsistence Regional Advisory Councils (Councils), Federally recognized Tribes of Alaska, Alaska Native Corporations, and the public.

DATES: This rule is effective November 4, 2015.

ADDRESSES: This rule and public comments received on the proposed rule may be found on the Internet at www.regulations.gov at Docket No. FWS-R7-SM-2014-0063. Board meeting transcripts are available for review at the Office of Subsistence Management, 1011 East Tudor Road, Mail Stop 121, Anchorage, AK 99503, or on the Office of Subsistence Management Web site (<https://www.doi.gov/subsistence>).

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Eugene R. Peltola, Jr., Office of Subsistence Management; (907) 786-3888 or subsistence@fws.gov. For

questions specific to National Forest System lands, contact Thomas Whitford, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 743-9461 or twhitford@fs.fed.us.

SUPPLEMENTARY INFORMATION:**Background**

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program. This program provides a preference for take of fish and wildlife resources for subsistence uses on Federal public lands and waters in Alaska. The Secretaries published temporary regulations to carry out this program in the **Federal Register** on June 29, 1990 (55 FR 27114), and published final regulations in the **Federal Register** on May 29, 1992 (57 FR 22940). The program regulations have subsequently been amended a number of times. Because this program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, "Parks, Forests, and Public Property," and Title 50, "Wildlife and Fisheries," at 36 CFR 242.1-242.28 and 50 CFR 100.1-100.28, respectively. The regulations contain subparts as follows: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife.

Consistent with Subpart B of these regulations, the Secretaries established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board comprises:

- A Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- The Alaska Regional Director, U.S. Fish and Wildlife Service;
- The Alaska Regional Director, U.S. National Park Service;
- The Alaska State Director, U.S. Bureau of Land Management;
- The Alaska Regional Director, U.S. Bureau of Indian Affairs;
- The Alaska Regional Forester, U.S. Forest Service; and
- Two public members appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture.

Through the Board, these agencies and members participate in the development of regulations for subparts C and D, which, among other things, set forth program eligibility and specific harvest seasons and limits.

In administering the program, the Secretaries divided Alaska into 10 subsistence resource regions, each of which is represented by a Regional Advisory Council. The Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Council members represent varied geographical, cultural, and user interests within each region.

Prior Rulemaking

On November 23, 1990 (55 FR 48877), the Board published a notice in the **Federal Register** explaining the proposed Federal process for making rural determinations, the criteria to be used, and the application of those criteria in preliminary determinations. On December 17, 1990, the Board adopted final rural and nonrural determinations, which were published on January 3, 1991 (56 FR 236). Final programmatic regulations were published on May 29, 1992, with only slight variations in the rural determination process (57 FR 22940). As a result of this rulemaking, Federal subsistence regulations at 36 CFR 242.15 and 50 CFR 100.15 require that the rural or nonrural status of communities or areas be reviewed every 10 years, beginning with the availability of the 2000 census data.

Because some data from the 2000 census was not compiled and available until 2005, the Board published a proposed rule in 2006 to revise the list of nonrural areas recognized by the Board (71 FR 46416, August 14, 2006). The final rule published in the **Federal Register** on May 7, 2007 (72 FR 25688).

Secretarial Review

On October 23, 2009, Secretary of the Interior Salazar announced the initiation of a Departmental review of the Federal Subsistence Management Program in Alaska; Secretary of Agriculture Vilsack later concurred with this course of action. The review focused on how the Program is meeting the purposes and subsistence provisions of Title VIII of ANILCA, and if the Program is serving rural subsistence users as envisioned when it began in the early 1990s.

On August 31, 2010, the Secretaries announced the findings of the review, which included several proposed administrative and regulatory reviews and/or revisions to strengthen the Program and make it more responsive to those who rely on it for their subsistence uses. One proposal called

for a review, with Council input, of the rural determination process and, if needed, recommendations for regulatory changes.

The Board met on January 20, 2012, to consider the Secretarial directive and the Councils' recommendations and review all public, Tribal, and Alaska Native Corporation comments on the initial review of the rural determination process. After discussion and deliberation, the Board voted unanimously to initiate a review of the rural determination process and the 2010 decennial review. Consequently, the Board found that it was in the public's best interest to extend the compliance date of its 2007 final rule (72 FR 25688; May 7, 2007) on rural determinations until after the review of the rural determination process and the decennial review were completed or in 5 years, whichever comes first. The Board published a final rule on March 1, 2012 (77 FR 12477), extending the compliance date.

The Board followed this action with a request for comments and announcement of public meetings (77 FR 77005; December 31, 2012) to receive public, Tribal, and Alaska Native Corporations input on the rural determination process.

Due to a lapse in appropriations on October 1, 2013, and the subsequent closure of the Federal Government, some of the preannounced public meetings and Tribal consultations to receive comments on the rural determination process during the closure were cancelled. The Board decided to extend the comment period to allow for the complete participation from the Councils, public, Tribes, and Corporations to address this issue (78 FR 66885; November 7, 2013).

The Councils were briefed on the Board's **Federal Register** documents during their winter 2013 meetings. At their fall 2013 meetings, the Councils provided a public forum to hear from residents of their regions, deliberate on the rural determination process, and provide recommendations for changes to the Board.

The Secretaries, through the Board, also held hearings in Barrow, Ketchikan, Sitka, Kodiak, Bethel, Anchorage, Fairbanks, Kotzebue, Nome, and Dillingham to solicit comments on the rural determination process. Public testimony was recorded during these hearings. Government-to-government tribal consultations on the rural determination process were held between members of the Board and Federally recognized Tribes of Alaska. Additional consultations were held

between members of the Board and Alaska Native Corporations.

Altogether, the Board received 475 substantive comments from various sources, including individuals, members of the Councils, and other entities or organizations, such as Alaska Native Corporations and borough governments. In general, this information indicated a broad dissatisfaction with the current rural determination process. The aggregation criteria were perceived as arbitrary. The current population thresholds were seen as inadequate to capture the reality of rural Alaska. Additionally, the decennial review was widely viewed to be unnecessary.

Based on this information, the Board at their public meeting held on April 17, 2014, elected to recommend a simplification of the process by determining which areas or communities are nonrural in Alaska; all other communities or areas would, therefore, be rural. The Board would make nonrural determinations using a comprehensive approach that considers population size and density, economic indicators, military presence, industrial facilities, use of fish and wildlife, degree of remoteness and isolation, and any other relevant material, including information provided by the public. The Board would rely heavily on the recommendations of the Subsistence Regional Advisory Councils.

In summary, based on Council and public comments, Tribal and Alaska Native Corporation consultations, and briefing materials from the Office of Subsistence Management, the Board developed a proposal that simplifies the process of rural determinations and submitted its recommendation to the Secretaries on August 15, 2014.

On November 24, 2014, the Secretaries requested that the Board initiate rulemaking to pursue the regulatory changes recommended by the Board. The Secretaries also requested that the Board obtain Council recommendations and public input, and conduct Tribal and Alaska Native Corporation consultation on the proposed changes. If adopted through the rulemaking process, the current regulations would be revised to remove specific guidelines, including requirements regarding population data, the aggregation of communities, and the decennial review, for making rural determinations.

Public Review and Comment

The Departments published a proposed rule on January 28, 2015 (80 FR 4521), to revise the regulations governing the rural determination

process in subpart B of 36 CFR part 242 and 50 CFR part 100. The proposed rule opened a public comment period, which closed on April 1, 2015. The Departments advertised the proposed rule by mail, radio, newspaper, and social media; comments were submitted via *www.regulations.gov* to Docket No. FWS-R7-SM-2014-0063. During that period, the Councils received public comments on the proposed rule and formulated recommendations to the Board for their respective regions. In addition, 10 separate public meetings were held throughout the State to receive public comments, and several government-to-government consultations addressed the proposed rule. The Councils had a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, a Council Chair, or a designated representative, presented each Council's recommendations at the Board's public work session of July, 28, 2015.

The 10 Councils provided the following comments and recommendations to the Board on the proposed rule:

Northwest Arctic Subsistence Regional Advisory Council—unanimously supported the proposed rule.

Seward Peninsula Subsistence Regional Advisory Council—unanimously supported the proposed rule.

Yukon-Kuskokwim Delta Subsistence Regional Advisory Council—unanimously supported the proposed rule.

Western Interior Alaska Regional Advisory Council—supported the proposed rule.

North Slope Subsistence Regional Advisory Council—unanimously supported the proposed rule as written. The Council stated the proposed rule will improve the process and fully supported an expanded role and inclusion of recommendations of the Councils when the Board makes nonrural determinations. The Council wants to be closely involved with the Board when the Board sets policies and criteria for how it makes nonrural determinations under the proposed rule if the rule is approved, and the Council passed a motion to write a letter requesting that the Board involve and consult with the Councils when developing criteria to make nonrural determinations, especially in subject matter that pertains to their specific rural characteristics and personality.

Bristol Bay Subsistence Regional Advisory Council—supported switching the focus of the process from rural to

nonrural determinations. They indicated there should be criteria for establishing what is nonrural to make determinations defensible and justifiable, including determinations of the carrying capacity of the area for sustainable harvest, and governmental entities should not determine what is spiritually and culturally important for a community. They supported eliminating the mandatory decennial; however, they requested a minimum time limit between requests (at least 3 years). They discussed deference and supported the idea but felt it did not go far enough.

Southcentral Alaska Subsistence Regional Advisory Council—supported the proposed rule with modification. They recommended deference be given to the Councils on the nonrural determinations.

Southeast Alaska Subsistence Regional Advisory Council—supported the proposed rule with modification. The Council recommended a modification to the language of the proposed rule: “The Board determines, after considering the report and recommendations of the applicable regional advisory council, which areas or communities in Alaska are non-rural” The Council stated that this modification is necessary to prevent the Board from adopting proposals contrary to the recommendation(s) of a Council and that this change would increase transparency and prevent rural communities from being subject to the whims of proponents.

Kodiak/Aleutians Subsistence Regional Advisory Council—is generally appreciative that the Board has recommended changes to the rural determination process and supported elimination of the decennial review. The Council recommended that the Board implement definitive guidelines for how the Board will make nonrural determinations to avoid subjective interpretations and determinations; that the language of the proposed rule be modified to require the Board to defer to the Councils and to base its justification for not giving deference on defined criteria to avoid ambiguous decisions; that the Board provide program staff with succinct direction for conducting analyses on any proposals to change a community’s status from rural to nonrural; and that the Board develop written policies and guidelines for making nonrural determinations even if there is a lack of criteria in the regulations. The Council is concerned that proposals to change rural status in the region will be frequently submitted from people or entities from outside the region; the Council is opposed to

proposals of this nature from outside its region and recommends that the Board develop guidelines and restrictions for the proposal process that the Board uses to reassess nonrural status.

Eastern Interior Alaska Subsistence Regional Advisory Council—opposed the proposed rule due to the lack of any guiding criteria to determine what is rural or nonrural. They stated the lack of criteria could serve to weaken the rural determination process. They supported greater involvement of the Councils in the Board’s process to make rural/nonrural determinations. This Council was concerned about changes including increasing developments, access pressure on rural subsistence communities and resources, and social conflicts in the Eastern Interior region.

A total of 90 substantive comments were submitted from public meetings, letters, deliberations of the Councils, and those submitted via www.regulations.gov.

- 54 supported the proposed rule;
- 16 neither supported nor opposed the proposed rule;
- 7 supported the proposed rule with modifications;
- 7 neither supported nor opposed the proposed rule and suggested modifications; and
- 6 opposed the proposed rule.

Major comments from all sources are addressed below:

Comment: The Board should provide, in regulatory language, objective criteria, methods, or guidelines for making nonrural determinations.

Response: During the request for public comment (77 FR 77005; December 31, 2012), the overwhelming response from the public was dissatisfaction with the list of regulatory guidelines used to make rural determinations. The Board, at their April 17, 2014, public meeting, stated that if the Secretaries approved the recommended simplification of the rural determination process, the Board would make nonrural determinations using a comprehensive approach that considers, but is not limited to, population size and density, economic indicators, military presence, industrial facilities, use of fish and wildlife, degree of remoteness and isolation, and any other relevant material, including information provided by the public. The Board also indicated that they would rely heavily on the recommendations of the Subsistence Regional Advisory Councils. The Board, at their July 28, 2015, public work session, directed that a subcommittee be established to draft options (policy or rulemaking) to address future rural determinations. The subcommittee options, once reviewed

by the Board at their January 12, 2016, public meeting will be presented to the Councils for their review and recommendations.

Comment: The Board should give deference to the Regional Advisory Councils on nonrural determinations and place this provision in regulatory language.

Response: The Board expressed during its April 2014 and July 2015 meetings that it intends to rely heavily on the recommendations of the Councils and that Council input will be critical in addressing regional differences in the rural determination process. Because the Board has confirmed that Councils will have a meaningful and important role in the process, a change to the regulatory language is neither warranted nor necessary at the present time.

Comment: Establish a timeframe for how often proposed changes may be submitted.

Response: During previous public comment periods, the decennial review was widely viewed to be unnecessary, and the majority of comments expressed the opinion that there should not be a set timeframe used in this process. The Board has been supportive of eliminating a set timeframe to conduct nonrural determinations. However, this issue may be readdressed in the future if a majority of the Councils support the need to reestablish a nonrural review period.

Comment: Redefine “rural” to allow nonrural residents originally from rural areas to come home and participate in subsistence activities.

Response: ANILCA and its enacting regulations clearly state that you must be an Alaska resident of a rural area or community to take fish or wildlife on public lands. Any change to that definition is beyond the scope of this rulemaking.

Comment: Develop a policy for making nonrural determinations, including guidance on how to analyze proposed changes.

Response: The Board, at their July 28, 2015, public work session, directed that a subcommittee be established to draft options (policy or rulemaking) to address future rural determinations that, once completed, will be presented to the Councils for their review and recommendations.

Comment: Allow rural residents to harvest outside of the areas or communities of residence.

Response: All rural Alaskans may harvest fish and wildlife on public lands unless there is a customary and traditional use determination that identifies the specific community’s or area’s use of particular fish stocks or

wildlife populations or if there is a closure.

Rule Promulgation Process and Related Rulemaking

These final regulations reflect Secretarial review and consideration of Board and Council recommendations, Tribal and Alaska Native Corporations government-to-government tribal consultations, and public comments. The public received extensive opportunity to review and comment on all changes.

Because this rule concerns public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

Elsewhere in today's **Federal Register** is a direct final rule by which the Board is revising the list of rural determinations in subpart C of 36 CFR part 242 and 50 CFR part 100. See "Subsistence Management Regulations for Public Lands in Alaska; Rural Determinations, Nonrural List" in Rules and Regulations.

Conformance With Statutory and Regulatory Authorities

Administrative Procedure Act Compliance

The Board has provided extensive opportunity for public input and involvement in compliance with Administrative Procedure Act requirements, including publishing a proposed rule in the **Federal Register**, participation in multiple Council meetings, and opportunity for additional public comment during the Board meeting prior to deliberation. Additionally, an administrative mechanism exists (and has been used by the public) to request reconsideration of the Secretaries' decision on any particular proposal for regulatory change (36 CFR 242.18(b) and 50 CFR 100.18(b)). Therefore, the Secretaries believe that sufficient public notice and opportunity for involvement have been given to affected persons regarding this decision. In addition, because the direct final rule that is mentioned above and is related to this final rule relieves restrictions for many Alaskans by allowing them to participate in the subsistence program activities, we believe that we have good cause, as required by 5 U.S.C. 553(d), to make this rule effective upon publication.

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement that described four

alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The Final Environmental Impact Statement (FEIS) was published on February 28, 1992. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (Alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations.

A 1997 environmental assessment dealt with the expansion of Federal jurisdiction over fisheries. The Secretary of the Interior, with concurrence of the Secretary of Agriculture, determined that expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

Section 810 of ANILCA

An ANILCA section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final section 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

Paperwork Reduction Act

An agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. This rule does not contain any new collections of information that require OMB approval. OMB has reviewed and approved the collections of information associated with the subsistence regulations at 36 CFR part 242 and 50 CFR part 100, and assigned OMB Control Number 1018-0075, which expires February 29, 2016.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all

significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that two million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of \$3.00 per pound, this amount would equate to about \$6 million in food value Statewide. Based upon the amounts and values cited above, the Departments certify that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of \$100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this Program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies, and there is no cost imposed on any State or local entities or tribal governments.

Executive Order 12988

The Secretaries have determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132

In accordance with Executive Order 13132, the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

Title VIII of ANILCA does not provide specific rights to tribes for the subsistence taking of wildlife, fish, and shellfish. However, the Secretaries, through the Board, provided Federally recognized Tribes and Alaska Native corporations opportunities to consult on this rule. Consultation with Alaska Native corporations are based on 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, which 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 Secretaries, through the Board, provided a variety of opportunities for consultation: Commenting on proposed changes to the existing rule; engaging in dialogue at the Council meetings; engaging in dialogue at the Board’s meetings; and providing input in

person, by mail, email, or phone at any time during the rulemaking process.

On March 23 and 24, 2015, the Board provided Federally recognized Tribes and Alaska Native Corporations a specific opportunity to consult on this rule. Federally recognized Tribes and Alaska Native Corporations were notified by mail and telephone and were given the opportunity to attend in person or via teleconference.

Executive Order 13211

This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. However, this rule is not a significant regulatory action under E.O. 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

Drafting Information

Theo Matuskowitz drafted these regulations under the guidance of Eugene R. Peltola, Jr. of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by

- Daniel Sharp, Alaska State Office, Bureau of Land Management;
- Mary McBurney, Alaska Regional Office, National Park Service;
- Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Trevor T. Fox, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Thomas Whitford, Alaska Regional Office, U.S. Forest Service.

Authority

This rule is issued under the authority of Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126).

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, the Secretaries amend 36 CFR part 242 and 50 CFR part 100 as set forth below.

PART II—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

■ 1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart B—Program Structure

■ 2. In subpart B of 36 CFR part 242 and 50 CFR part 100, § 101.15 is revised to read as follows:

§ 101.15 Rural determination process.

(a) The Board determines which areas or communities in Alaska are nonrural. Current determinations are listed at § 101.23.

(b) All other communities and areas are, therefore, rural.

Dated: Oct. 28, 2015.

Sally Jewell,

Secretary of the Interior.

Dated: Sept. 30, 2015.

Beth G. Pendleton,

Regional Forester, USDA – Forest Service.

[FR Doc. 2015–27994 Filed 10–30–15; 8:45 am]

BILLING CODE 3410–11–4333–15–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 52 and 81**

[EPA–R04–OAR–2014–0904; FRL–9936–55–Region 4]

Air Plan Approval and Air Quality Designation; TN; Reasonably Available Control Measures and Redesignation for the TN Portion of the Chattanooga 1997 Annual PM_{2.5} Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the portion of a State Implementation Plan (SIP) revision submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), on October 15, 2009, that addresses reasonably available control measures (RACM), including reasonably available control technology (RACT), for the Tennessee portion of the Chattanooga, TN-GA-AL nonattainment area for the 1997 fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS) (hereinafter referred to as the “Chattanooga TN-GA-AL Area” or

Appendix B – Direct Final Rule – Nonrural List

Need for Correction

As published, the final regulations (TD 9728) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the final regulations (TD 9728), that are subject to FR Doc. 2015-18816, are corrected as follows:

1. On page 45866, in the preamble, third column, last sentence of first full paragraph, the language “rules, including section 706(d)(2) and section 706(d)(3).” is corrected to read “rules, including section 704(c), § 1.704-3(a)(6) (reverse section 704(c)), section 706(d)(2), and section 706(d)(3).”

2. On page 45868, in the preamble, first column, fourth line from the bottom of the column, the language “interim closings of its books except at” is corrected to read “interim closing of its books except at”.

3. On page 45871, in the preamble, second column, third line from the bottom of the column, under paragraph heading “*v. Deemed Timing of Variations*,” the language “taxable year was deemed to close at the” is corrected to read “taxable year was deemed to occur at the”.

4. On page 45873, in the preamble, third column, eighth line from the bottom of the column, the language “taxable as of which the recipients of a” is corrected to read “taxable year as of which the recipients of a”.

5. On page 45874, second column, eight lines from the bottom of the column, the following sentence is added to the end of the paragraph: “These final regulations do not override the application of section 704(c), including reverse section 704(c), and therefore the final regulations provide that the rules of section 706 do not apply in making allocations of book items upon a partnership revaluation.”

6. On page 45876, in the preamble, second column, under paragraph heading “*Effective/Applicability Dates*,” fifth line of the first paragraph, the language “of a special rule applicable to § 1.704-” is corrected to read “of a special rule applicable to § 1.706-”.

7. On page 45876, in the preamble, second column, under paragraph heading “*Effective/Applicability Dates*,” third line of the second paragraph, the language “regulations apply to the partnership” is corrected to read “regulations apply to partnership”.

8. On page 45876, in the preamble, third column, fourth line from the top of the column, the language “that was formed prior to April 19, 2009.” is corrected to read “that was formed prior to April 14, 2009.”

9. On page 45877, first column, under paragraph heading “*List of Subjects*,” the fourth line, the language “26 CFR part 2” is corrected to read “26 CFR part 602”.

10. On page 45883, third column, the first line of the signature block, the language “Karen L. Schiller,” is corrected to read “Karen M. Schiller.”

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2015-28014 Filed 11-3-15; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF AGRICULTURE**Forest Service****36 CFR Part 242****DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 100**

[Docket No. FWS-R7-SM-2015-0156; FXRS12610700000-156-FF07J00000; FBMS#4500086366]

RIN 1018-BA82

Subsistence Management Regulations for Public Lands in Alaska; Rural Determinations, Nonrural List

AGENCY: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Direct final rule.

SUMMARY: This rule revises the list of nonrural areas in Alaska identified by the Federal Subsistence Board (Board). Only residents of areas that are rural are eligible to participate in the Federal Subsistence Management Program on public lands in Alaska. Based on a Secretarial review of the rural determination process, and the subsequent change in the regulations governing this process, the Board is revising the current nonrural determinations to the list that existed prior to 2007. Accordingly, the community of Saxman and the area of Prudhoe Bay will be removed from the nonrural list. The following areas continue to be nonrural, but their boundaries will return to their original borders: the Kenai Area; the Wasilla/Palmer area; the Homer area; and the Ketchikan area.

DATES: This rule is effective on December 21, 2015 unless we receive significant adverse comments on or before December 4, 2015.

ADDRESSES: You may submit comments by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov> and search for FWS-R7-SM-2015-0156, which is the docket number for this rulemaking.

- *By hard copy:* U.S. mail or hand-delivery to: USFWS, Office of Subsistence Management, 1011 East Tudor Road, MS 121, Attn: Theo Matuskowitz, Anchorage, AK 99503-6199

FOR FURTHER INFORMATION CONTACT:

Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service,

Attention: Eugene R. Peltola, Jr., Office of Subsistence Management; (907) 786-3888 or subsistence@fws.gov. For questions specific to National Forest System lands, contact Thomas Whitford, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 743-9461 or twhitford@fs.fed.us.

SUPPLEMENTARY INFORMATION:**Background**

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program (Program). This program provides a preference for take of fish and wildlife resources for subsistence uses on Federal public lands and waters in Alaska. Only residents of areas identified as rural are eligible to participate in the Program on Federal public lands in Alaska. Because this program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, “Parks, Forests, and Public Property,” and Title 50, “Wildlife and Fisheries,” at 36 CFR 242.1-242.28 and 50 CFR 100.1-100.28, respectively.

Consistent with these regulations, the Secretaries established a Federal Subsistence Board (Board) comprising Federal officials and public members to administer the Program. One of the Board’s responsibilities is to determine which communities or areas of the State are rural or nonrural. The Secretaries also divided Alaska into 10 subsistence resource regions, each of which is represented by a Regional Advisory Council (Council). The Council members represent varied geographical, cultural, and user interests within each region. The Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a

meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska.

Related Rulemaking

Elsewhere in today's **Federal Register** is a final rule that sets forth a new process by which the Board will make rural determinations ("Subsistence Management Regulations for Public Lands in Alaska; Rural Determination Process"). Please see that rule for background information on how this new process was developed and the extensive Council and public input that was considered. A summary of that information follows:

Until promulgation of the rule mentioned above, Federal subsistence regulations at 36 CFR 242.15 and 50 CFR 100.15 had required that the rural or nonrural status of communities or areas be reviewed every 10 years, beginning with the availability of the 2000 census data. Some data from the 2000 census was not compiled and available until 2005, so the Board published a proposed rule in 2006 to revise the list of nonrural areas recognized by the Board (71 FR 46416, August 14, 2006). The final rule published in the **Federal Register** on May 7, 2007 (72 FR 25688), and changed the rural determination for several communities or areas in Alaska. These communities had 5 years following the date of publication to come into compliance.

The Board met on January 20, 2012, and, among other things, decided to extend the compliance date of its 2007 final rule on rural determinations. A final rule published March 1, 2012 (77 FR 12477), that extended the compliance date until either the rural determination process and findings review were completed or 5 years, whichever came first. The 2007 regulations have remained in titles 36 and 50 of the CFR unchanged since their effective date.

