

KODIAK/ALEUTIANS Subsistence Regional Advisory Council



USFWS

Brown bear in Dog Salmon Creek, Kodiak National Wildlife Refuge.

Meeting Materials
March 26–27, 2013
Kodiak

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KODIAK/ALEUTIANS SUBSISTENCE REGIONAL ADVISORY COUNCIL

Best Western Kodiak Inn, Kodiak, Alaska
March 26–27, 2013
8:30 a.m. – 5:00 p.m.

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.

DRAFT AGENDA

*Asterisk identifies action item.

- 1. Call to Order (Chair)**
- 2. Invocation**
- 3. Roll Call and Establish Quorum (Secretary or DFO)..... 4**
- 4. Seating of New Members**
- 5. Welcome and Introductions (Chair)**
- 6. Review and Adopt Agenda* (Chair) 1**
- 7. Election of Officers *(DFO)**
 - A. Chair
 - B. Vice-Chair
 - C. Secretary
- 8. Review and Approve September 25, 2012 Meeting Minutes* (Chair)**
- 9. Reports**
 - A. Council Member Reports
 - B. Chair’s Report
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 - C. Status of Emperor Goose Proposal to the Alaska Migratory Bird Co-Management Council

12. New Business (Chair)

- A. Ghost Fishing of Derelict Crab Pots in Womens Bay, Conducted by the NOAA/Kodiak Laboratory/Shellfish Assessment Program (Chris Long, NOAA)
- B. Rural Determination Process (*Steve Fried, OSM*).....30
- C. Call for Wildlife Regulatory Proposals, Deadline: March 29, 2013
(*Wildlife Division, OSM*)*33
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13. Agency Reports

- A. OSM (*Stephen Fried*)
 - 1. Budget Update
 - 2. Staffing Update
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- A. Confirm date and location of fall 2013 meeting*
- B. Select date and location of winter 2014 meeting*

15. Closing Comments

16. Adjourn (Chair)

To teleconference into the meeting, call the toll free number: 1-866-916-7020, then when prompted enter the passcode: 37311548

The U.S. Fish and Wildlife is committed to providing access to this meeting for those with a disability who wish to participate. Please direct all requests for accommodation for a disability to the Office of Subsistence Management at least five business days prior to the meeting.

If you have any questions regarding this agenda or need additional information, please contact Kodiak/Aleutians Council Coordinator Tom Jennings at 907-786-3364 or contact the Office of Subsistence Management at 1-800-478-1456 for general inquiries.

REGION 3—Kodiak/Aleutians Regional Advisory Council

Seat	Yr Apptd <i>Term Expires</i>	Member Name & Address
1	2010 2013	Antone A. Shelikoff Akutan, Alaska
2	2001 2013	Patrick B. Holmes Kodiak, Alaska
3	2008 2013	Richard R. Koso Adak, Alaska
4	2004 2013	Samuel I. Rohrer Kodiak, Alaska
5	2011 2014	Thomas L. Schwantes Kodiak, Alaska
6	2011 2014	Peter M. Squartsoff Port Lions, Alaska
7	2011 2014	Vincent M. Tutiakoff Sr. Unalaska, Alaska
8	2009 2015	Della A. Trumble King Cove, Alaska
9	2000 2015	Speridon M. Simeonoff Sr. Chair Akhiok, Alaska
10	2012 2015	Melissa M. Berns Old Harbor, Alaska

FEDERAL SUBSISTENCE BOARD ACTION REPORT

January 22-24, 2013

Anchorage, Alaska: Egan Center

STATEWIDE PROPOSALS

There were no statewide proposals to review at this meeting.

**KODIAK/ALEUTIANS ALASKA SUBSISTENCE REGIONAL ADVISORY COUNCIL
PROPOSALS**

Proposal 13-14

DESCRIPTION: Requests modification to the Federal subsistence king and Tanner crab fisheries regulations for the Kodiak area. The proponent requests establishing definitions for king and Tanner crab pots, modifying gear marking requirements, and clarifying crab pot limits per vessel.

COUNCIL RECOMMENDATION: **Oppose**

Any of the proposed changes will be detrimental and cause hardship to subsistence users. The Council strongly supports the existing regulatory language.

BOARD ACTION: **Defer** (6-2 vote)

JUSTIFICATION:

This action allows additional time for the Council and State to address new data and work to clarify regulatory language and define affected areas.

The no votes stated that it would be detrimental to the satisfaction of subsistence needs.