The Board followed that action with a request for comments and announcement of public meetings (77 FR 77005; December 31, 2012) to receive public, Tribal, and Alaska Native Corporations input on the rural determination process. At their fall 2013 meetings, the Councils provided a public forum to hear from residents of their regions, deliberate on the rural determination process, and provide recommendations for changes to the Board. The Board also held hearings in Barrow, Ketchikan, Sitka, Kodiak, Bethel, Anchorage, Fairbanks, Kotzebue, Nome, and Dillingham to solicit comments on the rural determination process, and public testimony was

recorded. Government-to-government tribal consultations on the rural determination process were held between members of the Board and Federally recognized Tribes of Alaska. Additional consultations were held between members of the Board and Alaska Native Corporations.

Altogether, the Board received 475 substantive comments from various sources, including individuals, members of the Councils, and other entities or organizations, such as Alaska Native Corporations and borough governments. In general, this information indicated a broad dissatisfaction with the current rural determination process.

Based on this information, the Board at their public meeting held on April 17, 2014, elected to recommend a simplification of the process by determining which areas or communities are nonrural in Alaska; all other communities or areas would, therefore, be rural. The Board would make nonrural determinations using a comprehensive approach that considers population size and density, economic indicators, military presence, industrial facilities, use of fish and wildlife, degree of remoteness and isolation, and any other relevant material, including information provided by the public. The Board would rely heavily on the recommendations of the Councils. The Board developed a proposal that simplifies the process of rural determinations and submitted its recommendation to the Secretaries on August 15, 2014.

On November 24, 2014, the Secretaries requested that the Board initiate rulemaking to pursue the regulatory changes recommended by the Board. The Secretaries also requested that the Board obtain Council recommendations and public input, and conduct Tribal and Alaska Native Corporation consultation on the proposed changes.

The Departments published a proposed rule on January 28, 2015 (80 FR 4521), to revise the regulations governing the rural determination process in subpart B of 36 CFR part 242 and 50 CFR part 100. Following a process that involved substantial Council and public input, the Departments published the final rule that may be found elsewhere in today's **Federal Register**.

Direct Final Rule

During that process, the Board went on to address a starting point for nonrural communities and areas. The May 7, 2007 (72 FR 25688), final rule was justified by the Board's January 3,

1991, notice (56 FR 236) adopting final rural and nonrural determinations and the final rule of May 7, 2002 (67 FR 30559), amending 36 CFR 242.23(a) and 50 CFR 100.23(a) to add the Kenai Peninsula communities (Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifornsky, Kasilof, Clam Gulch, Anchor Point, Homer, Kachemak City, Fritz Creek, Moose Pass, and Seward) to the list of areas determined to be nonrural. The 2007 rule added the village of Saxman and the area of Prudhoe Bay to the nonrural list and expanded the nonrural boundaries of the Kenai Area; the Wasilla/Palmer area; the Homer area; and the Ketchikan Area.

Since the 2007 final rule (72 FR 25688; May 7, 2007) was contentious, and so many comments were received objecting to the changes imposed by that rule, the Board has decided to return to the rural determinations prior to the 2007 final rule. The Board further decided that the most expedient method to enact their decisions was to publish this direct final rule adopting the pre-2007 nonrural determinations. As a result, the Board has determined the following areas to be nonrural: Fairbanks North Star Borough; Homer area—including Homer, Anchor Point, Kachemak City, and Fritz Creek; Juneau area—including Juneau, West Juneau, and Douglas; Kenai area—including Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifornsky, Kasilof, and Clam Gulch; Ketchikan area—including Ketchikan City, Clover Pass, North Tongass Highway, Ketchikan East, Mountain Point, Herring Cove, Saxman East, Pennock Island, and parts of Gravina Island; Municipality of Anchorage; Seward area—including Seward and Moose Pass, Valdez, and Wasilla area—including Palmer, Wasilla, Sutton, Big Lake, Houston, and Bodenberg Butte.

These final regulations reflect Board review and consideration of Council recommendations, Tribal and Alaska Native Corporations government-to-government tribal consultations, and public comments. Based on concerns expressed by some of the Councils and members of the public, the Board went on to direct staff to develop options for the Board to consider and for presentation to the Councils, to address future nonrural determinations. These options will be presented to the Board and Chairs of each Council at the January 12, 2016, public meeting.

We are publishing this rule without a prior proposal because we view this action as an administrative action by the Federal Subsistence Board. This rule will be effective, as specified above in DATES, unless we receive significant

adverse comments on or before the deadline set forth in DATES. Significant adverse comments are comments that provide strong justifications why the rule should not be adopted or for changing the rule. If we receive significant adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. If no significant adverse comments are received, we will publish a document in the **Federal Register** confirming the effective date.

Because this rule concerns public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

Conformance With Statutory and Regulatory Authorities

Administrative Procedure Act Compliance

In compliance with Administrative Procedure Act, the Board has provided extensive opportunity for public input and involvement in its efforts to improve the rural determination process as described in the related final rule published elsewhere in today's **Federal Register**. In addition, anyone with concerns about this rulemaking action may submit comments as specified in **DATES** and **ADDRESSES**.

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The Final Environmental Impact Statement (FEIS) was published on February 28, 1992. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (Alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations.

A 1997 environmental assessment dealt with the expansion of Federal jurisdiction over fisheries and is available at the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with concurrence of the Secretary of Agriculture, determined that expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

Section 810 of ANILCA

An ANILCA section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final section 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

During the subsequent environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of this rule was conducted in accordance with section 810. That evaluation also supported the Secretaries' determination that the rule will not reach the "may significantly restrict" threshold that would require notice and hearings under ANILCA section 810(a).

Paperwork Reduction Act

An agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. This rule does not contain any new collections of information that require OMB approval. OMB has reviewed and approved the collections of information associated with the subsistence regulations at 36 CFR part 242 and 50 CFR part 100, and assigned OMB Control Number 1018-0075, which expires February 29, 2016.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public

where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that two million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of \$3.00 per pound, this amount would equate to about \$6 million in food value Statewide. Based upon the amounts and values cited above, the Departments certify that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of \$100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this Program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more

in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

Executive Order 12988

The Secretaries have determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132

In accordance with Executive Order 13132, the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

The Alaska National Interest Lands Conservation Act, Title VIII, does not provide specific rights to tribes for the subsistence taking of wildlife, fish, and shellfish. However, the Secretaries, through the Board, provided Federally recognized Tribes and Alaska Native corporations opportunities to consult on this rule. Consultation with Alaska Native corporations are based on 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, which 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 Secretaries, through the Board, provided a variety of opportunities for consultation on the rural determination process: commenting on changes under consideration for the existing regulations; engaging in dialogue at the Council meetings; engaging in dialogue at the Board’s meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process.

Since 2007 multiple opportunities were provided by the Board for Federally recognized Tribes and Alaska Native Corporations to consult on the subject of rural determinations. Federally recognized Tribes and Alaska Native Corporations were notified by mail and telephone and were given the opportunity to attend in person or via teleconference.

Executive Order 13211

This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. However, this rule is not a significant regulatory action under E.O. 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

Drafting Information

Theo Matuskowitz drafted these regulations under the guidance of Eugene R. Peltola, Jr. of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by

- Daniel Sharp, Alaska State Office, Bureau of Land Management;
- Mary McBurney, Alaska Regional Office, National Park Service;
- Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Trevor T. Fox, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Thomas Whitford, Alaska Regional Office, U.S. Forest Service.

Authority

This rule is issued under the authority of Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126).

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, the Secretaries amend 36 CFR part 242 and 50 CFR part 100 as set forth below.

PART—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

■ 1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart C—Board Determinations

■ 2. In subpart C of 36 CFR part 242 and 50 CFR part 100, §1.23 is revised to read as follows:

§ 1.23 Rural determinations.

(a) The Board has determined all communities and areas to be rural in accordance with § .15 except the following: Fairbanks North Star Borough; Homer area—including Homer, Anchor Point, Kachemak City, and Fritz Creek; Juneau area—including Juneau, West Juneau, and Douglas; Kenai area—including Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifornsky, Kasilof, and Clam Gulch; Ketchikan area—including Ketchikan City, Clover Pass, North Tongass Highway, Ketchikan East, Mountain Point, Herring Cove, Saxman East, Pennock Island, and parts of Gravina Island; Municipality of Anchorage; Seward area—including Seward and Moose Pass, Valdez, and Wasilla/Palmer area—including Wasilla, Palmer, Sutton, Big Lake, Houston, and Bodenberg Butte.

(b) You may obtain maps delineating the boundaries of nonrural areas from the U.S. Fish and Wildlife Service at the Alaska Regional Office address provided at 50 CFR 2.2(g), or on the Web at <https://www.doi.gov/subsistence>.

Dated: September 30, 2015.

Eugene R. Peltola, Jr.,

Assistant Regional Director, U.S. Fish and Wildlife Service, Acting Chair, Federal Subsistence Board.

Dated: September 30, 2015.

Thomas Whitford,

Subsistence Program Leader, USDA – Forest Service.

[FR Doc. 2015–27996 Filed 10–30–15; 8:45 am]

BILLING CODE 3410–11–4333–15–P



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

Federal Subsistence Board

1011 East Tudor Road, MS121
Anchorage, Alaska 99503



FOREST SERVICE

AUG 15 2016

FWS/OSM 16062.CJ

Mr. Michael D. Bangs, Chair
Southeast Alaska Subsistence
Regional Advisory Council
P.O. Box 1733
Petersburg, Alaska 99833

Dear Mr. Bangs:

Enclosed with this letter is a report of the Federal Subsistence Board's non-consensus agenda action items at its April 12-14, 2016, meeting regarding proposed changes to subsistence wildlife regulations and customary and traditional use determinations. In total, the Board accepted the recommendations of the Subsistence Regional Advisory Councils – in whole or with modifications – in 67 of the 69 proposals on the agenda. Details of these actions and the Board's deliberations are contained in the meeting transcripts. Copies of the transcripts may be obtained by calling our toll free number, 1-800-478-1456, and are available online at the Office of Subsistence Management website, <https://www.doi.gov/subsistence>.

The Board uses a consensus agenda on those proposals where there is agreement among the affected Subsistence Regional Advisory Council(s), the Interagency Staff Committee, and the Alaska Department of Fish and Game concerning a proposed regulatory action. These proposals were deemed non-controversial and did not require a separate discussion. The consensus agenda items for the Southeast Alaska Subsistence Regional Advisory Council were proposals WP16-02 (rejected), WP16-03 (rejected), WP16-04 (adopted), WP16-05 (adopted), WP16-06 (adopted), and WP16-08 (adopted).

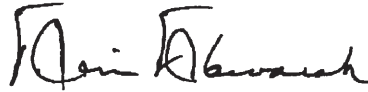
The Federal Subsistence Board appreciates the Southeast Alaska Subsistence Regional Advisory Council's active involvement in and diligence with the regulatory process. The ten Regional Advisory Councils continue to be the foundation of the Federal Subsistence Management Program, and the stewardship shown by the Regional Advisory Council chairs and their representatives at the Board meeting was noteworthy.

Mr. Bangs

2

If you have any questions regarding the summary of the Board's actions, please contact Robert Larson, Council Coordinator, at (907) 772-5930.

Sincerely,



Tim Towarak
Chair

Enclosure

cc: Federal Subsistence Board
Southeast Alaska Subsistence Regional Advisory Council members
Eugene R. Peltola, Jr., Assistant Regional Director, Office of Subsistence Management
Stewart Cogswell, Acting Deputy Assistant Regional Director
Office of Subsistence Management
Carl Johnson, Council Coordination Division Chief, Office of Subsistence Management
Interagency Staff Committee
Administrative Record

FEDERAL SUBSISTENCE BOARD ACTION REPORT

April 12-14, 2016

William A. Egan Civic and Convention Center, Anchorage, Alaska

SOUTHEAST REGION PROPOSALS

Proposal WP16-01

DESCRIPTION: This proposal, submitted by the Craig Tribal Association, requested that non-Federally qualified subsistence users be limited to the harvest of two deer from Federal public lands in Unit 2 and the season ending date for Federally qualified subsistence users be extended from Dec. 31 to Jan 31.

COUNCIL RECOMMENDATION: **Support with modification** to oppose limiting non-Federally qualified subsistence users to the harvest of two deer from Federal public lands and support extending the deer season to Jan 31.

BOARD ACTION: **Adopt with modification**, consistent with the Council's recommendation to extend the deer season on Unit 2 through Jan 31.

JUSTIFICATION: The Board determined that deer populations in Unit 2 are currently stable and growing. It is a traditional practice to harvest deer in January. Any increase in harvest of female deer is expected to be minimal and sustainable. Female deer currently make up about four percent of the harvest. The Forest Service District Rangers also have delegated authority for in-season management of deer in Unit 2 and have the authority to close the season early should there be conservation concerns. Limiting the harvest of deer by non-Federally qualified users is not necessary because there is no conservation concern for deer in Unit 2. Information contained in the staff analysis indicates that competition with non-Federally qualified users in Unit 2 is not reducing the hunting success of Federally qualified users. There's no legal basis for restricting non-Federally qualified users at this time.

Proposal WP16-07

DESCRIPTION: This proposal, submitted by the Southeast Alaska Subsistence Regional Advisory Council, requested that firearms be allowed to harvest beaver in Units 1-5 under Federal subsistence trapping regulations.

COUNCIL RECOMMENDATION: **Support with modification** to prohibit the use of firearms to take beaver under a trapping license on National Park Service land.

BOARD ACTION: **Adopted with modification**, consistent with the Council's recommendation to allow the use of firearms to take beaver under a trapping license in Units 1-5 except on National Park Service lands.

JUSTIFICATION: The Board action to support the modified proposal is consistent with the recommendation of the Southeast Regional Advisory Council. The proposal does not create conservation concerns because beaver populations in these units are healthy. The proposal provides an additional means to harvest beaver. The proposal aligns State and Federal regulations as noted, while maintaining the prohibition of firearm use to take furbearers on National Park Service lands. Allowing firearms to take beaver also provides for better quality when taking beaver for food and is allowed in other areas across the state. This regulation will reduce the need to issue nuisance harvest permits for beaver, and will benefit subsistence users by allowing the take of beaver encountered while trapping other species.

Proposal WP16-09

DESCRIPTION: This proposal, submitted by the Alaska Department of Fish and Game requested the Board close the Federal subsistence marten trapping season on Kuiu Island in Unit 3.

COUNCIL RECOMMENDATION: **Support with modification** to close the January and February portion of the marten trapping season on Kuiu Island and allow the December portion of the season to remain open.

BOARD ACTION: **Adopted with modification**, consistent with the Council's recommendation to close the January and February portion of the marten trapping season on Kuiu Island and allow the December portion of the season to remain open.

JUSTIFICATION: The Board agreed that the modified proposal is consistent with the deliberations and recommendations from the Council. A December-only season provides an opportunity for the continuation of subsistence uses and provides for the conservation of marten on Kuiu Island. Harvest data indicate that the result of closing the January to February portion of the season would likely reduce potential harvest by as much as 58 percent. Sealing of marten is required and allowing some harvest would facilitate collection of harvest statistics and biological samples for use by managers in monitoring this population. The number of trappers that have used this resource is very low, at only one or two currently. This recommended modification was the solution that was adopted by the Board for the 2013 season.

WP17-13 Executive Summary	
General Description	<p>Proposal FP17-13, requests clarifying the regulation that prohibits the use of nets on the road systems associated with the communities of Wrangell, Petersburg and Sitka.</p> <p><i>Submitted by: the Southeast Alaska Subsistence Regional Advisory Council.</i></p>
Proposed Regulation	<p>§ __.27(i)(13)(ix) <i>No permits for the use of nets will be issued for the salmon streams flowing across or adjacent to the road systems within the city limits of Petersburg, Wrangell, and Sitka.</i></p>
OSM Preliminary Conclusion	<p>Support Proposal FP17-13 with modification to prohibit the use of nets for road accessible streams of Petersburg, Wrangell, Sitka and Petersburg Creek.</p> <p>The modified regulation should read: § __.27(i)(13)(ix) <i>No permits for the use of nNets will be issued for the salmon are prohibited in streams flowing across or adjacent to the road systems within the city limits connected to the communities of Petersburg, Wrangell, and Sitka and Petersburg Creek.</i></p>
Southeast Regional Council Recommendation	
Interagency Staff Committee Comments	<p>The Interagency Staff Committee found the staff analysis to be a thorough and accurate evaluation of the proposal and that it provides sufficient basis for the Regional Council recommendation and Federal Board action on the proposal.</p>
ADF&G Comments	
Written Public Comments	<p>There were no written public comments.</p>

DRAFT STAFF ANALYSIS FP17-13

ISSUES

Proposal FP17-13, submitted by the Southeast Alaska Subsistence Regional Advisory Council (Council), requests clarifying the regulation that prohibits the use of nets on the road systems associated with the communities of Wrangell, Petersburg and Sitka.

DISCUSSION

The Council would like a determination whether the current language is still appropriate because these three communities now have unified city/borough governments and references to city limit boundaries for Petersburg and Wrangell expand the areas closed to fishing with nets on Wrangell and Mitkof Islands by definition without an appropriate public process.

The prohibition regarding the use of nets in salmon streams crossed by or adjacent to the road systems within the city limits of Petersburg, Wrangell and Sitka has been in place since the inception of the Federal subsistence fisheries management program in 1999. The City of Sitka has been a unified city/borough since 1971 and has not changed city boundaries. The City of Wrangell became a unified city/borough in 2008 and the City of Petersburg became a unified city/borough in 2013; effectively eliminating the old city limit boundaries, and expanding the city/borough boundaries to all the streams accessible by roads on Wrangell and Mitkof Islands. The fisheries resources of the road accessible streams connected to these communities are limited and easily accessible to the communities. The use of nets in these streams would likely result in a conservation concern.

Existing Federal Regulation

§ __.27(i)(13)(ix) No permits for the use of nets will be issued for the salmon streams flowing across or adjacent to the road systems within the city limits of Petersburg, Wrangell, and Sitka.

Proposed Federal Regulation

§ __.27(i)(13)(ix) No permits for the use of nets will be issued for the salmon streams flowing across or adjacent to the road systems ~~within the city limits~~ of Petersburg, Wrangell, and Sitka.

Existing State Regulation

5 AAC 01.747. Subsistence fishing policy for the Petersburg, Wrangell, and Sitka Road systems

(a) Salmon streams flowing across or adjacent to the road systems of Petersburg, Wrangell, and Sitka support only limited runs of salmon. Harvestable numbers of salmon in excess of the spawning escapement needs for those streams are normally of such a small magnitude that these numbers alone are not sufficient to support the consumptive demands of those communities. Therefore, permits allowing the use of nets shall not be issued for the streams along the road systems of those communities.

Extent of Federal Public Waters

For purposes of this discussion, the phrase “Federal public waters” is defined as those waters described under 36 CFR 242.3 and 50 CFR 100.3.

All waters of the areas are within the exterior boundaries of the Tongass National Forest and are considered Federal public waters for the purposes of Federal subsistence fisheries management.

Customary and Traditional Use Determinations

The community of Wrangell is located on Wrangell Island and streams that are adjacent to the road system flow into fishing Districts 7 and 8. The community of Petersburg is located on Mitkof Island and streams that are adjacent to the road system drain into fishing Districts 6 and 8. The community of Sitka is located on Baranof Island and the streams adjacent to the road system drain into fishing District 13, Section 13B, north of the latitude of Redfish Cape.

You must be a Federally qualified user to harvest salmon, Dolly Varden, trout, smelt, and Eulachon.

Federally qualified users for District 6 include: residents living south of Sumner Strait and west of Clarence Strait and Kashevaroff Passage; residents of drainages flowing into District 6 north of the latitude of Point Alexander (Mitkof Island); residents of drainages flowing into Districts 7 & 8, including the communities of Petersburg & Wrangell; and residents of the communities of Meyers Chuck and Kake.

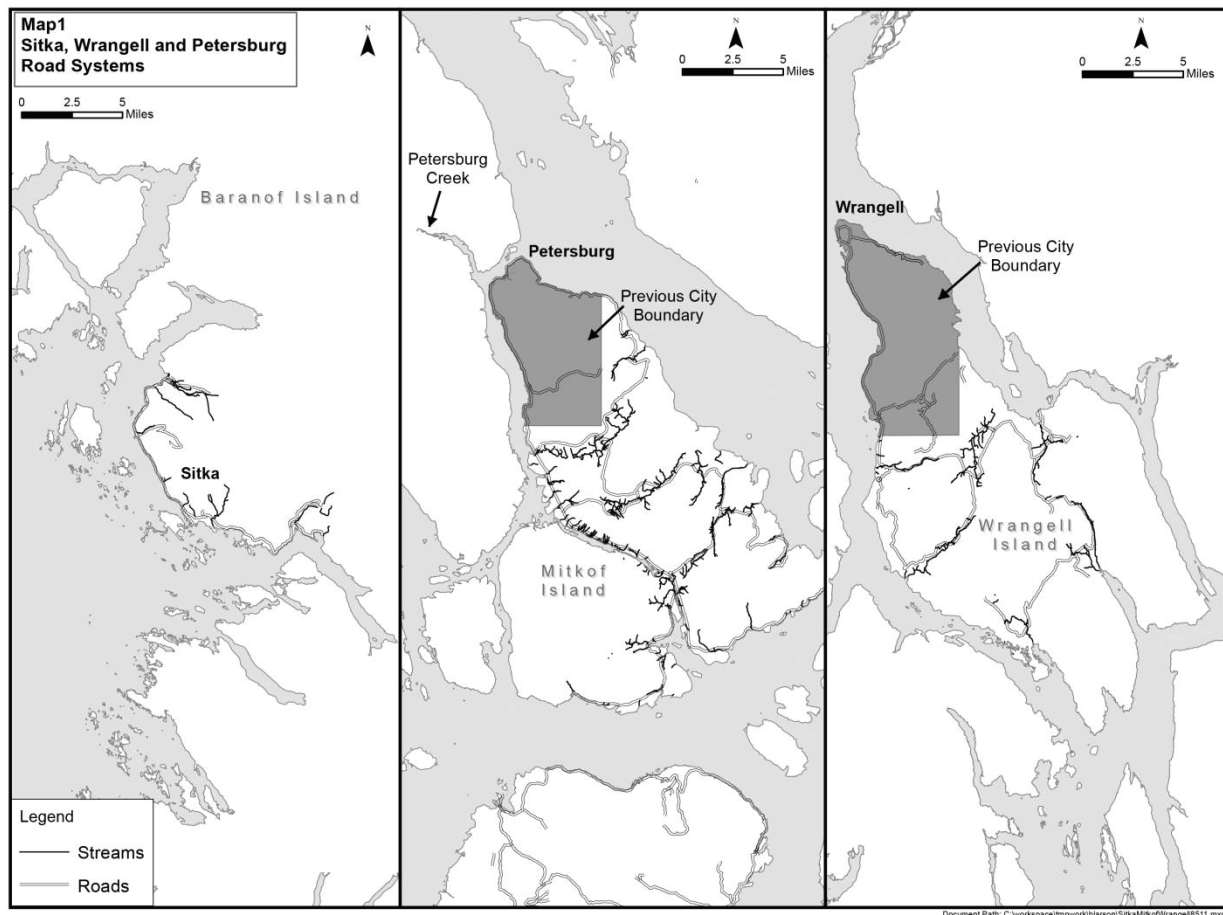
Federally qualified users of District 7 include: residents of drainages flowing into District 6 north of the latitude of Point Alexander (Mitkof Island); residents of drainages flowing into Districts 7 & 8, including the communities of Petersburg & Wrangell; and residents of the communities of Meyers Chuck and Kake.

Federally qualified users of District 8 include: residents of drainages flowing into Districts 7 and 8, residents of drainages flowing into District 6 north of the latitude of Point Alexander (Mitkof Island), and residents of Meyers Chuck.

Federally qualified users of District 13, Section 13B, north of the latitude of Redfish Cape include: Residents of the City and Borough of Sitka in drainages that empty into Section 13B north of the latitude of Dorothy Narrows.

Regulatory History

This regulation has been in place since the Federal subsistence program assumed responsibility for subsistence fishing. In-season managers clarified the effects of new city boundaries by including a prohibition on the use of nets as a permit condition for all salmon streams adjacent to the road systems of Petersburg and Wrangell for the 2013 season. In 2014, the permit condition was amended to include the use of rod and reel only for subsistence fishing in all streams for the entirety of Wrangell and Mitkof Islands, plus Petersburg Creek, a stream located on Kupreanof Island near Petersburg. The gear restriction for the road accessible streams of Sitka has remained the same, no nets on salmon streams accessible by road from the community. The only area closed to salmon fishing is the waters of Indian River within the boundaries of the Sitka National Historic Park. Wrangell and Mitkof Islands have an extensive road network both within and outside of the original city boundaries (**Map 1**) and many of the remaining watersheds may have new roads associated with timber harvest activities in the near future.



Biological Background

Coho, Chum and Pink Salmon are present in most of the streams adjacent to the road systems near these three communities. . All stream systems that contain salmon also contain trout and char, several of the larger streams, including Petersburg Creek, contain steelhead. Most of these systems have small returns with the exception of Starrigavan Creek and Indian River near Sitka that sometimes have significant Pink Salmon returns. The only system with a significant Sockeye Salmon return is Toms Creek on Wrangell Island. There is a remote release site for hatchery Chum Salmon near Earl West Cove Creek on Wrangell Island and a Coho and Chinook Salmon hatchery and release site in Blind Slough on Mitkof Island. Petersburg Creek has healthy returns of Coho and Pink Salmon in addition to a small Sockeye Salmon population and a well-known steelhead population.