GUIDANCE ON ANNUAL REPORTS

Background

ANILCA established the Annual Reports as the way to bring regional subsistence uses and needs to the Secretaries' attention. The Secretaries delegated this responsibility to the Board. Section 805(c) deference includes matters brought forward in the Annual Report.

The Annual Report provides the Councils an opportunity to address the directors of each of the four Department of Interior agencies and the Department of Agriculture Forest Service in their capacity as members of the Federal Subsistence Board. The Board is required to discuss and reply to each issue in every Annual Report and to take action when within the Board's authority. In many cases, if the issue is outside of the Board's authority, the Board will provide information to the Council on how to contact personnel at the correct agency. As agency directors, the Board members have authority to implement most of the actions which would effect the changes recommended by the Councils, even those not covered in Section 805(c). The Councils are strongly encouraged to take advantage of this opportunity.

Report Content

Both Title VIII Section 805 and 50 C.F.R. 100.11 (Subpart B of the regulations) describe what may be contained in an Annual Report from the councils to the Board. This description includes issues that are not generally addressed by the normal regulatory process:

- an identification of current and anticipated subsistence uses of fish and wildlife populations within the region;
- an evaluation of current and anticipated subsistence needs for fish and wildlife populations from the public lands within the region;
- a recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs related to the public lands; and
- recommendations concerning policies, standards, guidelines, and regulations to implement the strategy.

Please avoid filler or fluff language that does not specifically raise an issue of concern or information to the Board.

Report Clarity

In order for the Board to adequately respond to each Council's annual report, it is important for the annual report itself to state issues clearly.

- If addressing an existing Board policy, Councils should please state whether there is something unclear about the policy, if there is uncertainty about the reason for the policy, or if the Council needs information on how the policy is applied.
- Council members should discuss in detail at Council meetings the issues for the annual report and assist the Council Coordinator in understanding and stating the issues clearly.
- Council Coordinators and OSM staff should assist the Council members during the meeting in ensuring that the issue is stated clearly.

Thus, if the Councils can be clear about their issues of concern and ensure that the Council Coordinator is relaying them sufficiently, then the Board and OSM staff will endeavor to provide as concise and responsive of a reply as is possible.

Report Format

While no particular format is necessary for the Annual Reports, the report must clearly state the following for each item the Council wants the Board to address:

1. Numbering of the issues,
2. A description of each issue,
3. Whether the Council seeks Board action on the matter and, if so, what action the Council recommends, and
4. As much evidence or explanation as necessary to support the Council's request or statements relating to the item of interest.

Kodiak/Aleutians Subsistence Regional Advisory Council

c/o U.S. Fish and Wildlife Service
Office of Subsistence Management
1011 East Tudor Road, MS 121
Anchorage, Alaska 99503-6199
Phone: 907-786-3888, Fax: 907-786-3898
Toll Free: 800-478-1456

Mr. Tim Towarak, Chair
Federal Subsistence Board
1101 East Tudor Road, MS 121
Anchorage, Alaska 99503

Dear Mr. Towarak:

The Kodiak/Aleutians Subsistence Regional Advisory Council (Council) appreciates the opportunity to submit this annual report to the Federal Subsistence Board (Board) under the provisions of Section 805(a)(3)(D) and Section 805(c) of the Alaska National Interest Lands Conservation Act (ANILCA). At its public meeting held in Sand Point, Alaska on September 25, 2012, the Council brought forward the following concerns and recommendations for their 2012 report and approved the 2012 Annual Report at its March 26, 2012 meeting held in Kodiak. The items brought forward herein are issues of concern.

1. Pacific Cod Subsistence Harvest

Subsistence fishermen using halibut longlines are disallowed from keeping any pacific cod they bring up on their halibut skate. Those individuals fishing with subsistence lines under both Federal and State regulations are not able to harvest any incidentally caught pacific cod yet there are no harvest limits for pacific cod while using a rod and reel. The Council recommends that this disparity in the subsistence regulations should be revised to allow for legal pacific cod harvest that might be caught while fishing under those regulations.

2. McLees Lake Sockeye Salmon

The decline of sockeye salmon in McLees Lake at Unalaska has been discussed and noted as a Council concern. The Council requests the Board support for forecasting research on the lake's sockeye salmon population that is an important to the Unalaska subsistence users.

3. Effective Board Support of the RAC Process

The Council believes that the Regional Advisory Councils (RACs) are essential to providing meaningful input to the Board regarding implementation of ANILCA Title VII. The Council urges that each Board member and Agency Regional Director to please give full support to the operational capacity of the

RACs. The commitment of the Board to influence adequate Council member travel opportunities will enhance more effective representation by the RACs to meet with rural subsistence users. The Council is concerned that the downward budget trend will constrain the Council's goal to meet in rural communities and thereby limit meaningful interaction with rural subsistence users.

The Kodiak/Aleutians Subsistence Regional Advisory Council appreciates the Board's attention to these matters.

Sincerely,

Speridon Mitchell Simeonoff, Chair
Kodiak/Aleutians Subsistence
Regional Advisory Council

cc: Federal Subsistence Board
Kodiak/Aleutians Subsistence Regional Advisory Council

DRAFT



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

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

SEP 10 2012



FWS/OSM 12051.CJ

Mr. Speridon Mitch Simeonoff Sr., Chair
Kodiak/Aleutians Subsistence
Regional Advisory Council
P.O. Box 5008
Akhiok, Alaska 99615

Dear Mr. Simeonoff:

This letter responds to the Kodiak/Aleutians Subsistence Regional Advisory Council's (Council) 2011 Annual Report as approved at its winter 2012 meeting. The Secretaries of the Interior and Agriculture have delegated the responsibility to respond to these reports to the Federal Subsistence Board (Board). The Board appreciates your effort in developing the Annual Report and values the opportunity to review the issues brought forward concerning your region. Annual Reports allow the Board to become more aware of the issues that fall outside of the regulatory process and affect subsistence users in your region.

The Board has reviewed your Annual Report and offers the following responses:

Issue 1: Caribou Herd Surveys

It is crucial for resource managers to have accurate detailed information regarding populations in order to responsibly manage wildlife resources, especially when there is an apparent conservation concern. The caribou populations in Unit 9D and Unit 10 have fluctuated over the past 15 years. The Council has repeatedly, over a period of several years, requested the Izembek National Wildlife Refuge (Refuge) staff to conduct population surveys of the Unimak Caribou Herd.

The Refuge successfully conducted this survey for both Unit 9D and 10 in February 2012 much to the Council's satisfaction. The Council requests the Board to urge Refuge leadership to keep the Unimak and Southern Alaska Peninsula Caribou population surveys a high priority among other Refuge responsibilities.

Mr. Speridon Mitch Simeonoff Sr.

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Response

The Board understands the importance of having accurate population information with which to manage wildlife resources. The Izembek National Wildlife Refuge shares the Council's concern, and is committed to conducting caribou surveys for the Unimak Island (Unit 10) and Southern Alaska Peninsula Caribou Herds (Unit 9) as time, weather and resources allow. Surveys aid in the management of the herds and allow the Refuge to fulfill one of its Alaska National Interest Lands Conservation Act (ANILCA) purposes, to provide the opportunity for continued subsistence uses by local residents. The Refuge will continue to plan annual surveys, and appreciates the Council's understanding and patience regarding weather patterns and conditions beyond its control. Weather plays a critical role in the ability to conduct these aerial surveys safely; there may be some years when hazardous weather conditions prevent surveys from being conducted. Pilot, staffing and aircraft availability during periods of good weather are also other factors impacting the ability to conduct needed surveys.

Issue 2: Emperor Geese Subsistence Harvest

The people of the region this Council serves would like to have a subsistence harvest of Emperor Geese. This harvest would allow elders from our coastal villages to again have a taste of this traditional food where there has been no legal harvest allowed for over 20 years. The Council has submitted a request for such a harvest to the Executive Director of the Migratory Bird Co-Management Council and the Chief of USFWS Migratory Bird Management. The Council has not been notified if these requests were forwarded to the Co-management regulatory body.

Annual aerial surveys indicate that the Emperor Goose population has reached a plateau but does seem relatively stable. The Council believes a small subsistence harvest could be allowed without significant impact to the resource.

Response

Migratory birds do not fall under the jurisdiction of the Board; rather, the Alaska Migratory Bird Co-management Council (AMBCC) is responsible for migratory bird Federal subsistence management. AMBCC Executive Director and staff are aware of the Council's interest in a limited harvest of Emperor Geese. AMBCC Interim Executive Director, Crystal Leonetti, attended your meeting on March 22, 2012 via teleconference. The USFWS Migratory Bird Management Division Chief provided a power point summary of the Emperor Goose population status and trend as a handout to your Council members. AMBCC staff does not have a record of a request submitted in writing or verbally by the Council to provide for this harvest.