Harvest History

The Federal subsistence fisheries permit system has been in place since 2003. Subsistence harvest has been reported from one road accessible stream of Petersburg, four road accessible streams of Wrangell and four road accessible streams of Sitka. The total subsistence harvest from the road-side streams for all years for Petersburg is two trout. The total subsistence harvest from the road-side streams for all years for Wrangell is two Coho Salmon, 41 Pink Salmon, 131 trout, 14 Sockeye Salmon, and one steelhead. The total subsistence harvest for all years from the road-side streams for Sitka is 17 Brook Trout, four Coho Salmon, six Dolly Varden, four Pink Salmon and 43 trout (OSM 2016).

There are sport fisheries for salmon, Dolly Varden, steelhead and trout on streams adjacent to the roads connecting to all three communities but the total harvest is unknown due to the small size of these fisheries (Chadwick 2016, pers. comm.).

Other Alternative(s) Considered

An alternative is to amend the regulation to include the prohibition on use of nets in Petersburg Creek. Although Petersburg Creek is located on Kupreanof Island across Wrangell Narrows from the community of Petersburg, it is within the new unified city/borough boundary. This stream is easily accessible from the community of Petersburg, has limited resources and has the same vulnerabilities as other road accessible streams near Petersburg. Subsistence fishing permits currently include a prohibition on the use of nets in Petersburg Creek. The total subsistence harvest for all years for Petersburg Creek is 60 Sockeye Salmon (OSM 2016).

Effects of the Proposal

The language in the current regulation is outdated. If the proposal is adopted, the prohibition on the use of nets in salmon streams would be clarified to include all streams on Wrangell and Mitkof Islands accessible by road from Wrangell and Petersburg. If the intent is to keep the prohibition on use of nets to the pre-unification boundaries, a description of this area could be developed. There would be no change

for Sitka because that community was a unified city/borough prior to 1999 and the city boundaries have not changed.

Currently the use of nets is not allowed on streams adjacent to the roads connected to the communities of Wrangell, Petersburg and Sitka in both State and Federal regulations or permit conditions. Adopting this proposal results in no changes to current practices and aligns Federal and State subsistence fishing regulations. Rod and reel, gaffs, spears and handlines for snagging would remain as legal gear.

Petersburg Creek is within the unified city/borough boundary of Petersburg, but is located on Kupreanof Island near the community of Petersburg. This stream shares the same fish population concerns and management vulnerabilities as the road accessible streams of Petersburg, Wrangell and Sitka, and the use of nets is currently prohibited by permit.

OSM PRELIMINARY CONCLUSION

Support Proposal FP17-13 **with modification** to prohibit the use of nets for road accessible streams of Petersburg, Wrangell, Sitka and Petersburg Creek.

The modified regulation should read:

*§ __.27(i)(13)(ix) ~~No permits for the use of n~~**Nets will be issued for the salmon are prohibited in streams flowing across or adjacent to the road systems ~~within the city limits~~ connected to the communities of Petersburg, Wrangell, ~~and~~ Sitka and Petersburg Creek.***

Justification

The reference to Wrangell and Petersburg city limit boundaries in the current regulation include an area much larger than the area affected when the regulation was first adopted because the communities of Wrangell and Petersburg have expanded their unified city/borough boundaries to include the whole of Wrangell and Mitkof Islands. The intent of the original regulation is still valid and it is appropriate to expand the area where nets are not allowed. The use of nets in any salmon stream adjacent to the road systems of these communities would likely cause a conservation concern. Prohibiting the use of nets allows a reasonable level of subsistence use while protecting the health of salmon, char, trout and steelhead populations in streams adjacent to Petersburg, Wrangell and Sitka.

The preliminary conclusion includes a prohibition for the use of nets in Petersburg Creek. Nets are currently prohibited in Petersburg Creek as a permit condition because this stream shares the same characteristics and risks for overexploitation as other road accessible streams.

LITERATURE CITED

- Chadwick, R. 2016. Management Coordinator, Division of Sport Fish. Personal communication: phone. ADF&G. Sitka, AK
- Office of Subsistence Management (OSM). 2016. Subsistence permit database, updated May 2016.

WP17-14 Executive Summary	
General Description	<p>Proposal FP17-14, requests that a sling bow with a barbed fishing arrow attached by a line be added as a method to take Pink Salmon in the Southeastern Alaska Area.</p> <p><i>Submitted by: David Adams of Sitka, Alaska.</i></p>
Proposed Regulation	<p>§ __.25 <i>Subsistence taking of fish, wildlife, and shellfish: general regulations.</i></p> <p><i>(a) Definitions.</i></p> <p><i>Bow means a longbow, recurve bow, or compound bow, excluding a crossbow or any bow equipped with a mechanical device that holds arrows at full draw.</i></p> <p><i>A fishing arrow must have a barbed tip and be attached by a line to the device used to propel it.</i></p> <p><i>Sling shot means a forked stick, to which an elastic strap (or straps) is fastened to the two prongs.</i></p> <p><i>A sling bow is a slingshot that has been made or adapted to shoot an arrow.</i></p> <p>Southeastern Alaska Area</p> <p>§ __.27(i)(13)(iv)(B) <i>Unless otherwise specified in this paragraph (e)(13) of this section, allowable gear for salmon or steelhead is restricted to gaffs, spears, gillnets, seines, dip nets, cast nets, handlines, or rod and reel.</i></p> <p>§ __.27(i)(13)(xv) <i>Unless noted on a Federal subsistence harvest permit, there are no harvest limits for pink or chum salmon. A sling bow and fishing arrow attached by a line may be used to harvest Pink Salmon.</i></p>
OSM Preliminary Conclusion	Support Proposal FP17-14
Southeast Regional Council Recommendation	
Interagency Staff Committee Comments	The Interagency Staff Committee found the staff analysis to be a thorough and accurate evaluation of the proposal and that it provides sufficient basis for the Regional Council recommendation and Federal Board action on the proposal.
ADF&G Comments	
Written Public Comments	There were no written public comments.

DRAFT STAFF ANALYSIS FP17-14

ISSUES

Proposal FP17-14, submitted by David Adams of Sitka, Alaska requests that a sling bow with a barbed fishing arrow attached by a line be added as a method to take Pink Salmon in the Southeastern Alaska Area.

DISCUSSION

The proponent states that allowing a sling bow and fishing arrow to harvest Pink Salmon would provide additional opportunity to harvest Pink Salmon. The proponent clarified that this proposal would apply to the Southeastern Alaska Area. There is no definition of this gear type in Federal regulation. A sling bow is a sling shot that has been made or adapted to shoot an arrow. A sling shot is defined in the Oxford Online Dictionary as a forked stick, to which an elastic strap is fastened to the two prongs, typically used for shooting small stones. A fishing arrow is a barbed arrow attached to the sling bow with a line to retrieve fish.

No literature has been found indicating that Pink Salmon or other fish were traditionally taken by sling bow and arrow in Southeast Alaska. However, Title VIII of ANILCA does not restrict methods and means to customary and traditional types so the Board could allow the use of a sling bow and arrow to take Pink Salmon in the Southeastern Alaska Area.

Existing Federal Regulation

36 CFR 242 and 50 CFR 100

*§ __.25 Subsistence taking of fish, wildlife, and shellfish: general regulations.
(a) Definitions.*

Bow means a longbow, recurve bow, or compound bow, excluding a crossbow or any bow equipped with a mechanical device that holds arrows at full draw.

Southeastern Alaska Area

§ __.27(i)(13)(iv)(B) Unless otherwise specified in this paragraph (e)(13) of this section, allowable gear for salmon or steelhead is restricted to gaffs, spears, gillnets, seines, dip nets, cast nets, handlines, or rod and reel.

§ __.27(i)(13)(xv) Unless noted on a Federal subsistence harvest permit, there are no harvest limits for pink or chum salmon.

Proposed Federal Regulation

36 CFR 242 and 50 CFR 100

§ __.25 Subsistence taking of fish, wildlife, and shellfish: general regulations.

(a) Definitions.

Bow means a longbow, recurve bow, or compound bow, excluding a crossbow or any bow equipped with a mechanical device that holds arrows at full draw.

A fishing arrow must have a barbed tip and be attached by a line to the device used to propel it.

Sling shot means a forked stick, to which an elastic strap (or straps) is fastened to the two prongs.

A sling bow is a slingshot that has been made or adapted to shoot an arrow.

Southeastern Alaska Area

§ __.27(i)(13)(iv)(B) Unless otherwise specified in this paragraph (e)(13) of this section, allowable gear for salmon or steelhead is restricted to gaffs, spears, gillnets, seines, dip nets, cast nets, handlines, or rod and reel.

§ __.27(i)(13)(xv) Unless noted on a Federal subsistence harvest permit, there are no harvest limits for pink or chum salmon. A sling bow and fishing arrow attached by a line may be used to harvest Pink Salmon.

Extent of Federal Public Waters

For purposes of this discussion, the phrase “Federal public waters” is defined as those waters described under 36 CFR 242.3 and 50 CFR 100.3.

If adopted this proposal would apply to all Federal public waters in the Southeastern Alaska Area between a line projecting southwest from the westernmost tip of Cape Fairweather and Dixon Entrance. Subsistence uses are not authorized in the following National Park Service lands: Glacier Bay National Park, Klondike Gold Rush National Historical Park and Sitka National Historical Park.

Customary and Traditional Use Determinations

All salmon customary and traditional use determinations for the Southeastern Alaska and Yakutat areas apply and can be found at 36 CFR 242.24 (2) and 50 CFR 100.24 (2).

Regulatory History

Federal regulatory history

In 2004 the Southeast Alaska Subsistence Regional Advisory Council (Council) submitted proposal FP05-19 to define legal gear types for Federal subsistence salmon fisheries in the Southeast Alaska Area. At its fall meeting in 2004 the Council recommended supporting the proposal with modification to apply specifically to salmon and that gear types be inclusive of all types of seines. Sling bow and arrow was not among the gear types recommended by the Council for general regulations in the Southeastern Alaska

Area (SESRAC 2004). Proposal FP05-19 was adopted by the Board, with modification recommended by the Council, at its January 2005 meeting (FSB 2005).

There have been no proposals submitted to the Federal Subsistence Board to allow the use of a sling bow and fishing arrow. However, there have been proposals to allow the use of bow and arrow for the harvest of salmon.

At its January 2007 meeting, the Board adopted proposal FP07-06, with modification, to allow the taking of salmon by snagging (by handline or rod and reel), spear, bow and arrow, and capture by hand in Lake Clark and its tributaries by residents of Nondalton, Port Alsworth, Pedro Bay, Iliamna, Newhalen, and Lime Village (FSB 2007a:91–92).

At its December 2007 meeting, the Board adopted proposal FP08-11, with modification, to allow the taking of salmon by means of spear, bow and arrow, or capturing by bare hand in the Alaska Peninsula and Chignik Areas (FSB 2007b:230-231).

Proposal FP15-12, requested that bow and arrow be added as a method to take salmon in the Southeastern Alaska Area. The Council opposed this proposal. They determined that using a bow and arrow for fishing is a recreational activity that is not allowed in either State or Federal regulation and is not a customary and traditional method in the Southeastern Alaska Area. The Council was concerned there were unknown conservation concerns due to fishing mortalities associated with wounding (SESRAC 2012). The Board supported the Council's opposition to the proposal at the January 2013 Board Meeting (FSB 2013).

State regulatory history

The use of a sling bow and arrow to harvest salmon is not allowed nor defined under State of Alaska regulations.

The gear type most similar to a sling bow is a bow and fishing arrow. Under State regulations a bow used for fishing is defined as “a long bow, recurve bow, compound bow and cross bow” while the arrow used “must have a barbed tip and be attached by a line to the bow”. Salmon may not be taken by bow and arrow under State regulations.

In 2005 a proposal was submitted to the Alaska Board of Fisheries to allow the use of archery and compound bow rigged for fishing as a means to take subsistence salmon in the Southeast Alaska Area. The Council opposed this proposal. ADF&G staff comments stated that archery is not a traditional means for harvesting salmon in southeast Alaska (ADF&G 2006a). The Alaska Board of Fisheries rejected the proposal citing lack of public support and lack of a customary and traditional use pattern for taking fish with archery gear (ADF&G 2006b).

Effects of the Proposal

If this proposal is adopted it would provide an additional gear type to harvest salmon in the Southeastern

Alaska Area, thereby expanding subsistence opportunity for Federally qualified subsistence users. It is unknown how many harvesters would choose to use this gear type to harvest salmon. Other options are available to harvest salmon including more efficient methods and gear types that could be used in similar circumstances as a sling bow and arrow. Depending on the skill of the user this can be a selective gear type. There is the possibility for waste but perhaps no more so than with other allowable gear types like spears, gaffs and snagging with a hand line which are also dependent on the skill of the user. General regulations contain a provision specifically prohibiting the intentional waste or destruction of fish. There are no harvest limits for Pink Salmon in the Southeast Alaska Area and there is no expectation that the use of a sling bow and arrow would lead to an unsustainable level of harvest of Pink Salmon.

OSM PRELIMINARY CONCLUSION

Support Proposal FP17-14

Justification

Adoption of this proposal would result in additional opportunity for Federally qualified subsistence users. It is unknown how many people will choose to use this gear type, however its use is not expected to lead to an unsustainable level of harvest of Pink Salmon or have any effect on non-Federally qualified users. Although this is not a traditional gear type, Title VIII of ANILCA does not restrict methods and means to customary and traditional types so the Board could allow the use of a sling bow and arrow to take Pink Salmon in the Southeastern Alaska Area.

LITERATURE CITED

ADF&G. 2006a. Staff comments on subsistence, personal use, sport, guided sport and commercial finfish regulatory proposals for the Southeast and Yakutat management areas. Alaska Board of Fisheries meeting. Ketchikan, AK. <http://www.adfg.alaska.gov/index.cfm?adfg=fisheriesboard.meetinginfo>

ADF&G. 2006b. Summary of Actions: Alaska Board of Fisheries, Southeast and Yakutat finfish. Ketchikan, AK. January 22-February 1, 2006. <http://www.adfg.alaska.gov/index.cfm?adfg=fisheriesboard.meetinginfo>

FSB. 2005. Transcripts of Federal Subsistence Board Proceedings, January 2005. Office of Subsistence Management FWS. Anchorage, AK.

FSB. 2007a. Transcripts of the Federal Subsistence Board Proceedings, January 10, 2007. Office of Subsistence Management, FWS. Anchorage, AK.

FSB. 2007b. Transcripts of the Federal Subsistence Board Proceedings, December 12, 2007. Office of Subsistence Management, FWS. Anchorage, AK.

FSB. 2013. Transcripts of Federal Subsistence Board Proceedings, January 2013. Office of Subsistence Management FWS. Anchorage, AK.

SESRAC. 2007. Transcripts of the Southeast Alaska Subsistence Regional Advisory Council Proceedings, September, 2007 in Haines, Alaska. Office of Subsistence Management, FWS. Anchorage, AK.

SESRAC. 2004. Transcripts of the Southeast Alaska Subsistence Regional Advisory Council Proceedings. September, 2004. Office of Subsistence Management, FWS. Anchorage, AK.

SESRAC. 2012. Transcripts of the Southeast Alaska Subsistence Regional Advisory Council Proceedings, October, 2012 in Wrangell, Alaska. Office of Subsistence Management, FWS. Anchorage, AK.

FISHERIES RESOURCE MONITORING PROGRAM SOUTHEAST ALASKA OVERVIEW

BACKGROUND

Beginning in 1999, the Federal government assumed expanded management responsibility for subsistence fisheries on Federal public lands in Alaska under the authority of Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA). Expanded subsistence fisheries management introduced substantial new informational needs for the Federal system. Section 812 of ANILCA directs the Departments of the Interior and Agriculture, cooperating with the State of Alaska and other Federal agencies, to undertake research on fish and wildlife and subsistence uses on Federal public lands. To increase the quantity and quality of information available for management of subsistence fisheries, the Fisheries Resource Monitoring Program (Monitoring Program) was established within the Office of Subsistence Management (OSM). The Monitoring Program was envisioned as a collaborative interagency, interdisciplinary approach to enhance existing fisheries research and monitoring, and effectively communicate information needed for subsistence fisheries management on Federal public lands.

To implement the Monitoring Program, a collaborative approach is utilized in which five Federal agencies (U.S. Fish and Wildlife Service, Bureau of Land Management, National Park Service, Bureau of Indian Affairs, and U.S. Forest Service) work with the Alaska Department of Fish and Game, Regional Advisory Councils, Alaska Native Organizations, and other organizations. An interagency Technical Review Committee provides scientific evaluation of project proposals submitted for funding consideration. The Regional Advisory Councils provide strategic priorities and recommendations, and public comment is invited. The Interagency Staff Committee also provides recommendations. The Federal Subsistence Board takes into consideration recommendations and comments from the process, and forwards the successful proposals on to the Assistant Regional Director of OSM for final approval and funding.

During each biennial funding cycle, the Monitoring Program budget funds ongoing multi-year projects (2, 3 or 4 years) as well as new projects. Budget guidelines are established by geographic region (**Table 1**). The regional guidelines were developed by the Federal Subsistence Board using six criteria that included level of risk to species, level of threat to conservation units, amount of subsistence needs not being met, amount of information available to support subsistence management, importance of a species to subsistence harvest and level of user concerns with subsistence harvest. Budget guidelines provide an initial target for planning; however they are not final allocations and will be adjusted annually as needed.

Table 1. Regional allocation guideline for Fisheries Resource Monitoring Funds.

Region	Department of Interior	Department of Agriculture
	Funds	Funds
Northern	17%	0%
Yukon	29%	0%
Kuskokwim	29%	0%
Southwest	15%	0%
Southcentral	5%	33%
Southeast	0%	67%
Inter-regional	5%	0%

Two primary types of research projects are solicited for the Monitoring Program including Harvest Monitoring/Traditional Ecological Knowledge (HMTEK) and Stock, Status and Trends (SST), although projects that combine these approaches are also encouraged. Definitions of the two project types are listed below:

- **Stock Status and Trends Studies (SST)** - These projects address abundance, composition, timing, behavior, or status of fish populations that sustain subsistence fisheries with linkage to Federal public lands.
- **Harvest Monitoring and Traditional Ecological Knowledge (HMTEK)** - These projects address assessment of subsistence fisheries including quantification of harvest and effort, and description and assessment of fishing and use patterns.

PRIORITY INFORMATION NEEDS

OSM staff works with the Regional Advisory Councils, Federal and State fishery managers and land managers to ensure the Monitoring Program focuses on the highest priority information needs for management of Federal subsistence fisheries. Input from the Regional Advisory Councils is used to develop the Priority Information Needs by identifying issues of local concerns and knowledge gaps related to subsistence fisheries. The Priority Information Needs provide a framework for evaluating and selecting project proposals. Successful project proposal selection may not be limited to the identified Priority Information Needs but project proposals not addressing a priority information need must include compelling justification with respect to strategic importance.

PROJECT EVALUATION PROCESS

In the current climate of increasing conservation concerns and subsistence needs, it is imperative that the Monitoring Program prioritizes high quality projects that address critical subsistence questions. Projects are selected for funding through an evaluation and review process that is designed to advance projects that are strategically important for the Federal Subsistence Program, technically sound, administratively competent, promote partnerships and capacity building, and are cost effective.

Five criteria are used to evaluate project proposals:

1. **Strategic Priority** - Studies must be responsive to identified issues and priority information needs. All projects must have a direct linkage to Federal public lands and/or waters to be eligible for funding under the Monitoring Program.
2. **Technical-Scientific Merit** - Technical quality of the study design must meet accepted standards for information collection, compilation, analysis, and reporting.

3. **Investigator Ability and Resources** - Investigators must demonstrate that they are capable of successfully completing the proposed study by providing information on the ability (training, education, and experience) and resources (technical and administrative) they possess to conduct the work.
4. **Partnership-Capacity Building** - Partnerships and capacity building are priorities of the Monitoring Program. ANILCA mandates that rural residents be afforded a meaningful role in the management of Federal subsistence fisheries. Investigators are requested to include a strategy for integrating local capacity development in their investigation plans.
5. **Cost Benefit** – Each proposal is evaluated for “best value” and overall project costs.

PROJECTS FUNDED UNDER THE MONTORING PROGRAM

Since the inception of the Monitoring Program in 2000, 73 projects have been funded in the Southeast Alaska including one new projects operating during 2016 (**Table 2**).

Table 2. Fisheries Resource Monitoring Program projects funded in the Southeast Alaska from 2000 to 2016.

Project Number	Project Title	Project Cost
00-015	SE Alaska Subsistence Fisheries Database Development	\$48,137
00-043	Klawock Lake Sockeye Salmon Assessment	\$569,355
00-044	Falls Lake Sockeye Salmon Stock Assessment	\$418,174
00-045	SE Tribes Traditional Subsistence Territory Mapping	\$180,000
01-091	East Alsek Tiver Salmon Historical Use and TEK	\$25,000
01-103	SE Subsistence Fisheries GIS Database	\$30,000
01-104	Kake Sockeye Salmon Subsistence Harvest Use Pattern	\$75,000
01-105	Klawock River and Sarkar Lake Sockeye Salmon Harvest Use Patterns	\$75,000
01-125	Gut Bay, Kook, and Hoktaheen L Sockeye Salmon Escapement Index Kanalku, Hasselborg, and Sitkoh Lakes Sockeye Salmon Stock Assessment	\$454,158
01-126	Thoms, Salmon Bay, Luck Lakes Sockeye Salmon Escapement Index	\$443,446
01-127	Klag Bay Sockeye Salmon Stock Assessment	\$364,351
01-128	Hetta Lake Sockeye Salmon Stock Assessment	\$572,025
01-130	Salmon Lake Sockeye and Coho Salmon Stock Assessment	\$222,982
01-175	Virginia Lake Sockeye Salmon Stock Assessment	\$520,000
01-179	Neve and Pavlof Sockeye Salmon Stock Assessment	\$298,841
02-012	Redfish Bay Sockeye Salmon Stock Assessment	\$242,847
02-017	SE Subsistence Fisheries GIS Database Development	\$575,000
02-038	Wrangell Salmon Subsistence Harvest Use Pattern	\$80,000
02-049	Hoonah and Klawock Salmon Survey	\$64,666
02-104	Eek Lake Sockeye Salmon Stock Assessment	\$105,000
03-007		\$58,423

04-604	Klawock Lake Sockeye Salmon Assessment	\$171,600
04-605	Kanalku and Sitkoh Lakes Sockeye Salmon Stock Assessment	\$268,400
04-606	Hetta Lake Sockeye Salmon Stock Assessment	\$281,800
04-607	Falls, Gut, and Kutlaku Lakes Sockeye Stock Assessment	\$411,900
04-608	Salmon Lake Sockeye Salmon Stock Assessment	\$340,840
04-609	Klag Bay Sockeye Salmon Stock Assessment	\$349,800
04-651	SE Alaska Salmon TEK and Subsistence Monitoring	\$313,967
04-652	Subsistence TEK Database	\$269,405
05-601	Kook Lake Sockeye Salmon Assessment	\$239,842
05-603	Klawock Lake Sockeye Salmon Assessment	\$332,036
05-604	Prince of Wales Steelhead Assessment	\$1,069,226
06-601	Neva Lake Sockeye Salmon Assessment	\$89,151
06-602	Kutlaku Lake Sockeye Salmon Assessment	\$50,992
06-651	Southeast Alaska Survey of Customary Trade in Seafood	\$414,915
07-604	Klag Bay Sockeye Salmon Stock Assessment	\$327,279
07-606	Hetta Lake Sockeye Salmon Stock Assessment	\$476,651
07-607	Kanalku Lake Sockeye Salmon Assessment	\$497,626
07-608	Klawock Lake Sockeye Salmon Assessment	\$223,801
07-609	Falls Lake Sockeye Salmon Stock Assessment	\$269,283
07-610	Behm Canal Eulachon Genetics	\$55,950
07-651	Hydaburg Sockeye Salmon Customary and Traditional System	\$133,575
08-600	Karta River Sockeye Salmon Assessment	\$235,295
08-607	Unuk River Eulachon Assessment	\$64,455
08-650	POW Island Steelhead Trout Subsistence Harvest Survey	\$144,423
08-651	Maknahti Island Subsistence Herring Fishery Assessment	\$69,185
10-600	Karta River Sockeye Salmon Assessment	\$613,239
10-601	Hatchery Creek Sockeye Salmon Assessment	\$696,350
10-603	Yakutat Eulachon Surveys	\$116,785
10-604	Klag Lake Sockeye Salmon Assessment	\$532,106
10-605	Sitkoh Lake Sockeye Salmon Assessment	\$283,701
10-606	Hetta Lake Sockeye Salmon Stock Assessment	\$687,630
10-607	Kanalku Lake Sockeye Salmon Assessment	\$770,538
10-609	Falls Lake Sockeye Salmon Stock Assessment	\$489,979
10-610	Kook Lake Sockeye Salmon Assessment	\$766,310
10-611	Redoubt Lake Sockeye Salmon Assessment	\$100,000
10-612	Neva Lake Sockeye Salmon Assessment	\$604,788
12-600	Eek Lake Sockeye Salmon Stock Assessment	\$84,525
12-601	Hoktaheen Lake Sockeye Salmon Stock Assessment	\$152,533
12-602	Lake Leo Sockeye Salmon Stock Assessment (Option 2)	\$31,498
12-651	Changing Use Patterns in Subsistence Salmon Fisheries	\$52,630
14-601	Redoubt Lake Sockeye Salmon Assessment	\$26,575
14-602	Falls Lake Sockeye Salmon Stock and Harvest Assessment	\$121,650
14-603	Hetta Lake Sockeye Salmon Stock Assessment	\$173,405

FRMP Priority Information Needs

14-605	Hatchery Creek Sockeye Salmon Stock Assessment	\$144,264
14-606	Klawock Lake Sockeye Salmon Stock Assessment	\$27,594
14-607	Unuk River District 1 Hooligan Monitoring	\$60,215
14-608	Kanalku Lake Subsistence Sockeye Salmon Stock Assessment	\$160,066
14-609	Klag Lake Sockeye Salmon Stock Assessment	\$120,473
14-610	Kook Lake Sockeye Salmon Stock Assessment	\$169,794
14-611	Sitkoh Lake Sockeye Salmon Stock Assessment	\$97,025
14-612	Neva Lake Sockeye Salmon Stock Assessment	\$145,942
16-602	Eek Lake Sockeye Salmon Stock Assessment	\$80,443
Total		\$19,833,860

Revised Draft Combined State and Federal MOU Team Edits

(11 Aug 2016)

MEMORANDUM OF UNDERSTANDING

For

Coordinated Interagency Fish and Wildlife Management for Subsistence Uses on Federal
Public Lands in Alaska

between the

Federal Subsistence Board

(U.S. Fish and Wildlife Service, USDA Forest Service, National Park Service, Bureau of
Land Management, Bureau of Indian Affairs, and Secretarial Appointees)

and

State of Alaska

(Alaska Department of Fish and Game (ADF&G) and Alaska Board of Fisheries and
Alaska Board of Game (State Boards))

I. PREAMBLE

This Memorandum of Understanding (MOU) between the Federal Subsistence Board and the State of Alaska establishes guidelines to coordinate management of subsistence uses of fish and wildlife resources on Federal public lands in Alaska.

WHEREAS, the Secretaries of Agriculture and the Interior (Secretaries), by authority of the Alaska National Interest Lands Conservation Act (ANILCA) and other laws of Congress, regulations, and policies, are responsible for ensuring that the taking of fish and wildlife for nonwasteful subsistence uses on Federal public lands, as discussed in ANILCA §802(2) and defined in ANILCA §803, shall be accorded priority over the taking on such lands of fish and wildlife for other purposes as provided for in ANILCA §804; and that the Secretaries are responsible for protecting and providing the opportunity for rural residents of Alaska to engage in a subsistence way of life on Federal public lands in Alaska, consistent with the conservation of healthy populations of fish and wildlife and recognized scientific principles; and that these lands are defined in ANILCA §102 and Federal regulation (36 CFR Part 242 and 50 CFR Part 100); and that the Secretaries primarily implement this priority through the Federal Subsistence Board, providing for public participation through Regional Advisory Councils and Subsistence Resource Commissions as authorized by ANILCA §805 and §808 and Federal regulations (above); and,

WHEREAS, the State of Alaska, under its laws and regulations, is responsible for the management, protection, maintenance, enhancement, rehabilitation, and extension of the fish and wildlife resources of the State of Alaska on the sustained yield principle, subject to preferences among beneficial uses, such as providing a priority for subsistence harvest and use of fish and wildlife (where such uses are customary and traditional), and implements its program through the State Boards and the ADF&G, providing for public participation

Revised Draft Combined State and Federal MOU Team Edits

(11 Aug 2016)

through Advisory Committees authorized in the State's laws and regulations (Alaska Statutes Title 16; Alaska Administrative Code Title 5) and through Alaska Administrative Procedure Act; and,

WHEREAS, ANILCA, Title VIII, authorizes the Secretaries to enter into cooperative agreements in order to accomplish the purposes and policies of Title VIII, and the Federal Subsistence Board and the State of Alaska believe it is in the best interests of the fish and wildlife resources and the public to enter into this Memorandum of Understanding;

THEREFORE, the signatories endorse coordination of Federal and State regulatory processes and the collection and exchange of data and information relative to fish and wildlife populations and their use necessary for subsistence management on Federal public lands. This MOU forms the basis for such cooperation and coordination among the parties with regard to subsistence management of fish and wildlife resources on Federal public lands.

II. PURPOSE

The purpose of this MOU is to provide a foundation and direction for coordinated interagency fish and wildlife management for subsistence uses on Federal public lands, consistent with specific Federal and State authorities as stated above, that will protect and promote the sustained health of fish and wildlife populations, ensure conservation of healthy populations and stability in fish and wildlife management, and include meaningful public involvement. The signatories hereby enter this MOU to accomplish this purpose and to establish guidelines for subsequent agreements and protocols to implement coordinated management of fish and wildlife resources used for subsistence purposes on Federal public lands in Alaska.

III. GUIDING PRINCIPLES

- 1) Ensure conservation of fish and wildlife resources while providing for continued uses of fish and wildlife, including a priority for subsistence uses, through interagency subsistence management and regulatory programs that promote coordination, cooperation, and exchange of information between Federal and State agencies, regulatory bodies, Regional Advisory Councils, Subsistence Resource Commissions, State Advisory Committees, state and local organizations, tribes and/or other Alaska Native organizations, and other entities;
- 2) Recognize that wildlife management activities on Federal public lands, other than the subsistence take and use of fish and wildlife remain within the authority of the individual land management agencies.
- 3) Use the best available information, including scientific, cultural and local knowledge and knowledge of customary and traditional uses, for decisions regarding fish and wildlife management for subsistence uses on Federal public lands;

Revised Draft Combined State and Federal MOU Team Edits

(11 Aug 2016)

- 4) Avoid duplication in research, monitoring, and management;
- 5) Involve subsistence and other users in the fisheries and wildlife management planning processes;
- 6) Promote stability in fish and wildlife management and minimize unnecessary disruption to subsistence and other uses of fish and wildlife resources; and
- 7) Promote clear and enforceable hunting, fishing, and trapping regulations.

IV. THE FEDERAL SUBSISTENCE BOARD AND STATE OF ALASKA MUTUALLY AGREE

- 1) To cooperate and coordinate their respective research, monitoring, regulatory, and management actions to help ensure the conservation of fish and wildlife populations for subsistence use on Federal public lands.
- 2) To recognize that fish and wildlife population data and information, including local knowledge of customary and traditional uses, are important components of successful implementation of Federal responsibilities under ANILCA Title VIII.
- 3) To recognize a Federal priority for rural residents on Federal public lands for subsistence uses of fish and wildlife resources. Additionally, to allow for other uses of fish and wildlife resources when harvestable surpluses are sufficient, consistent with ANILCA and Alaska Statute 16.05.
- 4) To recognize that cooperative funding agreements implementing the provisions of this MOU be negotiated when necessary and as authorized by ANILCA §809 and other appropriate statutory authorities. Federal funding agreements for cooperative research and monitoring studies of subsistence resources with organizations representing local subsistence users and others are, and will continue to be, an important component of information gathering and management programs.
- 5) To recognize that Federal and State scientific standards for conservation of fish and wildlife populations are generally compatible. When differences interpreting data are identified, the involved agencies should appoint representatives to seek resolution of the differences.
- 6) To cooperatively pursue the development of information to clarify Federal and State regulations for the public.
- 7) To recognize that the signatories establish protocols or other procedures that address data collection and information management, data analysis and review, in-season fisheries and wildlife management, and other key activities and issues jointly agreed upon that affect subsistence uses on Federal public lands. (See Appendix)

Revised Draft Combined State and Federal MOU Team Edits

(11 Aug 2016)

- 8) To have Federal and State staff work cooperatively with Regional Advisory Councils, Subsistence Resource Commissions, State Advisory Committees, tribes and other stakeholders, as appropriate, to review data analyses associated with regulatory proposals, harvest assessment and monitoring studies, and subsistence resource management.
- 9) To designate liaisons for policy and program communications and coordination between the Federal and State programs.
- 10) To provide adequate opportunity for the appropriate Federal and State agencies to review analyses and justifications associated with special actions and emergency orders affecting subsistence uses on Federal public lands, prior to implementing such actions. Where possible and as required, Federal and State agencies will provide advance notice to Regional Advisory Council, Subsistence Resource Commission, and/or State Advisory Committee representatives, tribes and other interested members of the public before issuing special actions or emergency orders. Where conservation of the resource or continuation of subsistence uses is of immediate concern, the review shall not delay timely management action.
- 11) To cooperatively review existing, and develop as needed, Federal subsistence management plans and State fish and wildlife management plans that affect subsistence uses on Federal public lands. Provide an opportunity for Regional Advisory Council, Subsistence Resource Commission and/or State Advisory Committee representatives, tribes and other public to participate in the review. Consider Federal, State and cooperative fish and wildlife management plans as the initial basis for any management actions so long as they provide for subsistence priorities. Procedures for management plan reviews and revisions will be developed by the respective Federal and State Boards in a protocol.
- 12) To use the State's harvest reporting and assessment systems supplemented by information from other sources to monitor subsistence uses of fish and wildlife resources on Federal public lands. In some cases, Federal subsistence seasons, harvest limits, or data needs necessitate separate Federal subsistence permits and harvest reports.
- 13) To ensure that local residents, tribes and other users will have meaningful involvement in subsistence wildlife and fisheries regulatory processes that affect subsistence uses on Federal public lands.

V. GENERAL PROVISIONS

- 1) No member of, or Delegate to, Congress shall be admitted to any share or part of this document, or to any benefit that may arise from it.
- 2) This MOU is complementary to and is not intended to replace the Master Memoranda of Understanding between the individual Federal agencies and ADF&G, with the exception of specific Federal responsibilities for subsistence uses of fish and wildlife on

Revised Draft Combined State and Federal MOU Team Edits

(11 Aug 2016)

Federal public lands. Supplemental protocols to this document may be developed to promote further interaction and coordination among the parties.

- 3) Nothing herein is intended to conflict with Federal, State, or local laws or regulations.
- 4) Nothing in this MOU enlarges or diminishes each party's existing responsibilities and authorities.
- 5) Upon signing, the parties shall each designate an individual and an alternate to serve as the principal contact or liaison for implementation of this MOU.
- 6) This MOU becomes effective upon signing by all signatories and will remain in force until such time as the Secretary of the Interior determines that the State of Alaska has implemented a subsistence management program in compliance with Title VIII of ANILCA, or, signatories terminate their participation in this MOU by providing 60 days written notice. Termination of participation by one signatory has no impact on this MOU's effectiveness between the remaining signatories.
- 7) Regional Advisory Councils, Subsistence Resource Commissions and State Advisory Committees will be asked annually to provide comments to the signatories concerning Federal/State coordination. The signatories will meet annually or more frequently if necessary, to review coordinated programs established under this MOU, to consider Regional Advisory Council, Subsistence Resource Commission and State Advisory Committee comments, and to consider modifications to this MOU that would further improve interagency working relationships. Any modifications of this MOU shall be made by mutual consent of the signatories, in writing, signed and dated by all parties.
- 8) Nothing in this document shall be construed as obligating the signatories to expend funds or involving the United States or the State of Alaska in any contract or other obligations for the future payment of money, except as may be negotiated in future cooperative funding agreements.
- 9) This MOU establishes guidelines and mutual management goals by which the signatories shall coordinate, but does not create legally enforceable obligations or rights.
- 10) This MOU does not restrict the signatories from participating in similar agreements with other public or private agencies, tribes, organizations, and individuals.

Revised Draft Combined State and Federal MOU Team Edits

(11 Aug 2016)

SIGNATORIES

In WITNESS THEREOF, the parties hereto have executed this MOU as of the last date written bellow.

Commissioner
Alaska Department of Fish and Game
Date:

Chair of the Federal Subsistence Board
Date:

Chair
Alaska Board of Fisheries
Date:

Regional Director
U.S. Fish and Wildlife Service
Date:

Chair
Alaska Board of Game
Date:

Regional Forester
USDA Forest Service
Date:

Regional Director
National Park Service
Date:

State Director
Bureau of Land Management
Date:

Regional Director
Bureau of Indian Affairs
Date:

Member of the Federal Subsistence Board
Date:

Member of the Federal Subsistence Board
Date:

Revised Draft Combined State and Federal MOU Team Edits

(11 Aug 2016)

APPENDIX

SCOPE FOR PROTOCOLS AND/OR PROCEDURES

- 1) Joint technical committees or workgroups may be appointed to develop protocols and/or procedures.
- 2) Individual protocols and/or procedures should:
 - a. Be developed by an interagency committee. The committee shall involve, as appropriate, Regional Advisory Council, Subsistence Resource Commissions and/or State Advisory Committee representatives and other Federal/State regional or technical experts.
 - b. Identify the subject or topic of the protocol and provide justification.
 - c. Identify the parties to the protocol.
 - d. Identify the process to be used for implementing the protocol.
 - e. Provide for appropriate involvement of Regional Advisory Councils, Subsistence Resource Commissions and/or State Advisory Committees, tribes and/or other Alaska Native organizations, governmental organizations, and other affected members of the public when implementing protocols.
 - f. Specify technical committee or workgroup memberships.
 - g. Develop a timeline to complete tasks.
 - h. Identify funding obligations of the parties.
 - i. Define the mechanism to be used for review and evaluation.
- 3) Protocols or procedures require concurrence by the land agencies party to the specific protocols as appropriate and prior to implementation.

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 CFR §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.



Federal Subsistence Board

1011 East Tudor Road, MS121
Anchorage, Alaska 99503



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

FOREST SERVICE

AUG 24 2016

FWS/OSM 16075.CJ

Michael Bangs, Chair
Southeast Alaska Subsistence
Regional Advisory Council
P.O. Box 1733
Petersburg, Alaska 99833

Dear Chairman Bangs:

This letter responds to the Southeast Alaska Subsistence Regional Advisory Council's (Council) fiscal year 2015 Annual Report. The Secretaries of the Interior and Agriculture have delegated to the Federal Subsistence Board (Board) the responsibility to respond to these reports. The Board appreciates your effort in developing the Annual Report. Annual Reports allow the Board to become aware of the issues outside of the regulatory process that affect subsistence users in your region. We value this opportunity to review the issues concerning your region.

1. Fisheries Resource Monitoring Program

Funding for the Fisheries Resource Monitoring Program projects is important to the entire program and should be maintained at current levels and opportunities for funding projects from other sources investigated. The Council has written a letter to the USFS Regional Forester with these concerns, but the Board should be aware and concerned that funding for several informational needs is being reduced and important projects are being cancelled. The Council would be very interested to know if the Board is aware of opportunities for partnering with other agencies or non-governmental organizations.

Response:

The mission of the Fisheries Resource Monitoring Program (FRMP) is to identify and provide information needed to sustain subsistence fisheries on Federal public lands for rural Alaskans through a multidisciplinary collaborative program. The FRMP is administered by the Office of

Chairman Bangs

2

Subsistence Management (OSM). Projects are selected for funding under the Monitoring Program through an evaluation and review process that is designed to advance projects that are strategically important for the Federal Subsistence Management Program, technically sound, administratively competent, promote capacity building and are cost effective. The FRMP is intended to be a coordinated resource monitoring program which adds to, is consistent with, and does not duplicate existing efforts by government agencies and organizations already engaged in assessment of subsistence fisheries and subsistence fishery resources.

The Board appreciates the Council's concern with soliciting funding opportunities outside the U.S. Forest Service and the U.S. Fish and Wildlife Service budget system. Generally, it is the responsibility of the principal investigator to identify partnership opportunities while designing project proposals. To better compete for FRMP funding, principal investigators are strongly encouraged to submit project proposals that include other sources of funding. That helps stretch FRMP budgets. One of the rating categories for FRMP proposals is cost effectiveness. When Federal staff learn of other funding sources that can be used to augment FRMP proposals they share that information with principal investigators. Sources for grants or partnerships are a dynamic area and Federal staff are ready to assist principal investigators in identifying funding sources that complement the FRMP.

2. Transboundary Mining

The operation of mines on streams in Canada that flow into Alaska has the potential for significant negative effects on the region's fisheries resources. This topic was the number one priority issue identified by the Council in its 2014 Annual Report. The Council submitted letters to the Board in March and October of 2014 and remains concerned that local concerns are not being heard. There is a water quality program being initiated on some transboundary rivers this year and the Council requests Board support for the continuation of that project.

Response:

The Board is aware of the plans for the development of mines on the Taku, Stikine and Unuk Rivers, and the potential negative impacts to these rivers. The Board supports efforts to protect these watersheds as necessary to ensure healthy wild salmon populations and abundant fisheries, as well as the economic, ecological, subsistence, cultural, and recreational values that the river systems support. The Board defers to other appropriate agencies, primarily the U.S. Forest Service (USFS), for coordination with the public, Tribes and non-governmental organizations on habitat issues. The USFS has assumed a support role as it relates to large mine water quality oversight and monitoring, by assisting Central Council of Tlingit and Haida Indian Tribes of Alaska contractors in conducting baseline water quality studies, and sharing data associated with subsistence uses of fisheries associated with these river systems. The USFS is seeking guidance from the Department of Agriculture and Department of State regarding the best way to engage with the State of Alaska, Canadian Government, and British Columbia Province, to ensure that the resources of the Tongass National Forest are protected.

3. *Petition for Extraterritorial Jurisdiction*

The Council is interested in how the petition for extraterritorial jurisdiction for the marine waters in Chatham Strait is being resolved and whether the local solution approved by the State Board of Fisheries is being effective in passing Sockeye Salmon through the commercial fishery to provide for escapement and subsistence use of those stocks. The Council requests the Board engage the Alaska Department of Fish and Game to determine if additional Sockeye Salmon stock-of-origin genetic studies are warranted and whether subsistence needs are being met by the residents of Angoon.

Response:

The Federal Subsistence Board, and the Secretaries of the Interior and Agriculture remain keenly interested in the success of the fisheries management strategy developed by local users and the Alaska Board of Fisheries that addresses issues contained in the petition for extraterritorial jurisdiction submitted by Kootznoowoo Inc. The USFS continues to pursue the economic development aspects mentioned in the petition. The Fisheries Resource Monitoring Program has plans to monitor Sockeye Salmon escapements into Kanalku, Sitkoh and Kook Lakes for at least one more season. The USFS remains committed to operating those population assessment studies into the future, providing funding is available. The partial barrier at Kanalku Creek has been modified and studies will occur this season to monitor the effectiveness of that modification. The USFS and ADF&G are committed to work together to address access concerns and providing for adequate escapement of Sockeye Salmon to the Kanalku Lake. ADF&G will continue to obtain samples as necessary to complete the genetic stock database from Sockeye Salmon spawning populations but there is no funding available this season to monitor stock-of-origin genetic studies from the Chatham Strait and Icy Strait commercial seine fisheries. In 2015, the Alaska Board of Fisheries established a new Amounts Reasonably Necessary for Subsistence Uses of Salmon as 1,100-1,700 salmon for District 12 (Angoon). A total catch estimate for the 2015 season from the State's subsistence permit database is not yet available.

4. *Use of Cabins on National Park Service Land*

There is currently a prohibition on subsistence use of cabins and other facilities that have been permitted for commercial activities within Glacier Bay and Wrangell-St. Elias National Preserve. This prohibition does not make sense to the Council. The Council would like to engage the Board in consideration of how the National Park Service (NPS) should implement the subsistence priority on Preserve lands. The Council would appreciate a report on management of cabins used for subsistence in other parks and preserves.

Chairman Bangs

4

Response:

The National Park Service (NPS) appreciates the Council's concern regarding the subsistence use of cabins and other facilities on NPS lands, and notes the specific concerns identified for Glacier Bay National Preserve and Wrangell-St. Elias National Park and Preserve. Contrary to what the Council reported in its annual report, there is no prohibition on subsistence use of cabins and facilities permitted for commercial activities in the Malaspina Glacier Forelands area of Wrangell-St. Elias National Preserve and the Dry Bay area of Glacier Bay National Preserve, consistent with NPS regulations for cabins (Title 36 Code of Federal Regulations, Part 13, Subpart C). Within Glacier Bay National Preserve at Dry Bay, subsistence uses are authorized during the times that the camps are occupied in association with commercial fishing activities (May 1-October 31). Requests to use the camps for subsistence activities outside this season are addressed on a case-by-case basis. Although two requests were recently denied, those requests were for a six-month period and included uses in addition to subsistence. The majority of the requests over the last decade have been approved. In the Malaspina Glacier Forelands area of Wrangell-St. Elias National Preserve, separate permits authorize the use of the cabins for subsistence activities and commercial fishing activities. This arrangement appears to work for the federally qualified subsistence users who have these permits.

Subsistence harvests of fish and wildlife in NPS national preserves in Alaska is allowed consistent with Title 8 of ANILCA. Subsistence harvests are also allowed in some national parks and monuments, as specified in ANILCA. Seasons and harvest limits for fish and wildlife are established by the Federal Subsistence Board, while the NPS has management authority over issues such as plant harvest, access, and the use of cabins and other structures in support of subsistence. In terms of implementing the subsistence priority, federal subsistence harvests would have a priority over other consumptive uses in times of shortage. In addition, federal regulations may be more liberal than state regulations. For example, the federal season for hunting goats in Unit 5 is one month longer than the state season. Similarly the federal moose season opens one week earlier than the state season, and federal public lands in Unit 5A (except for Nunatak Bench) are closed to the harvest of moose except by residents of Unit 5A (Yakutat) from October 8 to October 21. Consistent with the NPS cabin regulations, the use of cabins to support subsistence activities *may* be authorized, if cabins are recognized as a customary and traditional part of subsistence uses in the area. As described below, however, the regulations specify factors that must be considered in deciding whether to authorize such use. In both the Dry Bay and Malaspina Forelands areas, subsistence users also have access to a public use cabin.

With regard to the Council's question about the management of cabins used for subsistence in other parks and preserves, NPS units in Alaska manage subsistence cabins consistent with Title 36 Code of Federal Regulations (CFR) Sections 13.160 - .168, which were effective as of October 20, 1986. Region-wide regulations were adopted in an effort to assure uniform treatment of cabin permit applications in Alaska park areas. These regulations provide that permits should only be issued after considering whether cabins are a customary and traditional part of subsistence uses in the area and determining whether the use and occupancy of a cabin is

necessary to reasonably accommodate the applicant's subsistence uses. In making this determination, the Superintendent is directed to examine the applicant's particular circumstances, including his or her past pattern of subsistence uses and plans for future use, reasonable subsistence use alternatives, the specific subsistence uses to be accommodated, the impacts of the cabin or structure on other local subsistence users, and the impacts of the proposed structure and activities on the values and purposes for which the park area was established. The regulations also provide that the Superintendent may designate existing cabins or other structures that may be shared by local rural residents for authorized subsistence uses without a permit. Construction of new subsistence cabins may be permitted only if a tent or other temporary facility would not accommodate the applicant's subsistence uses without significant hardship and no other type of cabin or structure can accommodate the subsistence uses with a lesser impact on the values and purposes for which the park area was established. Additionally, any newly constructed subsistence cabins must be designated for shared use. Residential use of subsistence cabins is prohibited.

Philip Hooge, Superintendent, Glacier Bay National Park and Preserve, plans to attend the October 2016 Council meeting in Petersburg. The Council is encouraged to continue working with the Superintendent on this issue.

5. Sea Otters

The Council recognizes that the Board does not have direct management authority for sea otters, but the Council feels it is imperative that the Board understands that the expanding sea otter population is destroying much of the economic base for rural communities in the region and eliminating an important component of the subsistence lifestyle of rural residents. Enforcement of the regulations governing harvest does not promote use of these animals. It is the intention of the Council to identify the negative impacts of sea otters as an ongoing issue that is important to the residents of the Region but not to request a specific action by the Board.

Response:

The Board forwarded this issue to the U.S. Fish and Wildlife Service, Marine Mammals Management, which responds as follows:

The U.S. Fish and Wildlife Service is aware of the conflicts between a growing sea otter population and commercial and subsistence use of shellfish and other resources. There are no regulations that govern the harvest of sea otters by Alaskan Natives that live in coastal communities. The only restriction is that the harvest is not wasteful.

Chairman Bangs

6

6. Customary and Traditional Use

The Council has expended considerable efforts in reviewing the customary and traditional use determination process, as requested by the Secretary of the Interior. After several years of discussion, the Council has decided not to submit a proposal to change the current customary and traditional use determination regulations but instead approved a letter to the Board which outlines the Council's approach to and interpretation of the current regulations. This is specific to the Southeast Region and acknowledges that it may not be applicable to the rest of the state due to the wide variation of conditions and considerations that are present in other regions. The Council requests the Board reply to the Council with an evaluation of the recommendation contained in the letter.

Response:

The Board greatly appreciates the time, energy, and commitment that the Council has given to this issue. Not only has the Council's efforts benefitted the other Councils by raising their understanding of customary and traditional use determinations, it has benefitted the staff at the Office of Subsistence Management as well. The Board has separately provided a detailed response to the Council's latest letter, a copy of which is attached. The Board looks forward to continued dialogue with the Council on this issue as is needed.

7. Terminal Area Escapement

Adequate returns of Sockeye Salmon to the terminal areas, sufficient to provide for escapement and subsistence fishing, are a continuing concern to the Council. The Council will work with staff to identify those systems in greatest need of information concerning total returns, interception rates and escapement requirements in addition to importance to subsistence use. The Council anticipates the need for additional technical assistance and hopes that the Board will support any future requests for staff support required to define and identify specific data gaps.