As reported by Ms. Leonetti at the March Council meeting, a proposal requesting this allowance can be submitted to AMBCC for consideration. Proposals may be submitted by individuals or groups such as the Council. AMBCC encourages proponents to draft a proposal, working with one or both of the AMBCC Regional Representatives, listed below, and with the AMBCC staff prior to submitting a final proposal. Proposals may be submitted to AMBCC between

Mr. Speridon Mitch Simeonoff Sr.

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November 1 and December 15 each year; the proposals are then voted on at the spring AMBCC meeting, usually held in April. The proposal guidelines can be located on the AMBCC web site: <http://alaska.fws.gov/ambcc/Regulations.htm>

The AMBCC Staff can be reached at 907-786-3499. Your AMBCC Regional Representatives are:

Sun'aq Tribe of Kodiak

Rick Rowland, 312 West Marine Way, Kodiak, Alaska 99615

Tel: (907) 486-4449; Fax: (907) 486-3316; Email: stknrd@sunaq.org

Aleutian/Pribilof Islands Assoc.

Peter Devine, c/o Qagan Tayagungin Tribal Office, Sand Point, Alaska 99661

Tel: (907) 383-5616; Fax: (907) 383-5814

Issue 3: Karluk Lake Enhancement

The precipitous decline of sockeye and Chinook salmon in the Karluk Lake drainage has been discussed and noted as a Council concern. The Council supports active rehabilitation of the Karluk Lake salmon and requests the Kodiak National Wildlife Refuge (Refuge) to carefully consider the value of salmon to subsistence users. The Kodiak Regional Aquaculture Association has proposed to implement an enhancement project to increase the lake productivity. The Council urges the Refuge to conduct its project review in an expedient manner due to the long timeline for recovery and because of the increased opportunity for subsistence users to harvest salmon.

Response

The Board shares your concerns over the status of sockeye and Chinook salmon in the Karluk Lake drainage and effects upon subsistence users. A proposal to fertilize Karluk Lake, primarily to boost sockeye salmon production, was submitted by the Kodiak Regional Aquaculture Association in February 2012. The proposal is being evaluated by the Kodiak National Wildlife Refuge Manager to assess its compatibility with Refuge purposes. Once a compatibility determination is finalized, it will be available for public review. If any Council members would like to receive information or to comment on this compatibility determination during the public review process you should contact Gary Wheeler at (907) 487-2600 or gary_wheeler@fws.org.

Issue 4: Effective Tribal Consultation and Funding

The Council believes that the development of the Tribal Consultation Policy as presented to the Council appears to be appropriate. However, adequate funding for implementation of Tribal Consultation is essential to meet the intent of the Presidential mandate. Alaskan Tribal governments comprise forty percent of all Federally recognized Tribes in the United States. That suggests that there needs to be a significant level of involvement by the Federal Subsistence Program in order to adequately consult with Alaska's Tribes. The Council continues to hear

Mr. Speridon Mitch Simeonoff Sr.

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reports of reduced Federal subsistence budgets and Council meeting travel restrictions. Council meeting locations are restricted to meet in hub communities only, and that truly limits effective Tribal consultation at the local level. We urge the Board, Agency Directors and the Office of Subsistence Management leadership to prioritize and restore funding for Council meeting travel to remote villages as one means of effectively consulting with Tribes.

Response

At its meeting on May 9, 2012, the Federal Subsistence Board adopted a Tribal Consultation Policy. This policy provides the framework for the Board's consultation with Federally recognized Tribes on ANILCA Title VIII subsistence matters under the Board's authority, while maintaining the central role of the Federal Subsistence Regional Advisory Councils as advisors to the Board. Federal law requires Federal agencies to consult with Alaska Native Corporations established under the Alaska Native Claims Settlement Act (ANCSA) on the same basis as Tribal governments. The Board has delayed adoption of the ANCSA Corporation consultation policy until the Department of Interior finalizes its policy. The Federal Subsistence Board's Tribal consultation policy, draft ANSCA Corporation consultation policy, and other documents related to consultation can be found at <http://alaska.fws.gov/asm/issue.cfml>.

Effective Tribal consultation will likely be adversely affected by Federal budget issues. As the reductions in the Federal budget continue, travel outside of normal Council meetings in the future will be very limited. Specifically, the Office of Subsistence Management has experienced a declining budget since 2001 due to the economy and a variety of other factors beyond its control. The OSM budget, including travel budget, is likely to continue to reduce in the future. These types of reductions will make it necessary for Regional Advisory Councils to continue to meet in communities that provide the greatest cost efficiencies. We will continue to provide the Regional Advisory Councils with budget briefings to help develop a better understanding of what cuts are being made and how these cuts will affect the Federal Subsistence Management Program.