Response:

The Fisheries Resource Monitoring Program is designed to provide information needed for management of Federal subsistence fisheries. The focus of the Program in the Southeastern Alaska Area is Sockeye Salmon population assessments and harvest monitoring in locations identified by the Council as a priority information need. At the spring 2016 Council meeting in Anchorage, the Council provided staff a preliminary list of priority Sockeye Salmon systems for population assessment studies starting in 2018. The Council will have an opportunity to review and amend that list during their fall council meeting. In November 2016, there will be a call for investigators to submit proposals to address those priority information needs. Staff from the Office of Subsistence Management and the U.S. Forest Service are committed to working with

Chairman Bangs

7

the Council to assist in identifying relevant information needs and are committed to work with ADF&G and Project Investigators to focus studies to address specific informational deficiencies necessary for management of these stocks. The population assessment studies now underway will provide base-line information that will help refine and define additional fisheries information needs that may be specific to a particular species or location.

8. *Salmon and Halibut Interception*

Interception of salmon and halibut by commercial fisheries both within and outside of the Southeast Region has been an ongoing concern and the subject of previous annual report issues. The Council is interested in remaining aware of the magnitude of these removals, particularly in the long-line and trawl fisheries in the Gulf of Alaska, and efforts to control or reduce the level of by-catch. The Council requests the Board provide a comprehensive summary of this issue and an analysis on the effects of these interceptions on subsistence use of these fish stocks.

Response:

One of the national standards of the Magnuson-Stevens Fishery Conservation and Management Act states that conservation and management measures shall, to the extent practicable, minimize bycatch, and to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. The North Pacific Fisheries Management Council (NPFMC) is responsible for implementation of the Act and adopts regulations and management plans governing the conduct of fisheries in the Bering Sea and Gulf of Alaska. The results of studies identifying incidental harvests and subsequent management controls are contained in a briefing document found at: <http://www.npfmc.org/wp-content/PDFdocuments/bycatch/Bycatchflyer913.pdf>. The subsistence halibut program is implemented by the National Marine Fisheries Service (NMFS) and the Board does not have the authority to investigate the effects of halibut bycatch on the subsistence halibut fishery. Although the Board does have the authority to manage subsistence salmon fisheries on Federal public waters, there is simply not the capacity to conduct an analysis of the effects on subsistence fisheries by incidental harvests, independent of the NPFMC and the NMFS. The NPFMC is acutely aware of the interest by subsistence users in eliminating incidental harvest of salmon that may subsequently be used for subsistence. Fishery management plans developed by the NPFMC are implemented by the NMFS. Chinook Salmon prohibited species catch (PSC) limits were established for the Gulf of Alaska (GOA) pollock trawl fisheries in 2012 and for the non-pollock groundfish species in 2015. The NPFMC is in the process of developing comprehensive management measures to address the trawl fleet's ability to fish within the established PSC limits and will consider further reductions to GOA Chinook salmon PSC limits. More information on comprehensive GOA measures can be found at: <http://www.npfmc.org/goa-trawl-bycatch-management/>.

Chairman Bangs

8

9. North Pacific Fishery Management Council Representation

The Council is in complete agreement with the other Councils in requesting the Board seek to find an avenue for having a designated subsistence seat on the North Pacific Fisheries Management Council. The representative for such a seat should have experience on a Federal subsistence regional advisory Council.

Response:

The membership of the North Pacific Fishery Management Council (NPFMC) is determined by statute; specifically, the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §1852. The NPFMC is required under Section 302(a)(1)(F) of that Act to have 11 voting members, including 7 appointed by the Secretary of Commerce, with 5 from Alaska and 2 from Washington. Governors from both states are provided the opportunity to make recommendations on those appointments. The remaining four seats are the leading fisheries officials for the states of Alaska, Washington and Oregon and the Alaska Regional Director for the National Marine Fisheries Service.

Nothing in the current law requires a particular type of user to occupy any of the 7 seats where the governors can make nominations. There is, however, an Advisory Panel of 21 members that does include subsistence users in its membership. As noted in previous annual report replies to the Regional Advisory Councils, the Magnuson-Stevens Act is currently up for renewal. In June 2015, the U.S. House of Representatives passed a bill (H.R. 1335) to reauthorize the Magnuson – Stevens Act. It has not passed the U.S. Senate.

The most recent appointees to Obligatory Seats from Alaska, made in 2015, are Dan Hull of Anchorage and Andrew D. Mezirow of Seward. Enclosed is the most recent nomination letter from the Governor, dated March 9, 2016. It is worth noting that in Governor Walker’s nomination letters to the Secretary of Commerce, he notes he has consulted with “commercial and recreational fishing interests in Alaska,” but not *subsistence* interests as the law does not presently require it. However, H.R. 1335, if it becomes law, would require the Governor to consult with “the subsistence fishing interests of the State.” The bill also adds a new definition of “subsistence fishing” to the Magnuson-Stevens Act. The definition parallels language currently seen in Title VIII of the Alaska National Interest Lands Conservation Act:

The term “subsistence fishing” means fishing in which the fish harvested are intended for customary and traditional uses, including for direct personal or family consumption as food or clothing; for the making or selling of handicraft articles out of nonedible byproducts taken for personal or family consumption, for barter, or sharing for personal or family consumption; and for customary trade.

Chairman Bangs

9

The bill passed the U.S. House of Representatives on June 1, 2016. On June 2, it was received in the Senate and referred to the Committee on Commerce, Science and Transportation. There has been no action since then. The Office of Subsistence Management will keep you and other Councils informed on any additional developments.

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 Southeast Region are well represented through your work.

Sincerely,



Tim Towarak
Chair

Enclosures

cc: Southeast Alaska Subsistence Regional Advisory Council
Eugene R. Peltola, Jr., Assistant Regional Director, Office of Subsistence Management
Stewart Cogswell, Acting Deputy Assistant Regional Director
Office of Subsistence Management
Carl Johnson, Council Coordination Division Chief, Office of Subsistence Management
Robert Larson, Council Coordinator, U.S. Forest Service
Federal Subsistence Board
Interagency Staff Committee
Administrative Record

STATE CAPITOL
P.O. Box 110001
Juneau, AK 99811-0001
907-465-3500
fax: 907-465-3532



550 West Seventh Avenue, Suite 1700
Anchorage, AK 99501
907-269-7450
fax 907-269-7461
www.Gov.Alaska.Gov
Governor@Alaska.Gov

Governor Bill Walker
STATE OF ALASKA

March 9, 2016

Ms. Eileen Sobeck
Assistant Administrator for Fisheries
National Marine Fisheries Service
1315 East-West Highway, Room 14636
Silver Spring, MD 20910

Dear Ms. Sobeck:

In accordance with the provisions of Section 302 of the Magnuson-Stevens Fishery Conservation and Management Act, I am pleased to submit my nominations for two obligatory seats from the State of Alaska on the North Pacific Fishery Management Council (NPFMC) expiring August 10, 2016. As discussed below, I have nominated individuals who are knowledgeable and experienced in the harvest, conservation, and management of fishery resources and who also provide representation for minority groups.

After reviewing the requirements of the Act and consulting with commercial and recreational fishing interests in Alaska, I nominate the individuals listed below for consideration by the Secretary of Commerce:

Seat 1
Theresa Peterson
Eric Olson
Paul Gronholdt

Seat 2
Michael "Buck" Laukitis
Linda Behnken
Art Nelson

I select Ms. Theresa Peterson and Mr. Michael "Buck" Laukitis as my preferred nominees for consideration. As required by the Act, I am submitting two alternate nominees that can be considered for each seat in Mr. Eric Olson, Mr. Paul Gronholdt, Ms. Linda Behnken and Mr. Art Nelson.

Ms. Theresa Peterson has been a commercial and subsistence fisherman for over thirty years. She currently serves as an Advisory Panel Member of the North Pacific Fishery Management Council. Her other memberships include the Alaska Jig Association, the Community Fish Network, and as the Outreach Coordinator for the Alaska Marine Conservation Council. Theresa studied Linguistics and Political Science at the University of California.

Mr. Michael "Buck" Laukitis is a commercial fisherman and the owner of Magic Fish Company and Compass Rose Properties. He helped to develop the Alaska Maritime Workforce Development Plan in 2014. Mr. Laukitis has a United States Coast Guard 100 Ton Masters License. He is also a

Ms. Eileen Sobeck
NPFMC Nominations
March 9, 2016
Page 2

longstanding member of the Board of Trustees for the Homer Foundation, whose mission is to promote philanthropic and charitable activities. Mr. Laukitis has a degree in Philosophy from Colorado College.

Ms. Linda Behnken is the Executive Director of Alaska Longline Fishermen's Association. She is also a previous member of North Pacific Fishery Management Council. Ms. Behnken is a member of the Alaska Sustainable Fisheries Trust and the Halibut Coalition. She holds a master's degree in Environmental Science from the Yale School of Forestry and Environmental Studies.

Mr. Paul Gronholdt is a member of the Oagan Tayagungin Tribe and has been a commercial fisherman for over thirty five years.

Mr. Eric Olson is a member of the Pacific States Marine Fisheries Commission and a former manager of the Yukon Delta Fisheries Development Association. He has fished commercially for nearly forty years. He is a previous member of the North Pacific Research Board.

Mr. Art Nelson is the Executive Director of the Bering Sea Fishermen's Association. He grew up fishing commercially for salmon in the Prince William Sound. As a young man he worked for the Kawerak Native Association as a Fisheries Specialist, managing projects that counted salmon escapement. Later he did much the same work for Bering Sea Fishermen's Association. Mr. Nelson has been a member on the Advisory Panel to the North Pacific Anadromous Fisheries Commission, the Alaska Board of Fisheries Kuskokwim Subsistence Salmon Panels, and is Chairman of the Steering Committee for Arctic-Yukon-Kuskokwim Sustainable Salmon Initiative. Mr. Nelson studied biology at the University of Alaska.

Enclosed you will find a list of commercial and recreational fishing groups that have provided input in my nomination of these knowledgeable and qualified individuals. The nominees provide balanced and insightful experience for the NPFMC and will contribute greatly to fisheries management and conservation in the North Pacific. I appreciate your consideration of these nominees.

Sincerely,



Bill Walker
Governor

Enclosures

cc: The Honorable Sam Cotton, Commissioner, Department of Fish and Game
Nathan Butzlaff, Associate Director of State and Federal Relations, Office of the Governor

List of commercial and recreational fishing groups providing input for my nominations:

Afognak Native Corporation
Alaska Federation of Natives
Alaska Groundfish Data Bank
Alaska Longline Fishermen's Association
Alaska Marine Conservation Council
Aleutian Pribilof Island Community Development Association
At-Sea Processors Association
Bristol Bay Economic Development Corporation
Central Bering Sea Fishermen's Association
City of Larsen Bay
City of Old Harbor
City of Saint Paul
Halibut Coalition
International Seafoods of Alaska
Inupiat Community of the Arctic Slope
Kaguyak Village Council
Kawerak, Inc.
K-Bay Fisheries Association
Kodiak Archipelago Rural Regional Leadership Forum
Kodiak Island Borough
Koniag, Inc.
Native Village of Port Lions
North Pacific Fisheries Association
North Pacific Research Board
North Pacific Seafoods
Ocean Beauty Seafoods
Ocean Peace, Inc.
Old Harbor Native Corporation
Pacific Seafood Processors Association
Pelagic Resources, Inc.
Peter Pan Seafoods, Inc.
Tanana Chiefs Conference
United Fishermen of Alaska



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

Federal Subsistence Board

1011 East Tudor Road, MS121
Anchorage, Alaska 99503



FOREST SERVICE

FWS/OSM 16041.JH

JUN 21 2016

Mr. Mike Bangs, Chairman
Southeast Alaska Subsistence
Regional Advisory Council
P.O. Box 1733
Petersburg, Alaska 99833

Dear Mr. Bangs:

Thank you for your letters dated May 28, 2015 and January 22, 2016, which discuss the Southeast Alaska Subsistence Regional Advisory Council's (Council) concerns and recommendations associated with the customary and traditional use (C&T) determination process of the Federal Subsistence Management Program. The Federal Subsistence Board (Board) and the Office of Subsistence Management (OSM) understand that the Council continues to have concerns and is requesting additional information about a number of issues, as well as offering recommendations for future C&T determinations in the Southeast Region. The Board is grateful for the serious attention that the Council has directed toward finding a path forward on this important issue. We also appreciate the robust and thoughtful discussions about this issue that the Council has initiated.

The Board would like to first address your questions about how the eight C&T factors contained in the Federal subsistence management regulations follow the direction given in Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA), the benefit served by having the eight C&T factors in regulation and the necessary or desired outcome they achieve. Section 814 of ANILCA directs the Secretaries of the Interior and Agriculture to develop implementing regulations to carry out the intent of ANILCA. The regulations contained within Subparts A (General Provisions) and B (Program Structure), including the eight factors that exemplify customary and traditional use, are the Secretaries' interpretation of that guidance. While the eight factors were adopted from the State of Alaska following several public review and comment processes, they are applied differently in the Federal Subsistence Management Program to ensure that subsistence uses are identified under the Federal subsistence priority. Most importantly, the eight-factor analysis applied by the Board when considering C&T determinations is intended to protect subsistence use rather than limit it.

Mr. Bangs

2

The policy recommendations for addressing C&T determinations in the Southeast Region offered by the Council in your January 22, 2016 letter are consistent with the Federal Subsistence Management Program's current C&T determination process statewide. Because of the important role of subsistence in rural Alaska, it is assumed that C&T determinations will necessarily be broad and inclusive. The eight factors provide a general framework for examining the pattern of use of a resource. The Federal Subsistence Management Program does not employ a rigid checklist approach to assessing the eight factors in contrast to the State of Alaska's use of those factors. Instead, analyses in the Federal program take a holistic approach and the eight factors serve as a guide for considering whether an area or community generally exhibits the eight factors characteristic of customary and traditional uses. Like the Council, the Board recognizes that there are regional, cultural, and temporal variations and the application of the eight factors will likely vary by region and by resource depending on actual patterns of use. It is the Board's opinion that when the eight factors that characterize customary and traditional uses are applied appropriately, they provide maximum flexibility to address regional variations across the state and offer protections for the subsistence way of life in rural Alaska.

Furthermore, it is the Board's opinion that all of the eight factors do not need to be present or given equal weight in considering whether to make a specific C&T determination. Additionally, the Board gives deference to recommendations received from Councils on the C&T determination requests that affect their regions. Information and recommendations received from Councils are critical to the C&T determination process, as the Councils represent subsistence users and have direct knowledge of the practices associated with the subsistence way of life. The goal of C&T determination analyses that utilize the eight factors is to recognize customary and traditional uses in the most inclusive manner possible.

In your May 28, 2015 letter, the Council also requested that clarification on four specific aspects of the C&T determination issue be provided as an amendment to the briefing provided to you by OSM in 2014. Rather than amend the 2014 C&T briefing, OSM has provided the requested clarification below. We believe this clarification may also be of use to the Council as you develop C&T determination proposals in the future.

- (1) What are the appropriate factors or conditions that could be used to determine the geographical extent of a community's use of fish and wildlife (i.e., the geographic area described in the customary and traditional use determination)?*

Existing regulations provide for extensive flexibility in proposals requesting C&T determinations and the analysis of such proposals. While requests for C&T determinations should focus on specific geographic areas, the definition and size of the areas can vary greatly across proposals, depending on the needs of the proponent. The Federal Subsistence Management Program currently utilizes the State's Game Management Unit system to organize regulations by geographical area for management convenience and to be consistent with other regulatory processes. However, this system may not be appropriate for all C&T determinations. Therefore, under current regulations the defined geographical extent of a community's or area's use of fish

Mr. Bangs

3

and wildlife should originate from the proponent in the proposal requesting a C&T determination. This ensures that proposals are based on the needs of local users rather than primarily management convenience.

(2) What are appropriate factors or considerations that could be used to decide the customary and traditional use of which species, stocks, populations or aggregations of species, stocks or populations?

As stated previously, the eight factors currently contained in regulation reflect characteristics that generally exemplify customary and traditional uses. They are assessed in a holistic fashion in relation to fish stocks or wildlife populations identified in a proposal to the Board for a C&T determination. The specific fish stocks or wildlife populations addressed in C&T determination analyses are defined by proponents. A proponent may request consideration of one or more stocks or populations in a single proposal to the Board. Flexibility is intentionally built into the regulations so that proposals are developed at the local level with recognition that a one-size-fits-all approach to C&T determination proposals would not be appropriate in the Federal Subsistence Management Program.

Under current regulations, proposals may be submitted for new C&T determinations or revisions to existing C&T determinations. If there are existing C&T determinations in your region that the Council would like to change, we urge you to submit a proposal requesting modifications. In cases where proposals are inclusive and request the addition of one or more community or area to an existing C&T determination, analyses focus on the community, communities, area or areas identified. However, in cases where proposals seek to narrow or refine an existing C&T determination to a limited number of communities or areas, a full analysis and a re-evaluation of the existing C&T determination is undertaken. This is required because the intent of C&T determinations is to be inclusive, rather than exclusive. Proposals to limit subsistence uses must be thoroughly analyzed to ensure that they are not contrary to the protections offered by the Federal subsistence priority.

Alternatively, if the Council would like to request changes to the C&T determination regulations, these would need to be submitted by the Board in the form of a Petition to the Secretaries because the regulations pertaining to C&T determinations are contained in Subpart B of the Federal subsistence regulations, which fall under Secretarial authority. Any petitions to the Secretaries to change Federal Subsistence Management Program regulations should reflect the wishes of all Subsistence Regional Advisory Councils, similar to the recent process of modifying the regulations addressing the rural determination process. Should the Council decide to pursue such regulatory changes in the future, the Board recommends that the Council seek concurrence on the requested changes from the other Regional Advisory Councils, as any approved changes would have statewide effects. Please be advised that changing regulatory language that falls under Secretarial authority can be a lengthy process.

Mr. Bangs

4

- (3) Does the suggested regulation provide appropriate autonomy, direction, and flexibility for the Councils to identify qualified users based on criteria developed by the Councils, specific to a region?*

Because the regulations contained in Subpart B pertain to the overall structure of the Federal Subsistence Management Program, changes would affect all subsistence uses and users across the state and should be made on a programmatic basis. The Board believes that the Council's previous suggestion to remove the eight C&T determination factors from regulation and replace them with region-specific criteria would make the process inflexible by requiring each region to petition the Secretaries any time a change to their criteria was requested. Again, we believe that when the eight factors that characterize customary and traditional uses are applied appropriately, they provide significant flexibility to address and recognize regional variations across the state.

Regarding the Council's earlier suggestion that C&T determinations should be based on the criteria identified in Section 804, we do not agree that this was Congress' intent. The purpose of C&T determinations is to identify and protect the subsistence uses that are central to the subsistence way of life in rural Alaska. Customary and traditional use determinations are not intended to restrict harvest or allocate resources among Federally qualified subsistence users. Rather, these determinations acknowledge the subsistence uses in rural areas and communities that are subject to the Federal subsistence priority. Thus, they may be very broad and in some instances may extend the subsistence priority for particular fish stocks or wildlife populations to a large number of rural residents in Alaska. Customary and traditional use determinations are based on historic patterns of use rather than the availability of resources. On the other hand, the criteria identified in Section 804 are specifically used to prioritize *among* subsistence users when all rural residents with a C&T determination cannot be provided an opportunity to meet their subsistence needs or the continued viability of the fish stock or wildlife population is threatened and allocation of subsistence resources is required. The Office of Subsistence Management offered multiple training sessions focusing on the Federal subsistence prioritization process at the All Council Meeting in March 2016. The Office of Subsistence Management is happy to provide additional training opportunities to the Council on this topic.

- (4) Can customary and traditional use determinations be included in §__.18 (regulation adoption process) where Councils have so-called "deference" from the Board on proposals regarding the "take" of fish and wildlife? Is the proposed language sufficient to achieve deference to the Councils when making customary and traditional use determinations?*

Mr. Bangs

5

In a status report on the Secretarial Review of the Federal Subsistence Management Program dated April 27, 2012, the Board notified the Secretary of the Interior that deference to the Councils has been expanded to include recommendations on C&T determinations. Therefore, deference language is not needed in regulation for C&T issues that fall under the Board's authority, such as C&T determinations. Councils are entitled to deference on C&T determinations unless recommendations conflict with the overriding principles contained in Title VIII of ANILCA. In making decisions about C&T determinations, the Board must balance deference to Councils with the need to avoid actions that would inadvertently result in C&T determinations that are exclusive instead of inclusive and protective.

In closing, we wish to express our appreciation of the extensive and intensive efforts of the Southeast Alaska Subsistence Regional Advisory Council to identify and address concerns related to C&T determinations in the Federal Subsistence Management Program. The Council's recommendations regarding future C&T determinations in the Southeast Region align well with the current process followed statewide in the Federal program. We look forward to receiving future C&T determination proposals from the Council. Please contact Dr. Jennifer Hardin, Anthropology Division Chief, Office of Subsistence Management at (907) 786-3677 or by email at jennifer_hardin@fws.gov with any questions or concerns about C&T determination proposals or analyses.

Sincerely,



Tim Towarak
Chair

Enclosures

cc: Eugene R. Peltola, Jr., Assistant Regional Director, OSM
Stewart Cogswell, Acting Assistant Regional Director, OSM
Jennifer Hardin, Anthropology Division Supervisor, OSM
Carl Johnson, Subsistence Coordinator Division Supervisor, OSM
Chris McKee, Wildlife Division Supervisor, OSM
Amee Howard, Policy Coordinator, OSM
Theo Matuskowitz, Regulation Specialist, OSM
Federal Subsistence Board
Interagency Staff Committee
Administrative Record



***Southeast Alaska
Subsistence Regional
Advisory Council***

**Mike Bangs, Chairman
PO Box 1733
Petersburg AK 99833**

RAC SE15036.RL

JAN 22 2016

Mr. Tim Towarak, Chair
Federal Subsistence Board
c/o U.S. Fish and Wildlife Service
Office of Subsistence Management
1011 East Tudor Road, Mail Stop 121
Anchorage, Alaska 99503

Dear Chairman Towarak:

In a December 17, 2010 letter, the Secretary of the Interior requested the Board “Review, with RAC input, the customary and traditional use determination process and present recommendations for regulatory changes.”

The Council considered this charge seriously and has discussed the customary and traditional use (C&T) determination process at every meeting we have held since that time. In-depth discussions with subject matter experts on staff were conducted between meetings through a C&T council member working group. These productive discussions have led to a better understanding of how the past C&T process developed and contributed to an approach for future C&T recommendations that will come from the Council. We appreciate the assistance provided by Federal staff in our effort.

The Council found that the existing C&T determination procedures, and related eight factors, followed by the Federal Subsistence Management Program were adopted from procedures followed by the State of Alaska when it was managing Federal land for subsistence purposes. The State of Alaska considered that subsistence hunting and fishing was not authorized unless there was a positive C&T determination recognizing the use of a specific species of fish or wildlife by a specific community in a specific area. No subsistence use could take place without such a determination.

The Council believes this legacy approach violates the spirit and letter of the Alaska National Interest Land Conservation Act (ANILCA). The goal of the Act with respect to subsistence is to

protect customary and traditional subsistence uses and ensure that they continue. This letter contains the Council's policy recommendation to the Federal Subsistence Board. Recognizing there are regional differences, this recommendation is intended for the Southeast Alaska Region only. The guideline we will follow in subsequent C&T recommendations to the Federal Subsistence Board returns to what we understand to be the clear purpose of ANILCA.

The Council is now in its 22nd year and has sufficient experience and knowledge of the Federal subsistence program to suggest an approach that suits customary and traditional subsistence patterns of use in our region. Because this policy recommendation is not intended for the whole state, the Council will not propose changes to the implementing regulations at this time. The Council reserves the right to propose regulatory changes in the future to address issues that develop as our recommendation is refined and implemented.

In general, we believe that subsistence use should be authorized for all rural communities for a wide variety of species in both the Yakutat and Southeastern Areas. These species comprise virtually all fish and wildlife (including birds and invertebrates) that have been taken for food or other purposes, including handicrafts, ceremonies, and customary trade. In the future, the Council may recommend determinations that are similarly broad in scope.

The Council notes that the eight criteria or factors are also part of the legacy adopted from State of Alaska procedures when Federal management began. In this light, the Council may continue to use the eight factors in general to allow orderly presentation of information on subsistence uses in our region. However we will not use these criteria as a checklist that need to be met before subsistence use is authorized. We request that the Federal Subsistence Board eliminate use of these factors as dispositive criteria.

ANILCA requires the Federal Subsistence Board to defer to Regional Advisory Councils on management issues that involve "taking." We believe that the C&T determinations involve "taking" since C&T determinations have been used to either allow or restrict who can take fish and wildlife resources for subsistence uses. The Council has articulated this view that C&T determinations involve "taking" in previous correspondence with the Board and in our annual reports. The Board recognized this in its 2007 draft Board C&T policy which stated: "Title VIII of ANILCA established a preference for customary and traditional uses of fish and wildlife by according a priority for non-wasteful taking by rural Alaska residents."

The Council may elect to revise the C&T determinations for the Southeast Region to better correspond with our recommendation. In order to do this carefully and with diligence, we are likely to phase in a new set of C&T determinations through Council generated proposals.

Additionally, the Council intends to develop a recommendation for allocating resources as specified in ANILCA Section 804. Resources in our region are generally abundant at this time, and Section 804 does not need to be applied. However, in order to be better prepared to apply Section 804 criteria should it be necessary to do so, the Council requests staff assistance and training on this topic.