In closing, I want to thank you and your Council for their continued involvement and diligence in matters regarding the Federal Subsistence Management Program. I speak for the entire Board

Mr. Speridon Mitch Simeonoff Sr.

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in expressing our appreciation for your efforts and our confidence that the subsistence users of the Kodiak/Aleutians region are well represented through your work.

Sincerely,
/S/

Tim Towarak, Chair
Federal Subsistence Board

cc: Kodiak/Aleutians Subsistence
Regional Advisory Council
Federal Subsistence Board
Interagency Staff Committee
Pete Probasco, Assistant Regional Director, OSM
Kathy O'Reilly-Doyle, Deputy Assistant Regional Director, OSM
Carl Johnson, Council Coordinator Div. Chief, OSM
Tom Jennings, Council Coordinator, OSM
Administrative Records

FP13-14 Executive Summary	
General Description	Proposal FP 13-14 requests modification to the Federal subsistence king and Tanner crab fisheries regulations for the Kodiak area. The proponent requests establishing definitions for king (<i>Paralithodes camtschaticus</i>) and Tanner (<i>Chionoecetes bairdi</i>) crab pots, modifying gear marking requirements, and clarifying crab pot limits per vessel. <i>Submitted by the Alaska Department of Fish and Game</i>
Proposed Regulation	<p>§.28 (e)(4)(i)(C) You may only use one crab pot, which may be of any size, to take king crab. You may only use one king crab pot per person with a maximum of only one pot per vessel, to take king crab; a king crab pot is a pot that is not more than 10 feet long by 10 feet wide by 42 inches high with rigid tunnel eye openings that individually are no less than five inches in any one dimension with tunnel eye opening perimeters that individually are more than 36 inches or a pot that is no more than 10 feet long by 10 feet wide by 42 inches high and that tapers inward from its base to a top consisting of one horizontal opening of any size. The king crab pot, in addition to marking requirements in 5 AAC 02.010 (e), shall have legibly inscribed on the keg or buoy attached to the pot “king crab”.</p> <p>§.28 (e)(4)(v) (A) You may not use more than five crab pots to take Tanner crab. You may not use more than five Tanner crab pots or ring nets per person to take Tanner crab with a maximum of 10 pots or ring nets per vessel; a Tanner crab pot may be no more than 10 feet long by 10 feet wide by 42 inches high with rigid tunnel eye openings that individually are less than 5 inches in one dimension with tunnel eye opening perimeters that individually are more than 36 inches; or a pot that is no more than 10 feet long by 10 feet wide by 42 inches high and that tapers inward from its base to a top that consists of one horizontal opening of any size. Tanner crab pots, in addition to marking requirements in 5 AAC 02.010 (e), shall have legibly inscribed on the keg or buoy attached to the pot “Tanner crab”.</p>
OSM Conclusion	Oppose
Kodiak/Aleutians Regional Council Recommendation	Oppose
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 recommendations and Federal Subsistence Board action on the proposal.
ADF&G Comments	Support
Written Public Comments	None

STAFF ANALYSIS FP13-14

ISSUES

Proposal FP 13-14, submitted by the Alaska Department of Fish and Game (ADF&G), requests modification to the Federal subsistence king and Tanner crab fisheries regulations for the Kodiak area. The proponent requests establishing definitions for king (*Paralithodes camtschaticus*) and Tanner (*Chionoecetes bairdi*) crab pots, modifying gear marking requirements, and clarifying crab pot limits per vessel.

DISCUSSION

The proponent seeks to align Federal subsistence regulations for the harvest of king and Tanner crab with current State subsistence regulations within the Kodiak Area. King crab is the local name used to refer to red king crab in the Kodiak Area. Fishery managers assume that all king crabs harvested in the subsistence fishery are red king crab, since other king crab species are not widely distributed or readily available in the Kodiak Area. In March 2011, the Alaska Board of Fisheries adopted Proposal 308 with modification, which changed the State regulations governing subsistence king and Tanner crab pots for the Kodiak Area and established crab pot vessel limits for the Kodiak Area. The proponent states that adoption of this proposal will simplify enforcement of both State and Federal subsistence harvest regulations by decreasing the amount of red king crab illegally harvested in the Kodiak Area. The proponent also states that by changing pot size regulations, handling mortality of adult red king crab would decrease, resulting in more mature male red king crab to assist with rebuilding the population, as there is a conservation concern for the king crab population. Fishery managers assume that all king crabs harvested in the subsistence fishery are red king crab, since other king crab species are not widely distributed or readily available in the Kodiak Area.