Chairman Towarak

3

Summary recommendation:

- Our recommendation applies to the Southeast Region only.
- The Council expects that the Federal Subsistence Board shall provide deference to the Council's C&T recommendations as per Board policy and ANILCA requirements.
- Future C&T recommendations from the Council will tend to be inclusive with respect to Southeast communities and geographic areas. They may refer to "all rural communities" or "throughout the Southeast Area/Region" as appropriate.
- Future C&T recommendations from the Council may refer to "all fish species" or "all game species" or "all furbearer species" as appropriate.
- The Council may use the eight factors to organize review of subsistence information. As indicated in existing federal regulation, the eight factors are not required to be applied as hard criteria before a C&T recommendation can be made.
- We reserve the option to seek changes or amendments to regulatory language in 36 CFR Part 242.16(a) (b) and 50 CFR Part 100. 16(a) (b) in the future.

Thank you for your consideration of this issue. Any questions regarding this letter can be addressed directly to me or through our Council Coordinator, Mr. Robert Larson, at 907-772-5930, robertlarson@fs.fed.us.

Sincerely,



Mike Bangs
Chair

cc: Federal Subsistence Board
Michael Johnson, Senior Advisor for Alaska Affairs, Department of the Interior
Eugene R. Peltola, Jr. Assistant Regional Director, Office of Subsistence Management
Jennifer Hardin, Anthropology Division Chief, Office of Subsistence Management
Carl Johnson, Council Coordination Division Chief, Office of Subsistence Management
Robert Larson, Council Coordinator, United States Forest Service
Interagency Staff Committee
Administrative Record



***Southeast Alaska
Subsistence Regional
Advisory Council***

**Michael Bangs, Chairman
P.O. Box 1733
Petersburg, Alaska 99833**

RAC SE15019.RL

28 MAY 2015

Mr. Tim Towarak, Chair
Federal Subsistence Board
c/o U.S. Fish and Wildlife Service
Office of Subsistence Management
1011 E. Tudor Road, Mail Stop 121
Anchorage, Alaska 99503

Greetings Chairman Towarak:

The Southeast Alaska Subsistence Regional Advisory Council (Council) thanks the Office of Subsistence Management for its efforts to review our suggestion for regulatory changes to the customary and traditional (C&T) use determination process, and for providing us an analysis of the effects on both the Southeast Region and other regions of the State. The analysis was enlightening but incomplete and revealed that the Council's intention was not clearly communicated or understood regarding why the council wanted to engage in this conversation or the possible effects of our suggested regulatory changes on subsistence users.

After the comprehensive Secretarial program review, the Council asked the other Councils (letter January 11, 2013) to re-evaluate the customary and traditional use determination process and assist the Board in reviewing the "customary and traditional determination process to provide clear, fair, and effective determinations in accord with Title VIII goals and provisions." At that time, the Council's preferred solution was to substitute the eight C&T factors with the three factors included in Section 804 of the Alaska National Interest Lands Conservation Act (ANILCA). It was the intent of the Council to encourage the use of the criteria in Section 804 to make customary and traditional use determinations.

Chairman Towarak

2

The Council continues to believe the current process of using the eight C&T criteria, as developed by the State of Alaska for a much different purpose, is inappropriate for the Federal program. Customary and traditional use determinations identify which resources have a priority use by what people; they should not be an obstacle to overcome. The over-arching question that must be answered is what benefit is served by having the eight C&T factors in regulation, and what necessary or desired outcome do they achieve? How can the eight C&T factors be conceived to follow the direction given in Title VIII of ANILCA?

The process of making customary and traditional determinations should be based on the criteria identified by Congress in Section 804 of ANILCA:

- (1) customary and direct dependence upon the populations as the mainstay of livelihood
- (2) local residency; and
- (3) the availability of alternative resources.

The Council has suggested specific regulatory language to the Board (letter April 1, 2014). The intent of this communication was to initiate the aforementioned staff analysis regarding the effects of the proposed language and to solicit expert advice regarding necessary amendments to implement the Council's intent. The proposed language is as follows.

(36 CFR 242.16 and 50 CFR 100.16) Customary and traditional use determination process.

(a) The Board shall determine which fish and wildlife have been customarily and traditionally used for subsistence within a geographic area. When it is necessary to restrict the taking of fish and wildlife to assure continued viability of a fish or wildlife population, a priority for the taking of such population for subsistence uses shall be implemented based on the application of the following criteria; customary and direct dependence upon the populations as the mainstay of livelihood; local residency; and the availability of alternative resources. For areas managed by the National Park Service, where subsistence uses are allowed, the determinations may be made on an individual basis.

(b) Each region shall have the autonomy to recommend customary and traditional use determinations specific to that region.

(c) The Board shall give deference to recommendations of the appropriate Regional Council(s). Councils will make recommendations regarding customary and traditional uses of subsistence resources based on its review and evaluation of all available information, including relevant technical and scientific support data and the traditional knowledge of local residents in the region.

(d) Current determinations are listed in § 100.24

The Council recognizes there are a number of unresolved issues that need to be addressed prior to a final recommendation, including:

- How to best reorder the subparts in a logical sequence
- Describing how determinations could easily be “broad” or “specific,” depending on circumstances
- How determinations are made when there are areas common to two or more Regions
- What would be the reasoning or the conditions (i.e., Section 805 (c)) for the Board to not accept a Council recommendation

The review of the current process of making customary and traditional use determinations has resulted in considerable efforts by this Council, staff and other Councils. The Council is interested in making a final decision on whether to move forward with a formal regulatory proposal, but is first seeking assistance in rewriting the language in our previously suggested customary and traditional use determination regulatory proposal. Specifically, the Council would like clarification on several additional aspects of this issue.

- (1) The Council anticipates the geographic extent of the customary and traditional use area may be large or small, depending on local considerations. What are appropriate factors or conditions that could be used to determine the geographical extent of a community’s use of fish and wildlife (i.e., the geographic area described in the customary and traditional use determination)?
- (2) The process of identifying which fish and wildlife resources are within an area is a component of the geographic area discussion. Customary and traditional use determinations can apply to a specific species, stock, or population, or aggregations of stocks or populations of a species, or aggregations of species within an area. What are appropriate factors or considerations that could be used to decide the customary and traditional use of which species, stocks, populations or aggregations of species, stocks or populations?
- (3) Regional Advisory Councils should have the autonomy to decide which criteria should be used to identify the customary and traditional use of fish and wildlife in their region. The criteria may contain any or all of the current eight customary and traditional use factors or other characteristics, including those identified in Section 804 of ANILCA. Does the suggested regulation provide appropriate autonomy, direction, and flexibility for the Councils to identify qualified users based on criteria developed by the Councils, specific to a region?

Chairman Towarak

4

- (4) The Council is interested in a way for deference to be actually added into the regulatory language. Can customary and traditional use determinations be included in § ____ .18 (regulation adoption process) where Councils have so-called “deference” from the Board on proposals regarding the “take” of fish and wildlife? Is the proposed language sufficient to achieve deference to the Councils when making customary and traditional use determinations?

The Council appreciates the complexity of the issue and the amount of information exchange between Councils that is required to develop a new regulation for a process that is such a fundamental part of the program. We are ready to move forward with a final recommendation, but would appreciate an addendum to the staff analysis that addresses these concerns. Please address any questions with this letter directly to Mr. Robert Larson, Council Coordinator, U. S. Forest Service, Box 1328, Petersburg, Alaska 99833, (907) 772-5930, robertlarson@fs.fed.us.

Sincerely,



Mike Bangs
Chair

Cc Federal Subsistence Board
Southeast Alaska Subsistence Regional Advisory Council
Eugene R. Peltola, Jr., Assistant Regional Director, Office of Subsistence Management
Chuck Ardizzone, Deputy Assistant Regional Director, Office of Subsistence Management
Carl Johnson, Council Coordination Division Chief, Office of Subsistence Management
Interagency Staff Committee
Administrative Record



applicants by the proposed priority would be limited to paperwork burden related to preparing an application for a discretionary grant program that is using the priority in its competition. Because the costs of carrying out activities would be paid for with program funds, the costs of implementation would not be a burden for any eligible applicants, including small entities.

Regulatory Flexibility Act Certification: For these reasons as well, the Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Intergovernmental Review: Some of the programs affected by this proposed priority are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., Braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

John B. King, Jr.,

Secretary of Education.

[FR Doc. 2016-13456 Filed 6-7-16; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[Docket No. FWS-R7-SM-2015-0159; FXRS12610700000167-FF07J00000; FBMS# 4500088147]

RIN 1018-BB22

Subsistence Management Regulations for Public Lands in Alaska—Applicability and Scope; Tongass National Forest Submerged Lands

AGENCY: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. District Court for Alaska in its October 17, 2011, order in *Peratrovich et al. v. United States and the State of Alaska*, 3:92-cv-0734-HRH (D. Alaska), enjoined the United States “to promptly initiate regulatory proceedings for the purpose of implementing the subsistence provisions in Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) with respect to submerged public lands within Tongass National Forest” and directed entry of judgment. To comply with the order, the Federal Subsistence Board (Board) must initiate a regulatory proceeding to identify those submerged lands within the Tongass National Forest that did not pass to the State of Alaska at statehood and, therefore, remain Federal public lands subject to the subsistence provisions of ANILCA.

Following the Court’s decision, the Bureau of Land Management (BLM) and the USDA–Forest Service (USDA–FS) started a review of hundreds of potential pre-statehood (January 3, 1959) withdrawals in the marine waters of the Tongass National Forest. In April and October of 2015, BLM submitted initial lists of submerged public lands to the Board. This proposed rule would add those submerged parcels to the subsistence regulations to ensure compliance with the Court order. Additional listings will be published as BLM and the USDA–FS continue their review of pre-statehood withdrawals.

DATES: *Public comments:* Comments on this proposed rule must be received or postmarked by August 8, 2016.

Public meetings: The Federal Subsistence Regional Advisory Councils

(Councils) will hold public meetings to receive comments on this proposed rule on several dates between September 28 and November 2, 2016, and make recommendations to the Federal Subsistence Board. The Board will discuss and evaluate proposed regulatory changes during a public meeting in Anchorage, AK, in January 2017. See **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings.

ADDRESSES: *Public meetings:* The Federal Subsistence Board and the Federal Subsistence Regional Advisory Councils’ public meetings will be held at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings.

Public comments: You may submit comments by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov> and search for FWS-R7-SM-2015-0159, which is the docket number for this rulemaking.

- *By hard copy:* U.S. mail or hand-delivery to: USFWS, Office of Subsistence Management, 1011 East Tudor Road, MS 121, Attn: Theo Matuskowitz, Anchorage, AK 99503-6199.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Review Process section below for more information).

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Eugene R. Peltola, Jr., Office of Subsistence Management; (907) 786-3888 or subsistence@fws.gov. For questions specific to National Forest System lands, contact Thomas Whitford, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 743-9461 or twhitford@fs.fed.us.

SUPPLEMENTARY INFORMATION:

Background

Under Title VIII of ANILCA (16 U.S.C. 3111-3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program. This program provides a preference for take of fish and wildlife resources for subsistence uses on Federal public lands and waters in Alaska. The Secretaries published temporary regulations to carry out this program in the **Federal Register** on June 29, 1990 (55 FR 27114), and published final regulations in the **Federal Register**

on May 29, 1992 (57 FR 22940). The program regulations have subsequently been amended a number of times. Because this program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, "Parks, Forests, and Public Property," and Title 50, "Wildlife and Fisheries," at 36 CFR 242.1–242.28 and 50 CFR 100.1–100.28, respectively. The regulations contain subparts as follows: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife. Consistent with subpart B of these regulations, the Secretaries established a Federal Subsistence Board to administer the Federal Subsistence Management Program (Program). The Board comprises:

- A Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- The Alaska Regional Director, U.S. Fish and Wildlife Service;
- The Alaska Regional Director, National Park Service;
- The Alaska State Director, Bureau of Land Management;
- The Alaska Regional Director, Bureau of Indian Affairs;
- The Alaska Regional Forester, U.S. Forest Service; and
- Two public members appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture.

Through the Board, these agencies and public members participate in the development of regulations for subparts C and D, which, among other things, set forth program eligibility and specific harvest seasons and limits.

In administering the program, the Secretaries divided Alaska into 10 subsistence resource regions, each of which is represented by a Regional Advisory Council (Council). The Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Council members represent varied geographical, cultural, and user interests within each region.

Public Review Process—Comments and Public Meetings

The Federal Subsistence Regional Advisory Councils have a substantial role in reviewing this proposed rule and making recommendations for the final rule. The Federal Subsistence Board, through the Councils, will hold public meetings on this proposed rule at the

following locations in Alaska, on the following dates:

- Region 1—Southeast Regional Council, Petersburg, October 4, 2016
- Region 2—Southcentral Regional Council, Anchorage, October 18, 2016
- Region 3—Kodiak/Aleutians Regional Council, Cold Bay, September 28, 2016
- Region 4—Bristol Bay Regional Council, Dillingham, October 26, 2016
- Region 5—Yukon-Kuskokwim Delta Regional Council, Bethel, October 12, 2016
- Region 6—Western Interior Regional Council, McGrath, October 11, 2016
- Region 7—Seward Peninsula Regional Council, Nome, November 1, 2016
- Region 8—Northwest Arctic Regional Council, Selawik, October 5, 2016
- Region 9—Eastern Interior Regional Council, Fort Yukon, October 25, 2016
- Region 10—North Slope Regional Council, Barrow, November 1, 2016

A public notice of specific dates, times, and meeting locations will be published in local and statewide newspapers prior to each meeting. Locations and dates may change based on weather or local circumstances. The Regional Advisory Council's agenda determines the length of each Council meeting based on workload.

The Board will discuss and evaluate submitted comments and public testimony on this proposed rule during a public meeting scheduled for January 2017 in Anchorage, Alaska. The Federal Subsistence Regional Advisory Council Chairs, or their designated representatives, will present their respective Councils' recommendations at the Board meeting. Additional public testimony may be provided to the Board on this proposed rule at that time. At that public meeting, the Board will deliberate and make final recommendations to the Secretaries on this proposed rule.

You may submit written comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. If you submit a comment via <http://www.regulations.gov>, your entire comment, including any personal identifying information, will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we

used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays, at: USFWS, Office of Subsistence Management, 1011 East Tudor Road, Anchorage, AK 99503.

Reasonable Accommodations

The Federal Subsistence Board is committed to providing access to these meetings for all participants. Please direct all requests for sign language interpreting services, closed captioning, or other accommodation needs to Deborah Coble, 907-786-3880, subsistence@fws.gov, or 800-877-8339 (TTY), seven business days prior to the meeting you would like to attend.

Tribal Consultation and Comment

As expressed in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," the Federal officials that have been delegated authority by the Secretaries are committed to honoring the unique government-to-government political relationship that exists between the Federal Government and Federally Recognized Indian Tribes (Tribes) as listed in 75 FR 60810 (October 1, 2010). Consultation with Alaska Native corporations is based on 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, which 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 Alaska National Interest Lands Conservation Act does not provide specific rights to Tribes for the subsistence taking of wildlife, fish, and shellfish. However, because tribal members are affected by subsistence fishing, hunting, and trapping regulations, the Secretaries, through the Board, will provide Federally recognized Tribes and Alaska Native corporations an opportunity to consult on this proposed rule.

The Board will engage in outreach efforts for this proposed rule, including a notification letter, to ensure that Tribes and Alaska Native corporations are advised of the mechanisms by which they can participate. The Board provides a variety of opportunities for consultation: Proposing changes to the existing rule; commenting on proposed changes to the existing rule; engaging in dialogue at the Regional Advisory Council meetings; engaging in dialogue

at the Board's meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process. The Board will commit to efficiently and adequately providing an opportunity to Tribes and Alaska Native corporations for consultation in regard to subsistence rulemaking.

The Board will consider Tribes' and Alaska Native corporations' information, input, and recommendations, and address their concerns as much as practicable.

Jurisdictional Background and Perspective

The *Peratrovich* case dates back to 1992 and has a long and involved procedural history. The plaintiffs in that litigation raised the question of which marine waters in the Tongass National Forest, if any, are subject to the jurisdiction of the Federal Subsistence Management Program. In its May 31, 2011, order, the U.S. District Court for Alaska (Court) stated that "it is the duty of the Secretaries [Agriculture & Interior] to identify any submerged lands (and the marine waters overlying them) within the Tongass National Forest to which the United States holds title." It also stated that, if such title exists, it "creates an interest in [the overlying] waters sufficient to make those marine waters public lands for purposes of [the subsistence provisions] of ANILCA."

Most of the marine waters within the Tongass National Forest were not initially identified in the regulations as public lands subject to the subsistence priority based upon a determination that the submerged lands were State lands, and later through reliance upon a disclaimer of interest filed by the United States in *Alaska v. United States*, No. 128 Orig., 546 U.S. 413 (2006). In that case, the State of Alaska had sought to quiet title to all lands underlying marine waters in southeast Alaska, which includes most of the Tongass National Forest. Ultimately, the United States disclaimed ownership to most of the submerged lands in the Tongass National Forest. The Supreme Court accepted the disclaimer by the United States to title to the marine waters within the Tongass National Forest, excepting from that disclaimer several classes of submerged public lands that generally involve small tracts. *Alaska v. United States*, 546 U.S. at 415.

When the United States took over the subsistence program in Alaska in 1990, the Departments of the Interior and Agriculture stated in response to comments on the scope of the program during promulgation of the interim

regulations that "the United States generally does not hold title to navigable waters and thus navigable waters generally are not included within the definition of public lands" (55 FR 27115; June 29, 1990). That position was changed in 1999 when the subsistence priority was extended to waters subject to a Federal reserved water right following the *Katie John* litigation. The Board identified certain submerged marine lands that did not pass to the State and, therefore, where the subsistence priority applied. However, the Board did not attempt to identify each and every small parcel of submerged public lands and thereby marine water possibly subject to the Federal Subsistence Management Program because of the potentially overwhelming administrative burden. Instead the Board invited the public to petition to have submerged marine lands included. Over the years, several small areas of submerged marine lands in the Tongass National Forest have been identified as public lands subject to the subsistence priority.

In its May 31, 2011, order, the Court stated that the petition process was not sufficient and found that "concerns about costs and management problems simply cannot trump the congressional policy that the subsistence lifestyle of rural Alaskans be preserved as to public lands." The Court acknowledged in its order that inventorying all these lands could be an expensive undertaking, but that it is a burden "necessitated by the 'complicated regulatory scheme' which has resulted from the inability of the State of Alaska to implement Title VIII of ANILCA." The Court then "enjoined" the United States "to promptly initiate regulatory proceedings for the purpose of implementing the subsistence provisions in Title VIII of ANILCA with respect to submerged public lands within Tongass National Forest" and directed entry of judgment.

The BLM and USDA-FS started a time- and resource-consuming review of hundreds of potential pre-statehood (January 3, 1959) withdrawals in the marine waters of the Tongass National Forest. Both agencies are reviewing their records to identify dock sites, log transfer sites, and other areas that may not have passed to the State at statehood. The review process is ongoing and expected to take quite some time.

Developing the Applicability and Scope; Tongass National Forest Submerged Lands Proposed Regulations

In April and October of 2015, BLM submitted initial listings of parcels of

submerged public lands to the Board. This proposed rule will add those listings to the subsistence regulations to ensure compliance with the Court's order. Additional listings will be published as BLM and USDA-FS continue their reviews of pre-statehood withdrawals. In addition, this proposed rule would make nonsubstantive changes to 36 CFR 242.3 and 50 CFR 100.3 to correct errors, such as misspellings and punctuation errors, which occur in the existing regulations.

Because this proposed rule concerns public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

Compliance With Statutory and Regulatory Authorities

National Environmental Policy Act

A Draft Environmental Impact Statement that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The Final Environmental Impact Statement (FEIS) was published on February 28, 1992. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (Alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations.

A 1997 environmental assessment dealt with the expansion of Federal jurisdiction over fisheries and is available at the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with concurrence of the Secretary of Agriculture, determined that expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

Section 810 of ANILCA

An ANILCA § 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final § 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Federal Subsistence Management

Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

During the subsequent environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of the subsistence program regulations was conducted in accordance with § 810. This evaluation also supported the Secretaries' determination that the regulations will not reach the "may significantly restrict" threshold that would require notice and hearings under ANILCA § 810(a).

Paperwork Reduction Act of 1995 (PRA)

This proposed rule does not contain any new collections of information that require Office of Management and Budget (OMB) approval under the PRA (44 U.S.C. 3501 *et seq.*) OMB has reviewed and approved the collections of information associated with the subsistence regulations at 36 CFR 242 and 50 CFR 100, and assigned OMB Control Number 1018-0075. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Regulatory Planning and Review (Executive Order 12866)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this proposed rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires

preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. In general, the resources to be harvested under this proposed rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that two million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of \$3.00 per pound, this amount would equate to about \$6 million in food value statewide. Based upon the amounts and values cited above, the Departments certify that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this proposed rule is not a major rule. It will not have an effect on the economy of \$100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these proposed regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

Executive Order 12988

The Secretaries have determined that these proposed regulations meet the applicable standards provided in §§ 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132

In accordance with Executive Order 13132, the proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

The Alaska National Interest Lands Conservation Act, Title VIII, does not provide specific rights to tribes for the subsistence taking of wildlife, fish, and shellfish. However, the Secretaries, through the Board, will provide Federally recognized Tribes and Alaska Native corporations an opportunity to consult on this proposed rule. Consultation with Alaska Native corporations are based on 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, which 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 Secretaries, through the Board, will provide a variety of opportunities for consultation: commenting on proposed changes to the existing rule; engaging in dialogue at the Regional Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process.

Executive Order 13211

This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. However, this proposed rule is not a significant regulatory action under E.O. 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

Drafting Information

Theo Matuskowitz drafted these proposed regulations under the guidance of Gene Peltola of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by:

- Daniel Sharp, Alaska State Office, Bureau of Land Management;
- Mary McBurney, Alaska Regional Office, National Park Service;
- Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;

- Trevor Fox, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Thomas Whitford, Alaska Regional Office, USDA—Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

Proposed Regulation Promulgation

For the reasons set out in the preamble, the Secretaries propose to amend 36 CFR part 242 and 50 CFR part 100 as set forth below.

PART—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

■ 1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart A—General Provisions

- 2. In subpart A of 36 CFR part 242 and 50 CFR part 100, amend § 3 as follows:
- a. In paragraph (a), remove the word “or” and in its place add the word “of” and remove the word “poortion” and in its place add the word “portion”;
 - b. In paragraph (b)(1)(iii), remove the word “A” and in its place add the word “All”;
 - c. In paragraph (b)(1)(v), remove the word “Latitute” and in its place add the word “Latitude”;
 - d. In paragraph (b)(2), remove “70 10’” and in its place add “70°10’” and remove “145 51’” and in its place add “145°51’”;
 - e. In paragraph (b)(3), remove the word “cape” and in its place add the word “Cape”, remove the word “Latitute” and in its place add the word “Latitude”, and remove “161 46’” and in its place add “161°46’”; and
 - f. Revise paragraph (b)(5) to read as set forth below:

§ 3 Applicability and scope.

* * * * *

(5) Southeastern Alaska, including the:

(i) Makhnati Island Area: Land and waters beginning at the southern point of Fruit Island, 57°02'35" north latitude, 135°21'07" west longitude as shown on

United States Coast and Geodetic Survey Chart No. 8244, May 21, 1941; from the point of beginning, by metes and bounds; S. 58° W., 2,500 feet, to the southern point of Nepovorotni Rocks; S. 83° W., 5,600 feet, on a line passing through the southern point of a small island lying about 150 feet south of Makhnati Island; N. 6° W., 4,200 feet, on a line passing through the western point of a small island lying about 150 feet west of Makhnati Island, to the northwestern point of Signal Island; N. 24° E., 3,000 feet, to a point, 57°03'15" north latitude, 134°23'07" west longitude; East, 2,900 feet, to a point in course No. 45 in meanders of U.S. Survey No. 1496, on west side of Japonski Island; southeasterly, with the meanders of Japonski Island, U.S. Survey No. 1,496 to angle point No. 35, on the southwestern point of Japonski Island; S. 60° E., 3,300 feet, along the boundary line of Naval reservation described in Executive Order No. 8216, July 25, 1939, to the point of beginning, and that part of Sitka Bay lying south of Japonski Island and west of the main channel, but not including Aleutski Island as revoked in Public Land Order 925, October 27, 1953, described by metes and bounds as follows: Beginning at the southeast point of Japonski Island at angle point No. 7 of the meanders of U.S. Survey No. 1496; thence east approximately 12.00 chains to the center of the main channel; thence S. 45° E. along the main channel approximately 20.00 chains; thence S. 45° W. approximately 9.00 chains to the southeastern point of Aleutski Island; thence S. 79° W. approximately 40.00 chains to the southern point of Fruit Island; thence N. 60° W. approximately 50.00 chains to the southwestern point of Japonski Island at angle point No. 35 of U.S. Survey No. 1496; thence easterly with the meanders of Japonski Island to the point of beginning including Charcoal, Harbor, Alice, Love, and Fruit islands and a number of smaller unnamed islands.

(ii) Tongass National Forest:
 (A) Beacon Point, Frederick Sound, and Kupreanof Island are shown on the U.S. Coast and Geodetic Survey Chart No. 8210—Sheet No. 16. The reference location is marked as 57 south, 79 east, CRM, SEC 8, U.S. Survey No. 1604. The point begins on the low-water line at N. 63° W., true and approximately 1,520 feet from Beacon Point beacon; thence due south true 1,520 feet; thence true East 1,800 feet, more or less to an intersection with a low-water line; thence following, is the low-water line round the point to point of the beginning (Approx. Long. 133°00' W. Lat. 56°56¼' N.).

(B) Bushy Island and Snow Passage are shown on the U.S. Coast and Geodetic Survey Chart, labeled No. 8160—Sheet No. 12. The reference location is marked as 64 south, 80 east, CRM, SEC. 31/32 on the map labeled, USS 1607. The point begins on a low-water line about ¼ nautical miles and southwesterly from the northwest point of the island, from which a left tangent to an island that is 300 yards in diameter and 100 yards offshore, bears the location—N. 60° W., true; thence S. 60° E., true and more or less 2,000 feet to an intersection with a low-water line on the easterly side of the island; thence forward along the winding of the low-water line northwesterly and southwesterly to the point of the beginning, including all adjacent rocks and reefs not covered at low water (Approx. Long. 132°58' W. Lat. 56°16½' N.).

(C) Cape Strait, Frederick Sound, and Kupreanof Island are shown on the U.S. Coast and Geodetic Survey Chart No. 8210—Sheet No. 16. The reference location is marked as 56 south, 77478 east, CRM, on the map labeled as USS 1011. It begins at a point on a low-water line that is westerly from the lighthouse and distant 1,520 feet in a direct line from the center of the concrete pier upon which the light tower is erected; thence South 45° E., true by 1,520 feet; thence east true by 1,520 feet, more or less to an intersection with the low-water line; thence north-westerly and westerly, following the windings of the low-water line to the point of beginning (Approx. Long. 133°05' W. Lat. 57°00' N.).

(D) Point Colpoys and Sumner Strait are shown on the U.S. Coast and Geodetic Survey Chart No. 8160—Prince of Wales Island—Sheet No. 12. The reference location is marked as 64 south, 78 east, CRM, SECs. 10, 11, 12 on the map labeled as USS 1634. Location is north of a true east-and-west line running across the point to 1,520 feet true south from the high-water line at the northernmost extremity. Map includes all adjacent rocks and ledges not covered at low water and also includes two rocks awash about 1¼ nautical miles east and South and 75° East, respectively, from the aforementioned point (Approx. Long. 133°12' W. Lat. 56°20' N.).

(E) Vank Island and Stikine Strait are shown on the U.S. Coast and Geodetic Survey Chart No. 8160—Sheet No. 18. Located at 62 south, 82 east, CRM, SEC 34, on the map labeled as USS 1648. This part of the island is lying south of a true east-and-west line that is drawn across the island from low water to low water. Island is 760 feet due North from

the center of the concrete pier upon which the structure for the light is erected (Approx. Long. 132°35' W. Lat. 56°27' N.).

(F) High Point, and Woronkofski Island, Alaska, are shown on the U.S. Coast and Geodetic Survey Chart No. 8160—Sheet No. 18. The location begins at a point on low water at the head of the first bight easterly of the point and about 1/8 nautical mile distant therefrom; thence south true 1,520 feet; thence west true 1,100 feet, more or less to an intersection with the low-water line; thence northerly and easterly, following the windings of the low-water line to point of the beginning (Approx. Long. 132°33' W. Lat. 56°24' N.).

(G) Key Reef and Clarence Strait are shown on the U.S. Coast and Geodetic Survey Chart No. 8160—Sheet No. 11. The reef lies 3/4 miles S. 80° E., true, from Bluff Island and becomes awash at extreme high water. Chart includes all adjacent ledges and rocks not covered at low water (Approx. Long. 132°50' W. Lat. 56°10' N.).

(H) Low Point and Zarembo Island, Alaska, are shown on U.S. Coast and Geodetic Survey Chart No. 8160—Sheet No. 22. The location begins at a point on a low-water line that is 760 feet in a direct line, easterly, from the center of Low Point Beacon. The position is located on a point of shoreline about 1 mile easterly from Low Point; thence S. 35°, W true 760 feet; thence N. 800 feet and W. 760 feet, more or less, to an intersection with the low-water line to the point of beginning (Approx. Long. 132°55 1/2' W. Lat. 56°27 1/2' N.).

(I) McNamara Point and Zarembo Island, Alaska, are shown on U.S. Coast and Geodetic Survey Chart No. 8160—Sheet No. 25. Location begins at a point on a low-water line that is 1,520 feet in a direct line, northerly, from McNamara Point Beacon—a slatted tripod structure; thence true east 1,520 feet; thence true south, more or less, 2,500 feet to an intersection with the low-water line; thence northwesterly and northerly following the windings of the low-water line to the point of the beginning (Approx. Long. 133°04' W. Lat. 56°20' N.).

(J) Mountain Point and Wrangell Narrows, Alaska, are shown on the U.S. Coast and Geodetic Survey Chart No. 8170—Sheet No. 27. The location begins at a point on a low-water line southerly from the center of Mountain Point Beacon and distant there from 1,520 feet in a direct line; thence true west 1,520 feet; thence true north, more or less, 3,480 feet to an intersection with the low-water line; thence southeasterly and southerly following the windings of the low-water line to the point of the

beginning (Approx. Long. 132°57 1/2' W. Lat. 56°44' N.).

(K) Angle Point, Revillagigedo Channel, and Bold Island are shown on the U.S. Coast and Geodetic Survey Chart No. 8075—Sheet No. 3. The reference location is marked as 76 south, 92 east, CRM, USS 1603. The location begins at a point on a low-water line abreast of the lighthouse on Angle Point, the southwestern extremity of Bold Island; thence easterly along the low-water line to a point that is 3,040 feet in a straight line from the beginning point; thence N. 30° W. True 3,040 feet; thence true west to an intersection with the low-water line, 3,000 feet, more or less; thence southeasterly along the low-water line to the point of the beginning (Approx. Long. 131°26' W. Lat. 55°14' N.).

(L) Cape Chacon, Dixon Entrance, and Prince of Wales Island are shown on the U.S. Coast and Geodetic Survey Chart No. 8074—Sheet No. 29. The reference location is marked as 83 south, 89 and 90 east, CRM, USS 1608. The location begins at a point at the low-water mark on the shore line of Dixon Entrance from which the southern extremity of Cape Chacon bears south 64° true East and approximately 3/4 nautical miles; thence N. 45° true East and about 1 nautical mile, more or less, to an intersection with a low-water line on the shore of Clarence Strait; thence southerly, following the meanderings of the low-water line of the shore, to and around Cape Chacon, and continuing to the point of the beginning. Reference includes all adjacent islands, islets, rocks, and reefs that are not covered at the low-water line (Approx. Long. 132° W. Lat. 54°42' N.).

(M) Lewis Reef and Tongass Narrows are shown on the U.S. Coast and Geodetic Survey Chart No. 8094—Sheet No. 71. The reference location is marked as 75 south, 90 east, CRM, SEC 9. The area point begins at the reef off of Lewis Point and partly bare at low water. This part of the reef is not covered at low water and lies on the northeast side of a true northwest-and-southeast line that is located 300 feet true southwest from the center of the concrete pier of Lewis Reef Light (Approx. Long. 131°44 1/2' W. Lat. 55°22'25" N.).

(N) Lyman Point and Clarence Strait are shown on the U.S. Coast and Geodetic Survey, Chart No. 8076—Sheet No. 8. The reference location is marked as 73 south, 86 east, CRM, SEC 13, on a map labeled as USS 2174 TRC. It begins at a point at the low-water mark. The aforementioned point is 300 feet in a direct line easterly from Lyman Point light; thence due south 300 feet; thence due west to a low-water mark 400 feet,

more or less; thence following the winding of the low-water mark to place of beginning (Approx. Long. 132°18' W. Lat. 35°35' N.).

(O) Narrow Point, Clarence Strait, and Prince of Wales Island are shown on the U.S. Coast and Geodetic Survey Chart No. 8100—Sheet No. 9. The reference location is marked as 70 south, 84 east, CRM, on a map labeled as USS 1628. The point begins at a point on a low-water line about 1 nautical mile southerly from Narrow Point Light, from which point a left tangent to a high-water line of an islet about 500 yards in diameter and about 300 yards off shore, bears south 30° true East; thence north 30° W., true 7,600 feet; thence N. 60° E., 3,200 feet, more or less to an intersection with a low-water line; thence southeasterly, southerly, and southwesterly, following the winding of the low-water line to the point of the beginning. The map includes all adjacent rocks not covered at low water (Approx. Long. 132°28' W. Lat. 55°47 1/2' N.).

(P) Niblack Point, Cleveland Peninsula, and Clarence Strait, Alaska, are shown on the U.S. coast and Geodetic Survey Chart No. 8102—Sheet No. 6, which is the same sheet used for Caamano Point. The location begins at a point on a low-water line from which Niblack Point Beacon, a tripod anchored to three concrete piers, bears southeasterly and is 1,520 feet in a direct line; thence true northeast 1,520 feet; thence true southeast 3,040 feet; thence true southwest at 600 feet, more or less, to an intersection with a low-water line; thence northwesterly following the windings of the low-water line to the point of the beginning (Approx. Long. 132°07' W. Lat. 55°33' N.).

(Q) Rosa Reef and Tongass Narrows are shown on the U.S. Coast and Geodetic Survey Chart No. 8094—Sheet No. 71. The reference location is marked as 74 south, 90 east, CRM, SEC 31. That part of the reef is not covered at low water and lies east of a true north-and-south line, located 600 feet true west from the center of the concrete pier of Rosa Reef Light. The reef is covered at high water (Approx. Long. 131°48' W. Lat. 55°24'15" N.).

(R) Ship Island and Clarence Strait are shown on the U.S. Coast and Geodetic Survey Chart No. 8100—Sheet No. 9. The reference location is marked as south, 8 east, CRM, SEC 27. The point begins as a small island on the northwesterly side of the Clarence Strait, about 10 nautical miles northwesterly from Caamano Point and 1/4 mile off the shore of Cleveland Peninsula. The sheet includes all

adjacent islets and rocks not connected to the main shore and not covered at low water (Approx. Long. 132°12' W. Lat. 55°36' N.).

(S) Spire Island Reef and Revillagigedo Channel are shown on the U.S. Coast and Geodetic Survey Chart No. 8075—Sheet No. 3. The reference location is marked as 76 south, 92 east, CRM, SEC 19. The detached reef, covered at high water and partly bare at low water, is located northeast of Spire Island. Spire Island Light is located on the reef and consists of small houses and lanterns surmounting a concrete pier. See chart for “Angle Pt.” (Approx. Long. 131°30' W. Lat. 55°16' N.).

(T) Surprise Point and Nakat Inlet are shown on the U.S. Coast and Geodetic Survey Chart No. 8051—Sheet No. 1. The reference location is marked as 80 south, 89 east, CRM. This point lies north of a true east-and-west line. The true east-and-west line lies 3,040 feet true south from the northernmost extremity of the point together with adjacent rocks and islets (Approx. Long. 130°44' W. Lat. 54°49' N.).

(U) Caamano Point, Cleveland Peninsula, and Clarence Strait, Alaska, are shown on the U.S. Coast and Geodetic Survey Chart No. 8102—Sheet No. 6. Location consists of everything apart of the extreme south end of the Cleveland Peninsula lying on a south side of a true east-and-west line that is drawn across the point at a distance of 800 feet true north from the southernmost point of the low-water line. This includes off-lying rocks and islets that are not covered at low water (Approx. Long. 131°59' W. Lat. 55°30' N.).

(V) Meyers Chuck and Clarence Strait, Alaska, are shown on the U.S. and Geodetic Survey Chart No. 8124—Sheet No. 26. The small island is about 150 yards in diameter and located about 200 yards northwest of Meyers Island (Approx. Long. 132°16' W. Lat. 55°44½' N.).

(W) Round Island and Cordova Bay, Alaska, are shown on the U.S. coast and Geodetic Survey Chart No. 8145—Sheet No. 36. The Southwestern Island of the group is about 700 yards long, including off-lying rocks and reefs that are not covered at low water (Approx. Long. 132°30½' W. Lat. 54°46½' N.).

(X) Mary Island begins at a point that is placed at a low-water mark. The aforementioned point is southward 500 feet from a crosscut on the side of a large rock on the second point below Point Winslow and Mary Island; thence due west ¾ mile, statute; thence due north to a low-water mark; thence following the winding of the low water

to the place of the beginning (Approx. Long. 131°11'00" W. Lat. 55°05'55" N.).

(Y) Tree Point starts at a point of a low-water mark. The aforementioned point is southerly ½ mile from extreme westerly point of a low-water mark on Tree Point, on the Alaska Mainland; thence due true east, ¾ mile; thence due north 1 mile; thence due west to a low-water mark; thence following the winding of the low-water mark to the place of the beginning (Approx. Long. 130°57'44" W. Lat. 54°48'27" N.).

* * * * *

Dated: May 31, 2016.

Dated: February 17, 2016.

Sally Jewell,

Secretary of the Interior.

Beth G. Pendleton,

Regional Forester USDA—Forest Service.

[FR Doc. 2016–13374 Filed 6–7–16; 8:45 am]

BILLING CODE 3410–11–4333–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2016–0247; FRL–9947–40–Region 4]

Air Plan Approval; South Carolina; Prong 4—2008 Ozone, 2010 NO₂, SO₂, and 2012 PM_{2.5}

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to conditionally approve the portions of revisions to the South Carolina State Implementation Plan (SIP), submitted by the South Carolina Department of Health and Environmental Control (SC DHEC), addressing the Clean Air Act (CAA or Act) visibility transport (prong 4) infrastructure SIP requirements for the 2008 8-hour Ozone, 2010 1-hour Nitrogen Dioxide (NO₂), 2010 1-hour Sulfur Dioxide (SO₂), and 2012 annual Fine Particulate Matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, commonly referred to as an “infrastructure SIP.” Specifically, EPA is proposing to conditionally approve the prong 4 portions of South Carolina’s July 17, 2008, 8-hour Ozone infrastructure SIP submission; April 30, 2014, 2010 1-hour NO₂ infrastructure SIP submission; May 8, 2014, 2010 1-hour SO₂ infrastructure SIP submission; and December 18, 2015,

2012 annual PM_{2.5} infrastructure SIP submission. All other applicable infrastructure requirements for these SIP submissions have been or will be addressed in separate rulemakings.

DATES: Comments must be received on or before July 8, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No EPA–R04–OAR–2016–0247 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Sean Lakeman of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Lakeman can be reached by telephone at (404) 562–9043 or via electronic mail at lakeman.sean@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) of the CAA are to be submitted by states within three years after promulgation of a new or revised NAAQS to provide for the implementation, maintenance, and enforcement of the new or revised NAAQS. EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of sections 110(a)(1) and 110(a)(2) as “infrastructure SIP” submissions. Sections 110(a)(1) and (2) require states to address basic SIP elements such as the requirements for monitoring, basic program requirements, and legal



THE STATE
of ALASKA

GOVERNOR BILL WALKER

Department of Natural Resources

DIVISION OF MINING, LAND AND WATER

DIRECTOR'S OFFICE

550 W. 7th Avenue, Suite 1070

Anchorage, AK 99501-3576

Main: 907.269.8600

Fax: 907.269.8904

August 8, 2016

US Fish and Wildlife Service
Office of Subsistence Management
1011 East Tudor Road
MS 121
Attn: Theo Matuskowitz
Anchorage, AK 99503-6199

VIA ELECTRONICALLY & US MAIL

Re: Docket No. FWS-R7-SM-2015-0159

Dear Mr. Matuskowitz:

The State of Alaska reviewed the June 8, 2016 Federal Register Notice regarding the proposed rule to add certain submerged parcels of land to the subsistence management regulations for public lands in Alaska as indicated by the above-mentioned docket number. The proposed rule intends to identify and add the following submerged lands as "lands within the Tongass National Forest that did not pass to the State of Alaska at Statehood" and, therefore, are subject to the subsistence provisions of ANILCA:

(5) Southeastern Alaska, including the:

(i) Makhnati Island Area: Land and waters beginning at the southern point of Fruit Island, 57°02'35" north latitude, 135°21'07" west longitude as shown on United States Coast and Geodetic Survey Chart No. 8244, May 21, 1941; from the point of beginning, by metes and bounds; S. 58° W., 2,500 feet, to the southern point of Nepovorotni Rocks; S. 83° W., 5,600 feet, on a line passing through the southern point of a small island lying about 150 feet south of Makhnati Island; N. 6° W., 4,200 feet, on a line passing through the western point of a small island lying about 150 feet west of Makhnati Island, to the northwestern point of Signal Island; N. 24° E., 3,000 feet, to a point, 57°03'15" north latitude, 134°23'07" west longitude; East, 2,900 feet, to a point in course No. 45 in meanders of U.S. Survey No. 1496, on west side of Japonski Island; southeasterly, with the meanders of Japonski Island, U.S. Survey No. 1,496 to angle point No. 35, on the southwestern point of Japonski Island; S. 60° E., 3,300 feet, along the boundary line of Naval reservation described in Executive Order No. 8216, July 25, 1939, to the point of beginning, and that part of Sitka Bay lying south of Japonski Island and west of the main channel, but not including Aleutski Island as revoked in Public Land Order 925, October 27, 1953, described by metes and bounds as follows: Beginning at the southeast point of Japonski Island at angle point No. 7 of the meanders of U.S. Survey No. 1496; thence east approximately 12.00 chains to the center of the main channel; thence S. 45° E. along the main channel approximately 20.00 chains; thence S. 45° W. approximately 9.00 chains to the southeastern point of Aleutski Island; thence S. 79° W. approximately 40.00 chains to the southern point of Fruit Island; thence N. 60° W. approximately 50.00 chains to the southwestern point of Japonski Island at angle point No. 35 of U.S. Survey No.

Docket No. FWS-R7-SM-2015-0159
USFWS Letter of Objection
August 8, 2016
Page 2

1496; thence easterly with the meanders of Japonski Island to the point of beginning including Charcoal, Harbor, Alice, Love, and Fruit islands and a number of smaller unnamed islands.

The State of Alaska objects to the inclusion of these above-described lands as being identified as remaining in Federal public ownership. Title to the above-described lands has already passed to and is held by the State of Alaska by virtue of the Patent issued February 15, 1968 as Patent No. 50-68-0194 and by virtue of the Patent issued May 11, 1990 as Patent No. 50-90-0267. These lands are no longer part of the federal public domain. Rather, they are state-owned lands, managed and controlled by the State of Alaska.

The State of Alaska does not oppose or object to the inclusion of the remainder of lands identified as Federal public lands subject to the subsistence provisions of ANILCA.

Thank you for your consideration.

Sincerely,



Kristin A. Hess
Division Operations Manager
State of Alaska
Department of Natural Resources
Division of Mining, Land & Water



United States Department of Agriculture

Transboundary Mining along the Alaska-British Columbia Border

Topic

The proposal and development of seven medium-to-large scale mines along the British Columbia border with Southeast Alaska have the potential to impact National Forest System lands and resources, as well as community health and well-being in Southeast Alaska.

Issue

The Forest Service participated in a dialogue initiated by State of Alaska Lt. Governor Mallott, on how the State and Tribal, municipal, federal and non-governmental stakeholders can engage the British Columbia provincial and Canadian governments in the planning, permitting and monitoring processes associated with these mines. The Lt. Governor plans to focus the State and its partners on establishing water quality and baseline studies on the three main rivers of the Tongass National Forest. The Forest Service may serve an advisory role to this work as it relates to large mine water quality oversight and monitoring, by supporting baseline studies, and sharing data associated with subsistence uses of fisheries associated with these river systems.

Background

- There are seven proposals for new or renewed large-scale mining projects with acid rock drainage generating potential in various stages of review, development, or operation in British Columbia, in the headwaters of the three main rivers of the Tongass National Forest: the Taku River, Stikine River, and Unuk River.
- These three rivers provide a major source of subsistence, sport, and commercial fish to the region, as well as recreational opportunities.
- The protection of these productive watersheds and intact habitats throughout these three transboundary river systems is necessary to ensure healthy wild salmon populations and abundant fisheries, as well as the economic, ecological, subsistence, cultural, and recreational values that the river systems support.

Current Situation

- The British Columbia, Canada, Mount Polley Mine tailings dam failure in August 2014, and the abandoned Gold King Mine breach in August 2015 near Durango, Colorado, have raised public awareness and concern regarding these issues.
- The U.S. Forest Service, Alaska Region, Tongass National Forest, and the Department of Agriculture have all heard from many concerned citizens regarding the development of these projects and the potential impacts to these three rivers.
- Tribal and non-governmental organizations continue to urge the United States government to work with the government of Canada to refer the transboundary development issue to the International Joint Commission (IJC), seeking to investigate long-term, regional downstream effects of these proposed and operating mining projects.



Forest Service
Alaska Region

Briefing Paper

July 2016

- In response to a letter from the Alaska Delegation, the U.S. Department of State has stated that while the Department, along with EPA, is engaged with their Canadian counterparts on the issue of transboundary water quality, and welcomes the opportunity to engage with the Delegation on issues of establishing baseline water quality and ensuring U.S. entities have a consultation role in the Canadian mine permitting process, the Department will not refer the issue to the IJC at this time.
- The Forest Service continues to engage with the State of Alaska, Canadian Government, and British Columbia Province, to ensure that the resources of the Tongass National Forest are protected.

More Information

Beth Pendleton, Regional Forester, 907-586-8863



Forest Service
Alaska Region

Briefing Paper

July 2016

Yakutat Tlingit Tribe

606 Forest Hwy. 10 * P.O. Box 418 * Yakutat, Alaska 99689
Phone (907) 784-3238 * Fax (907) 784-3595 * www.yttribe.org



February 22, 2016

Michelle Hale, Division Director
Department of Water
Alaska Department of Environmental Conservation
410 Willoughby Ave., Ste. 303
Juneau, AK 99811-1800
Michelle.hale@alaska.gov

Re: Nomination for Tier 3 Outstanding Natural Resource Water (ONRW) Designation

Ms. Hale:

On August 26, 2015 the Yakutat Tlingit Tribal Council unanimously voted to seek Tier 3 Natural Resource Water Designation. The Yakutat Tlingit Tribal Council represents the Yakutat Tlingit Tribe (Petitioners) in nominating the Yakutat Forelands for ONRW status and protection under 18 AAC 70.015(a)(3). To qualify as a Tier 3, or ONRW water, one of two criteria must be met. The water must either be in a national or state park or wildlife refuge or be a water with exceptional recreational or ecological significance (Emphasis added). Under these criteria, the Yakutat Forelands qualify as both an exceptional recreational area and as having special ecological significance. Additionally, these lands contain many historic, traditional, sacred and cultural sites vital to the Yakutat Tlingit Tribe. The area is currently under congressionally designated protection and within an inventoried Roadless Area.

Even though the State of Alaska has no nomination procedures yet in place, the federal antidegradation policy provides guidance for Petitioners. ONRW designation offers special protection for waters of "exceptional ecological significance." These are water bodies that are important, unique, or sensitive ecologically, but whose water quality, as measured by the traditional parameters such as dissolved oxygen or pH, may not be particularly high or whose characteristics cannot be adequately described by these parameters (such as wetlands).¹ See also 40 CFR 131.12(a)(3).

Guidance for developing implementation methods for antidegradation policies is provided through EPA's Regional Offices. While there is no published antidegradation guidance in Region X, Region VIII provides the following guidance on factors to consider when designating ONRW's. The factors to be considered in granting ONRW status include:

- (1) Location (e.g., on federal lands such as national parks, national wilderness areas, or national wildlife refuges),
- (2) Previous special designations (e.g., congressionally protected areas),
- (3) Existing water quality (e.g., pristine or naturally-occurring),

¹ Water Quality Standards Handbook: Second Edition EPA-823-B-94-005; August 1994 updated June 2007. At: <http://water.epa.gov/scitech/swguidance/standards/handbook/index.cfm>

MISSION To preserve, maintain and protect the unique culture, land & resources of Yakutat Tlingit people; to maximize our social, health & well-being while creating economic development benefits to all tribal members.



Yakutat Tlingit Tribe

- (4) Ecological value (e.g., habitat critical to the propagation of anadromous fish),
- (5) Recreational or aesthetic value (e.g., presence of an outstanding recreational fishery), and,
- (6) Other factors that indicate outstanding ecological or recreational resource value (e.g., rare or valuable wildlife habitat).²

Overview

We find that the entire area described below is comprised of an interconnected wetland that functionally serves as one watershed. The entirety of this low-lying wetland is productive anadromous fish habitat and functions as a single unit forming a unique ecological and recreational area that contributes to both the state and local economies. The many streams and rivers are surrounded by riparian habitat that plays a crucial role in water quality, fish habitat and channel stability: shade, cover, food, stream energy dissipation, and habitat complexity, are critical to the maintaining the functions of this anadromous wetland area. As this entire area serves as a single interconnected water resource, it is imperative that water quality be protected by granting Tier 3 ONRW protections.

Specifically, the wetland functions need to be maintained to enhance or protect water quality for drinking water, spawning, and other uses as is described by the State of Alaska.³ The Yakutat Forelands area described below supports over a dozen species of fish, including all five Pacific salmon species, and serves as prime spawning, rearing, and migration habitat. The State of Alaska Dept. of Fish and Game in 1983 classified the Yakutat Forelands as “Class I”, a designation meaning that “the area merits permanent protection.”⁴

The United States Environmental Agency (USEPA) identifies wetlands specifically as being eligible for ONRW protections.