In proposal FP13-14, the proponent incorrectly references § .28 (k)(4)(i), § .28 (k)(4)(iv), § .28 (k)(4)(v) as the Federal regulations to be modified. The correct Federal regulations are § .28 (e)(4)(i), § .28 (e)(4)(iv) and § .28 (e)(4)(v) with modifications to § .28 (e)(4)(iv) and § .28 (e)(4)(v).

Existing Federal Regulations

§ .28 subsistence taking of shellfish.

(e)(4) Kodiak Area.

(i) You may take crab for subsistence purposes only under the authority of a subsistence crab fishing permit issued by the ADF&G.

(iv) In the subsistence taking of king crab:

(A) The annual limit is three crabs per household; only male king crab with shell width of 7 inches or greater may be taken or possessed.

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a 2-week period must have all bait and bait containers removed and all doors secured fully open.

(C) *You may only use one crab pot, which may be of any size, to take king crab.*

(D) *You may take king crab only from June 1 through January 31, except that the subsistence taking of king crab is prohibited in waters 25 fathoms or greater in depth during the period 14 days before and 14 days after State open commercial fishing seasons for red king crab, blue king crab, or Tanner crab in the location.*

(E) *The waters of the Pacific Ocean enclosed by the boundaries of Womens Bay, Gibson Cove, and an area defined by a line ½ mile on either side of the mouth of the Karluk River; and extending seaward 3,000 feet, and all waters within 1,500 feet seaward of the shore-line of Afognak Island are closed to the harvest of king crab except by Federally qualified users.*

(v) *In the subsistence taking of Tanner crab:*

(A) *You may not use more than five crab pots to take Tanner crab.*

(B) *You may not take Tanner crab in waters 25 fathoms or greater in depth during the 14 days immediately before the opening of a State commercial king or Tanner crab fishing season in the location.*

(C) *The daily harvest and possession limit per person is 12 male crabs with a shell width 5 ½ inches or greater.*

Proposed Federal Regulations

§__.28 *subsistence taking of shellfish.*

(e)(4) *Kodiak Area.*

(i) *You may take crab for subsistence purposes only under the authority of a subsistence crab fishing permit issued by the ADF&G.*

(iv) *In the subsistence taking of king crab:*

(A) *The annual limit is three crabs per household; only male king crab with shell width of 7 inches or greater may be taken or possessed.*

(B) *All crab pots used for subsistence fishing and left in saltwater unattended longer than a 2-week period must have all bait and bait containers removed and all doors secured fully open.*

~~(C) *You may only use one crab pot, which may be of any size, to take king crab.*~~ *You may only use one king crab pot per person with a maximum of only one pot per vessel, to take king crab; a king crab pot is a pot that is not more than 10 feet long by 10 feet wide by 42 inches high with rigid tunnel eye openings that individually are no less than five inches in any one dimension with tunnel eye opening perimeters that individually are more than 36 inches or a pot that is no more than 10 feet long by 10 feet wide by 42 inches high and that tapers inward from its base to a top consisting of one horizontal opening of any size. The king crab pot, in addition to marking requirements in 5 AAC*

02.010 (e), shall have legibly inscribed on the keg or buoy attached to the pot “king crab”.

(D) You may take king crab only from June 1 through January 31, except that the subsistence taking of king crab is prohibited in waters 25 fathoms or greater in depth during the period 14 days before and 14 days after State open commercial fishing seasons for red king crab, blue king crab, or Tanner crab in the location.

(E) The waters of the Pacific Ocean enclosed by the boundaries of Womens Bay, Gibson Cove, and an area defined by a line ½ mile on either side of the mouth of the Karluk River; and extending seaward 3,000 feet, and all waters within 1,500 feet seaward of the shore-line of Afognak Island are closed to the harvest of king crab except by Federally qualified users.

(v) In the subsistence taking of Tanner crab:

(A) You may not use more than five crab pots to take Tanner crab. You may not use more than five Tanner crab pots or ring nets per person to take Tanner crab with a maximum of 10 pots or ring nets per vessel; a Tanner crab pot may be no more than 10 feet long by 10 feet wide by 42 inches high with rigid tunnel eye openings that individually are less than 5 inches in one dimension with tunnel eye opening perimeters that individually are more than 36 inches; or a pot that is no more than 10 feet long by 10 feet wide by 42 inches high and that tapers inward from its base to a top that consists of one horizontal opening of any size. Tanner crab pots, in addition to marking requirements in 5 AAC 02.010 (e), shall have legibly inscribed on the keg or buoy attached to the pot “Tanner crab”.