”ONRW designation also offers special protection for waters of "exceptional ecological significance." These are water bodies that are important, unique, or sensitive ecologically, but whose water quality, as measured by the traditional parameters such as dissolved oxygen or pH, may not be particularly high or whose characteristics cannot be adequately described by these parameters (such as wetlands).”⁵

The Forelands remote nature and pristine water quality are crucial factors that sustain millions of salmon that are born, grow, migrate and return to spawn its gravels. This fish habitat supports a varied community of bear, moose and thousands of migratory birds as well as the economy and the practice of cultural activities of the nearby community of Yakutat.

² U.S. Environmental. Protection. Agency, Region VIII, EPA Region VIII Guidance: Antidegradation Implementation 9 (1993), http://www2.rivernetnetwork.org/cleanwater/Region8_ch2_pg5-20.pdf

³ Alaska’s Final Integrated Report F, Alaska Water Quality Management Program; P. 110

⁴101st Congress 1st Session AMENDING ANILCA TO DESIGNATE CERTAIN LANDS IN THE TONGASS NATIONAL FOREST AS WILDERNESS, AND FOR OTHER PURPOSES, H.R. REP. NO. 101-84, Part 1 at 35 (1989).

⁵ 40 CFR 131.12(a)(3)

Yakutat Tlingit Tribe

All of these resources depend on the protection of the high quality water that not only physically connects the wetlands and numerous streams and rivers, but also connects the fish and wildlife resources.

Location of the ONRW

The area nominated is comprised of the congressionally-designated Yakutat Forelands Land Use Development II (“LUD II”) Management Area⁶ and a Semi-remote Recreation LUD designated in the 2008 Amendment to the Tongass Land and Resource Management Plan (TLMP), 2008. A map is available in the published Forest Plan.⁷

This area is within the Yakutat Forelands Inventoried Roadless Area (#339). This Roadless Area’s specific boundaries can be described as encompassing the land southeast from the town of Yakutat, between the Forest Highway 10 on the northeast, Glacier Bay National Park on the southeast, and the southwest boundary is the Gulf of Alaska, from Dry Bay to the South to Johnson Slough on the North. (*339-Yakutat Forelands C2-234 Final SEIS*)

Previous Special Designations

All of the nominated area is within an inventoried Roadless Area and currently under Congressional protections as either a LUD II area or Semi Remote Recreation area.

Congress passed the Tongass Timber Reform Act in 1990. In this landmark legislation, Congress designated the southern part of the nominated area as the Yakutat Forelands LUD II Management Area. The northern part of the nominated area is designated as Semi-remote Recreation LUD. Congress chose the Yakutat Forelands LUD II Area “for special management because of [its] critical importance for fish and wildlife habitat and [its] high value to tourism and recreation.”⁸

The protections afforded under a Tier 3 designation are consistent with these management goals.

The Tongass Forest Plan (2008) describes the desired future condition for lands designated under Semi-Remote Recreation LUD as “characterized by generally unmodified natural environments. Ecological processes and natural conditions are only minimally affected by past or current human uses or activities.” See 2008 TLMP at 3-63.

Exceptional Existing Water Quality and Ecological Value

There is very little chemical water quality data available for this area. The fact that the area supports a vibrant and diverse aquatic community and wildlife in an exceptional environmental setting is evidence of a high quality water resource.

The Yakutat Forelands comprise a diverse array of rivers and wetlands that possess a variety of functions and values that contribute substantially to the Yakutat Community and its people’s economy and well-being. The 1979 Forest Plan recognized the area as the single most diverse and productive fish,

⁶ Tongass Timber Reform Act, Pub. L. 101-626, § 201, 104 Stat. 4426, 4428 (1990).

⁷ http://tongass-fpadjust.net/Maps/FPA_Map_ROD.htm

⁸ H.R. CONF. REP. NO. 101-931, at 16 (1990).

Yakutat Tlingit Tribe

wildlife and waterfowl area in the Tongass.⁹ It includes productive rivers and streams, moist and wet marshes, kettle ponds, palustrine emergent marshes, Sitka spruce/ hemlock forested wetlands, riparian shrub communities, littoral wetlands, and temperate rainforest wetlands.

All of the activities, either natural or by man on the Forelands are dependent on the natural high quality and abundance of clean water. The interconnectedness between hydrology, fisheries, wildlife and people in this area demands the highest level of protection by the State of Alaska.

The Alaska Department of Fish and Game has identified over 90 anadromous fish streams in the area. This unique and productive coastal environment is exceedingly rare and in need of protection to water quality to ensure its continued vitality and traditional use by the local people.

Fisheries

This coastal and riverine wetlands are important to commercial, sport and subsistence fishing economies. The Yakutat Forelands are an interconnected wetland/estuarine complex that serve as critical spawning and rearing areas for all five salmon species, cutthroat, dolly varden trout and significant runs of eulachon. Included in this area are the Italio, Akwe and Alsek Rivers. According to the West Foreland Hydrologic Condition Assessment (2005):

“These streams collectively have the highest values for both spawning and rearing habitats. They are also among the most sensitive to both natural and human-caused disturbances. Some have developed complex life cycles uniquely adapted to their watersheds. The Situk River alone is considered one of the most productive rivers in Southeast Alaska due to its high fish species diversity and population density (Thedinga et al 1993).”

The valuable fisheries resources of the area are recognized by the State of Alaska Department of Fish and Game (ADF&G). Among the numerous fish bearing streams in the area, the Anadromous Waters Catalogue (ADF&G, 2000) identifies Williams Creek, Akwe River, Italio River, Ahrnklin River, and Situk River as primary fish-bearing streams (Class I). Additional Class I streams in the nominated area include: Cabin Slough, Emile Creek, Gines Creek, Clear Creek, Tanis River and Lake, Muddy Creek Cannery Creek, Square Creek and Outflow, Ustay River and Triangle Lake, Dangerous River, Miller Creek, Antlen River, Seal Creek, Middle Slough, and Kunayosh Creek. These waters provide habitat for sockeye, chinook, coho, pink, and chum salmon; steelhead and cutthroat trout; and Dolly Varden char. Eulachon run in the Situk, Lost, Dangerous, Italio, Akwe, and Alsek Rivers.

In 1998, the ADF&G assessed wildlife and resource data to specific Southeast watersheds and ranked them for comparison into Value Comparison Units (VCU) in order to guide management decisions.¹⁰ Within the nomination area are several river systems that earned the maximum VCU ranking of 1 for salmon production values. These systems are the Situk River, East Fork of the Italio, the Akwe River and Alsek River. ADF&G underwent this assessment because it believes it is the state's interest to

⁹ 101st Congress 1st Session AMENDING ANILCA TO DESIGNATE CERTAIN LANDS IN THE TONGASS NATIONAL FOREST AS WILDERNESS, AND FOR OTHER PURPOSES, H.R. REP. NO. 101-84, Part 1 at 35 (1989).

¹⁰ See ADF&G Technical Bulletin No.98-4 Tongass Fish and Wildlife Assessment, Tab le 6 Appendix A (1998).

Yakutat Tlingit Tribe

minimize conflicts between resource developments that result in the loss of habitat productivity and other forest uses that depend on habitat integrity. ONRW protection would serve to further the State's interest in maintaining these incredible public trust resources supported on the Yakutat Forelands.

Wildlife Habitat

The Yakutat Forelands comprise valuable habitat that supports a rich wildlife population, both in numbers and species diversity. Large mammal species include both brown and black bears (including the glacier bear, a bluish color phase of the black bear), moose, wolverines, wolves, and mountain goats. There is a Sitka black-tailed deer population, as a result of transplant efforts in the 1940's. Small animals include mink, marten, beaver, snowshoe hare and pika, as well as several amphibian species.

There are over 200 bird species recorded species on the forelands; approximately 60% of those species are known to breed or are suspected to breed in the area. (Appendix C339-Yakutat Forelands C2-236 *Final SEIS*) (e). Various other neotropical migrants utilize the area for reproduction, winter habitat and migration resting areas. Over 500,000 shorebirds utilize the foreland estuaries during migration. See Alaska's Key Coastal Wetlands, U.S. Forest Service.

Exceptional Recreational and Aesthetic Values

The 1979 forest plan recognized the Area (Yakutat Forelands) as the single most diverse and productive fish, wildlife, and waterfowl area in the Tongass. The numerous rivers, including the Italio, Akwe, and Ustay-Tanis Rivers are highly productive commercial fisheries for coho and sockeye salmon. The Forest Service describes the recreational fisheries for steelhead and salmon as "world class." See AMENDING ANILCA TO DESIGNATE CERTAIN LANDS IN THE TONGASS NATIONAL FOREST AS WILDERNESS, AND FOR OTHER PURPOSES, H.R. REP. NO. 101-84, Part 1 at 35 (1989).

The Yakutat Forelands have been vital for local food security for millennia. These wetlands support community food gathering for Native and rural non-Native Alaskans, as well as big game hunting. Resident households in Yakutat consume over 1000 pounds of wild foods, annually, from the forelands alleviating the high cost of grocery bills. See Alaska Dept. of Fish and Game Subsistence Division Report, 1999.

Importance to Tlingit Culture

The Tlingit people have occupied and cared for this area for thousands of years. The use & management of these lands, supports our very survival and is entwined with our, traditional and cultural practices that will assist us with the continuation of our culture for future generations. These areas, contains numerous archeologically sensitive areas sacred to us, one such example is, "where the Raven came to shore." Much of our survival, culture and traditions are dependent on the continued health of the forelands, the flora & Fauna, fisheries and wildlife it supports. This designation will guarantee the opportunity for traditional and cultural practices are maintained forever"

Local Economy

The majority of the monetary economy of Yakutat is derived from the Forelands in the form of commercial fishing, guided hunting and fishing, tourism, and various recreation, hunting and gathering activities. Much of Yakutat's economy is almost entirely based on sport, commercial and subsistence

Yakutat Tlingit Tribe

fishing on the Situk River alone.¹¹ All of these activities depend on the pristine quality of the wetland resource.

Trigger for a Tier 3 Review

The Department of Environmental Conservation's past practice has been to consider the potential for ONRW designation as part of the public notice and comment process on a draft wastewater discharge permit. However there is nothing in the interim guidelines that precludes consideration and granting of an ONRW nomination request outside of an application for a discharge permit or other trigger for an antidegradation review.¹²

Although the nominated area is not the subject of an application for a discharge permit, the area faces multiple threats for development. Oil and gas exploration has occurred in the area and the potential for development appears relatively high. The U.S. Geological Survey (USGS) has identified the Yakutat Forelands as a "Most Favorable Petroleum Reserve Area." As yet, development activities have not been initiated. Furthermore, the USGS Mineral Resource Data website (2001) indicates that there are eight prospects in the area for iron, titanium, gold, platinum, and chromium.¹³

Exploration activities may well be permitted outside of the need for a discharge permit application, or a discharge may be granted a temporary exclusion. Once an area is targeted for mineral or oil and gas development there will be little political will to do anything that may delay that development. It is imperative that ONRW protections be in place prior to any move to actively develop oil and gas leases in this area.

Therefore we ask the Alaska State Department of Environmental Conservation to acknowledge the Cultural significance, exceptional ecological values and outstanding recreational opportunities of the Yakutat Forelands and protect the dependent relationship between the surface and subsurface water quality, soils, fish and wildlife, economy and culture and designate this area a Tier 3 Outstanding Natural Resource Water afforded the highest level of protection from degradation.

Thank you for your assistance in helping us to attain this.

Yakutat Tlingit Tribe Council

Name: ___ Victoria L. Demmert: _____ Title: ___ Tribal President _____

Signature: _____ Date: _____

CC: Lt. Governor Byron Mallott

¹¹ Hubbard Glacier, Russell Fiord and Situk River *-A Landscape in Motion*, by Robert Gubernick Steven Paustian; *USDA Forest Service, Tongass National Forest, 2007*

¹² (http://www.dec.state.ak.us/water/wqsar/Antidegradation/docs/P&P-Interim_Antidegradation_Implementation_Methods.pdf)

¹³ Tongass Forest Plan Final SEIS, C2-242 at: www.tongass-seis.net/yrd/pdf/339.pdf



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

**Department of Environmental
Conservation**

DIVISION OF WATER

410 Willoughby Ave
Juneau, Alaska 99811-1800
Main: 907.465.5180
Fax: 907.465.5177
www.dec.alaska.gov

March 8, 2016

President Victoria L. Demmert
Yakutat Tlingit Tribe Council
606 Forest Hwy. 10
Yakutat, Alaska 99689

Dear President Demmert:

Thank you for your nomination of the Yakutat Forelands for designation as an Outstanding Natural Resource Water (ONRW). I appreciate the chance to have met with Raymond Sensmeier on March 2 to discuss the nature of the nomination, supporting documentation, and current status of the ONRW designation process. Having the opportunity to discuss the project with Mr. Sensmeier was beneficial to my understanding of the attributes of the Yakutat Forelands and the interest of the Yakutat Tlingit Tribe Council in making such a nomination.

The process the Department will use to evaluate ONRW nominations and assign an ONRW designation has not yet been determined. The Legislature is currently discussing the ONRW designation process in House Bill 283 and Senate Bill 163. Legislation will provide DEC with clear direction on its role and responsibilities in the designation process. Consequently, ONRW nominations received will be handled in accordance with a process yet to be developed. DEC will retain a copy of your nomination for further consideration and notify you once the Legislature and DEC have completed work on this issue.

Again, thank you for your patience and consideration during this process. If you have additional questions you may contact Nancy Sonafrank at (907) 451-2726 or email nancy.sonafrank@alaska.gov.

Sincerely,

A handwritten signature in cursive script that reads "Michelle Hale".

Michelle Hale
Director
Division of Water

cc: Raymond Sensmeier

Alaska Department of Environmental Conservation Outstanding National Resource Waters Frequently Asked Questions



What is an Outstanding National Resource Water (ONRW), or Tier 3 water?

ONRWs or Tier 3 waters are provided the highest level of protection under the antidegradation policy of the State of Alaska, which is required by the Clean Water Act. The purpose of an ONRW designation is to offer special protection for waters of "exceptional recreational or ecological significance."¹ ONRWs are often regarded as the highest quality waters of a state, though that is not a prerequisite characteristic.

What are the effects of an ONRW designation?

No new or increased discharges to an ONRW or its tributaries are permitted if the discharges would result in permanent lowering of water quality in the water (i.e., cause degradation). There are exceptions to allow activities that result only in a temporary, short-term, and limited change in the water quality of an ONRW; for example, for construction activities.

What type of discharges would not be allowed if there was an ONRW designation?

Discharges that would not be permitted into an ONRW include municipal storm water runoff, domestic wastewater (i.e., treated sewage) discharges, and any wastewater discharges from industrial operations such as mining projects.

How are land-use activities affected by an ONRW designation?

Projects that result in a long term lowering of ONRW water quality, through a discharge or other activity, would not be allowable. There are potential long-term, if not permanent, land-use consequences to designating ONRWs.

How are ONRWs designated?

There currently exists ambiguity in whether the Department of Environmental Conservation (DEC) or the Legislature has the authority to designate an ONRW. The Constitution says the Legislature makes land use designations (Article VIII Sect. VII), while Alaska Statute gives DEC general authority to set water quality standards (AS 46.03.080). The bill clarifies that authority. The bill creates a process by which nominations can be submitted to and compiled by DEC, then transmitted to the Legislature, with the Legislature making the final designation of ONRWs.

Why doesn't the bill direct DEC to designate ONRWs?

DEC already has tools for protecting water quality: Water quality standards, effluent limits in permits, methods for identifying and cleaning up impaired waters. An ONRW designation bypasses all of those tools. Given the far-reaching consequences of an ONRW designation, DEC believes the final authority should rest with the Legislature. The Legislature already has the authority to make other types of land use designations, including designation of state parks, marine protected areas, or special management areas.

Who can nominate or propose an ONRW?

Any resident of the state may nominate a water for ONRW designation.

¹ 18 AAC 70.015(a)(3)

Alaska Department of Environmental Conservation Outstanding National Resource Waters Frequently Asked Questions

What Alaska waters are currently designated as ONRWs?

Currently, there are no designated ONRWs in Alaska.

What waters in Alaska have been nominated for ONRW designation?

The Chilkat River, Koktuli River, and the Bristol Bay Watershed have been nominated for ONRW designation.

What are the processes used by other states to designate ONRWs?

The process for ONRW designation is left to the states to define. Methods used by other states range from legislative designation to designation by a board or commission, to designation by a state agency.

What are examples of ONRW designations in other states?

Examples from other states include waters that are part of national or state parks, wildlife refuge or wilderness areas, special trout waters, federal Wild and Scenic Rivers or other unique. States including Washington, Oregon, Idaho, and Nevada have not designated any ONRWs; California has designated two, Lake Tahoe and Mono Lake; all waters in national parks are ONRWs in Montana, and Arizona has designated 22 waters as ONRWs.

What is “antidegradation?”

Antidegradation is a tool used to protect the water quality in the State of Alaska, determining whether and to what extent water quality may be lowered. The federal Clean Water Act requires states to have an antidegradation policy and implementation methods that:

- Protect existing uses
- Authorize the lowering of water quality in high quality waters, where necessary for social or economic importance
- Provide a mechanism to provide additional protection for water of exceptional ecological or recreational significance (ONRWs)

Alaska adopted an antidegradation policy in 1997, but has not yet established final accompanying implementation procedures. This bill will fulfill that requirement for ONRWs and with regulations scheduled for public notice in the summer of 2016 for the remaining implementation procedure requirements, bring Alaska into compliance with federal law.

For more information on Alaska’s antidegradation policy, visit:
<http://dec.alaska.gov/water/wqsar/Antidegradation/index.html>.



Tongass Transition

Issue

The Tongass National Forest (TNF) is amending the Tongass Forest Plan to facilitate the transition to young growth management pursuant to the Secretary's July 2, 2013 Memorandum. The Forest Service is engaged in a variety of activities in support of maintaining a viable Southeast Alaska timber industry while transitioning to young growth management.

Key Points

Tongass Plan Amendment and Final EIS/Draft ROD

- May 27, 2014: The TNF initiated the plan amendment process and the Tongass Advisory Committee (TAC) was concurrently appointed to advise the Forest Service on transitioning the Tongass NF to young growth management.
- November 20, 2015: The Draft EIS and proposed Tongass Land Plan Amendment was published, with a 90-day comment period that closed February 22, 2016. More than 165,000 comments, encompassing 1,019 unique comments, were received.
- July 1, 2016: FEIS and Draft ROD published; 30-day FEIS public review period.
- July 1, 2016: Notice of Objection Filing Period published. 90-day objection filing period.
- Mid-December 2016: Plan Amendment approved.
- The selected alternative for the Plan Amendment is based on the unanimous recommendations of the TAC.
- The Forest Service is also implementing many of the other recommendations made by the TAC. These include inventory of young growth and old-growth "bridge timber", local workforce development efforts, and improvements in organizational processes.

Challenge Cost Share Agreement

- The State of Alaska and USDA State & Private Forestry have entered into a \$4 million challenge cost share agreement to inventory a robust sample of young growth (and old growth) on Prince of Wales Island. \$2.5 million will be used to improve forest resource inventory information and \$1.5 million will be used to support workforce development, improve forest industry infrastructure, and support young growth forest management practices.
- Crews have begun fieldwork on the timber inventory, and as of early July 2016 have inventoried more than 1500 plots representing 3700 acres of older young growth. Work continues on data analysis and prioritizing areas for timber sale planning.
- The Forest Service and State of Alaska held a Resource Academy in April 2016 to develop workforce capacity to support timber inventory and forest resource management efforts. Nearly all graduates were successfully placed in timber inventory jobs, and there is stakeholder interest in additional similar workforce development efforts.



- The State of Alaska is developing a GIS layer for logging transportation infrastructure to facilitate planning efforts.
- The Forest Service is working with adjacent landowners to identify broader collaborative opportunities for young growth inventories, landscape-scale LiDAR Imagery, and use of authorities such as Good Neighbor Act and Tribal Forest Protection Act.

Tongass Transition Collaborative

- The TAC charter expired in February 2016. Several members of the TAC subsequently organized the Tongass Transition Collaborative (TTC), a forest-level collaborative to assist in implementation of the transition.
- Several members of the TTC arranged a Young Growth Symposium on Prince of Wales Island the week of April 18, 2016. The event was a comprehensive review of past and ongoing young growth harvest activities on public and non-public lands.
- The TTC has requested support for monitoring the socioeconomic effects of the transition, consistent with a recommendation made by the TAC.

All Landowners Group

- The Forest Service and other forest landowners in Southeast Alaska have established the All Landowners Group to coordinate operations, find efficiencies, and share infrastructure to support resource management activities. The group meets regularly.
- Group members include Forest Service, Alaska Division of Forestry, Alaska Mental Health Trust Land Office, University of Alaska, and Sealaska.

Tongass Wide Young Growth Study

- The Forest Service is continuing the Tongass Wide Young Growth Study, begun in 2002, to increase knowledge of silvicultural practices for various purposes including young growth management.

Southeast Alaska Wood Quality Study

- The Forest Service is evaluating potential design of a study to determine the type, volume, and quality of products that can be manufactured from young growth Sitka spruce and western hemlock trees growing in Southeast Alaska.

More Information

Earl Stewart, Forest Supervisor, Tongass National Forest, estewart@fs.fed.us (907) 228-6200



Winter 2017 Regional Advisory Council Meeting Calendar

February-March 2017

Meeting dates and locations are subject to change.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Feb. 5	Feb. 6 <i>Window Opens</i>	Feb. 7	Feb. 8 NS — Barrow	Feb. 9	Feb. 10	Feb. 11
		EI — Fairbanks				
Feb. 12	Feb. 13	Feb. 14	Feb. 15 YKD — Bethel	Feb. 16	Feb. 17	Feb. 18
	SC — Anchorage					
Feb. 19	Feb. 20 PRESIDENT'S DAY HOLIDAY	Feb. 21	Feb. 22 WI — Fairbanks	Feb. 23	Feb. 24	Feb. 25
			K/A — Kodiak			
Feb. 26	Feb. 27	Feb. 28	Mar. 1	Mar. 2	Mar. 3	Mar. 4
		BB — Naknek				
			NWA — Kotzebue			
Mar. 5	Mar. 6 SP — Nome	Mar. 7	Mar. 8	Mar. 9	Mar. 10	Mar. 11
Mar. 12	Mar. 13	Mar. 14	Mar. 15	Mar. 16	Mar. 17 <i>Window Closes</i>	Mar. 18
		SE — Saxman				

Fall 2017 Regional Advisory Council Meeting Calendar

August - November 2017

Meeting dates and locations are subject to change.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Aug. 20	Aug. 21 <i>Window Opens</i>	Aug. 22	Aug. 23	Aug. 24	Aug. 25	Aug. 26
Aug. 27	Aug. 28	Aug. 29	Aug. 30	Aug. 31	Sept. 1	Sept. 2
Sept. 3	Sept. 4 LABOR DAY HOLIDAY	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	Sept. 25	Sept. 26	Sept. 27	Sept. 28	Sept. 29	Sept. 30
Oct. 1	Oct. 2	Oct. 3	Oct. 4	Oct. 5	Oct. 6	Oct. 7
Oct. 8	Oct. 9 COLUMBUS DAY HOLIDAY	Oct. 10	Oct. 11	Oct. 12	Oct. 13	Oct. 14
Oct. 15	Oct. 16	Oct. 17	Oct. 18	Oct. 19	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	Nov. 3	Nov. 4
Nov. 5	Nov. 6	Nov. 7	Nov. 8	Nov. 9	Nov. 10 <i>Window Closes</i> VETERANS DAY HOLIDAY	Nov. 11

AFN - Anchorage

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

Southeast Alaska Subsistence Regional Advisory Council

Charter

1. **Committee's Official Designation.** The Council's official designation is the Southeast Alaska Subsistence Regional Advisory (Council).
2. **Authority.** The Council is renewed by virtue of the authority set out in the Alaska National Interest Lands Conservation Act (16 U.S.C. 3115 (1988)), and under the authority of the Secretary of the Interior, in furtherance of 16 U.S.C. 410hh-2. The Council is regulated by 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 has 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 decisionmaking 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. Appoint one member to the Wrangell-St. Elias National Park Subsistence Resource Commission in accordance with Section 808 of the Alaska National Interest Lands Conservation Act (ANILCA).
 - f. Make recommendations on determinations of customary and traditional use of subsistence resources.
 - g. Make recommendations on determinations of rural status.
 - h. 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 \$175,000, including all direct and indirect expenses and 1.15 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 be inactive 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 Federal Subsistence Board in their nomination recommendations to the Secretary will strive to ensure that nine of the members (70 percent) represent subsistence interests within the Region and four 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.

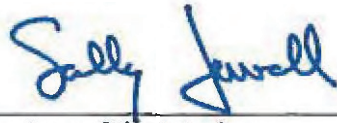
Members will be appointed for 3-year terms. A vacancy on the Council will be filled in the same manner in which the original appointment was made. Members serve at the discretion of the Secretary.

Council members will elect a Chair, Vice-Chair, and 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 will 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 purpose of compiling information and 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, shall be handled in accordance with General Records Schedule 6.2, and 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.



Secretary of the Interior

NOV 20 2015

Date Signed

DEC 03 2015

Date Filed

Follow and “Like” us on Facebook!
www.facebook.com/subsistencealaska