(B) You may not take Tanner crab in waters 25 fathoms or greater in depth during the 14 days immediately before the opening of a State commercial king or Tanner crab fishing season in the location.

(C) The daily harvest and possession limit per person is 12 male crabs with a shell width 5 ½ inches or greater.

Relevant State Regulations

5 AAC 02.420. Subsistence king crab fishery

(a) In the subsistence taking of king crab

(1) the annual limit is three king crab for a household;

(2) all king crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(3) notwithstanding 5 AAC 02.010(i) , no more than one king crab pot per person or per vessel may be used to take king crab; in addition to the marking requirements specified in 5 AAC 02.010(e), a king crab pot must have “king crab” legibly inscribed on the keg or buoy attached to the king crab pot;

(4) king crab may be taken only from June 1 through January 31, except that the subsistence taking of king crab is prohibited in waters 25 fathoms or more in depth during the 14 days immediately before the opening of a commercial king or Tanner crab fishing season in the location;

(5) only male king crab seven inches or greater in width of shell may be taken or possessed

(b) In this section, “king crab pot” is a pot that is no more than 10 feet long by 10 feet wide by 42 inches high with rigid tunnel eye openings that individually are no less than five inches in any one dimension, with tunnel eye opening perimeters that individually are more than 36 inches or a pot that is no more than 10 feet long by 10 feet wide by 42 inches high and that tapers inward from its base to a top consisting of one horizontal opening of any size.

5AAC 02.425. Subsistence Tanner crab fishery

(a) In the subsistence taking of Tanner crab

(1) no more than five Tanner crab pots or ring nets per person may be used to take Tanner crab with a maximum of 10 Tanner crab pots or ring nets per vessel; in addition to the marking requirements specified in 5 AAC 02.010(e), a Tanner crab pot must have “Tanner crab” legibly inscribed on the keg or buoy attached to the Tanner crab pot;

(2) the subsistence taking of Tanner crab is prohibited in waters 25 fathoms or more in depth during the 14 days immediately before the opening of a commercial king or Tanner crab fishing season in the location;

(3) the daily bag and possession limit is 12 crab per person and only male crab may be taken;

(4) only male Tanner crab five and one-half inches or greater in width of shell may be taken or possessed.

(b) In this section, “Tanner crab pot” is a pot that is no more than 10 feet long by 10 feet wide by 42 inches high with rigid tunnel eye openings that individually are less than five inches in one dimension, with tunnel eye opening perimeters that individually are more than 36 inches or a pot that is no more than 10 feet long by 10 feet wide by 42 inches high and that tapers inward from its base to a top consisting of one horizontal opening of any size.

Extent of Federal Public Waters

For the 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 This proposal will pertain to Federal marine waters of the Pacific Ocean enclosed by the boundaries of Womens Bay, Gibson Cove, an area defined on either side of the mouth of the Karluk River extending seaward 3,000 feet from shoreline, and all waters within three nautical miles of Afognak Island (**Map 1**).

Customary and Traditional Use Determinations

Residents of the Kodiak Area have a customary and traditional use determination for the harvest of Tanner crab in the Kodiak Area. Residents of the Kodiak Island Borough except those residents of the Kodiak



Coast Guard Base have customary and traditional use determination for king crab in the Kodiak Area, except for the Semidi Island, the North Mainland, and the South Mainland Sections.

Regulatory History

King Crab

In 1994, ADF&G submitted a proposal to the Federal Subsistence Board to restrict harvest of red king crab to males with a shell size greater than or equal to seven inches for Federal subsistence users. The Board did not adopt the size limit, but they did close Federal public waters to non-Federally qualified users as per the recommendation of the Interagency Staff Committee (FSB 1994).

In 2002, the Kodiak National Wildlife Refuge submitted proposal FP01-07, which requested a decrease in the annual harvest limit, from six male king crab per household to three per household with a minimum shell width of seven-inches (FSB 2002). Based on the recommendation of the Kodiak/Aleutians Subsistence Regional Advisory Council, the Board adopted the minimum shell width requirement along with a gear reduction limit of one pot of any size, but did not reduce the harvest limit. This action aligned State and Federal regulations for shell size and gear, while maintaining the closure to non-Federally qualified users.

In the Fall of 1983 the State closed commercial fishing of red king crab in the Kodiak Area, but continued to allow subsistence fishing. In 1996 the Alaska Board of Fisheries reduced the subsistence daily bag and possession limit for red king crab from six per household to three per household yearly due to conservation concerns. Subsequently, in 2011, the Federal Subsistence Board reduced the annual allowable Federal subsistence harvest of red king crab in the Kodiak Area from six per household to three per household per year.

Tanner Crab

In 1998 under State subsistence regulations, the taking of Tanner crab from July 15 to February 10 was prohibited in waters 25 fathoms or greater in depth, unless the commercial Tanner crab fishing season is open in the location. In 1999, the Federal subsistence Tanner crab regulations were changed, so that Tanner crab may not be harvested in waters 25 fathoms or greater in depth during the 14 days immediately before the opening of a commercial king or Tanner crab fishing season in the location. Additionally, a minimum shell width size was adopted, so a person may only harvest Tanner crab with a shell width of five and one-half inches or greater.

Biological Background

King Crab

Since 1982 the king crab population has size has decreased and remains at historically low numbers. Relatively few red king crabs are captured in the State trawl survey each year, it is not possible to accurately determine trends since small differences in catches result in large differences in population estimates (Spalinger 2009). However, these surveys show that the red king crab stock in the Kodiak Area has remained at very low abundance levels with no indication of rebuilding.

A total threshold abundance of 5.12 million fertilized females for reopening the king crab commercial fishery within the Kodiak Area (Pengilly and Schmidt 1995) has been set by ADF&G. State trawl survey estimates have continued to remain well below this level. The 2010 population estimate for red king crab

in the Kodiak Area was estimated at 133,055 crab, which is an increase from the estimate of 28,257 crab in 2009 (Spalinger 2011). Spalinger (2011) states that these abundance estimates likely reflect an uneven king crab distribution, resulting in high annual sampling variability and fluctuating population estimates from year to year.

The Kodiak road system provides ready access to marine waters under Federal jurisdiction in Womens Bay. These waters serve as a red king crab nursery area for the larger Chiniak Bay complex, and studies have shown that Womens Bay has much higher numbers of juvenile red king crabs than nearby Anton Larson Bay and the Trident Basin (Cummiskey et al. 2008, Dew 1991, Dew et al. 1992, and FSB 2002). After first settling in Womens Bay as larvae, red king crabs tend to remain there for six or seven years before leaving for the more open waters of Chiniak and Kalsin bays. Most red king crabs leaving Womens Bay have not yet attained a carapace width of 7 inches, which is the minimum legal size limit for males that can be harvested in subsistence fisheries.

Tanner Crab

In 1988, a trawl survey was implemented as the primary population assessment of crab populations. In 2007, the crab population was estimated at 186 million which was an all-time high since the trawl survey was implemented. The Tanner crab population in the Kodiak District decreased in 2010 and was estimated at 76.3 million crabs (Spalinger 2011).

Harvest History

King Crab

Small amounts of red king crab were caught in Kodiak in 1936; however no harvests were recorded until 1950. Initially the fishery was more exploratory as fisherman were developing gear, locating crab, and expanding markets. Once the fishery became established it grew rapidly. In 1960, the fishing season was open year-round and 21 million pounds of crab was harvested. Harvest peaked at 94 million pounds during the 1965/66 season. The 1966/67 commercial season was reduced to 10 months. From 1967 to 1982 the catches fluctuated between 11 and 74 million pounds. Starting in 1982 commercial harvest began to sharply decline. This combined with increased effort and low catches and decreasing abundance estimates resulted in a closure of the commercial red king crab fishery in Kodiak just prior to the 1982/83 fishing season. The commercial king crab fishery in Kodiak has not reopened since 1982/83 season (Sagalkin and Spalinger 2011).

An ADF&G subsistence permit is required to participate in the Federal subsistence king crab fishery. Reported King crab harvests in the Kodiak Area have been very small since the collapse of stock in the 1980s (FSB 2002). During the 1990s, annual estimated subsistence harvests of king crab by Kodiak Area communities ranged from 0 (Karluk) to 4,646 (Kodiak City) (**Table 1**). Harvest among the communities appears to be decreasing. Between 1990 and 1995 the Chiniak Area annual total harvests were approximately 1,000 king crabs. Between, 1996–2011, the annual harvest dropped to approximately 100 or less king crab (**Table 2**).

Tanner Crab

In 1967, the commercial Tanner crab fishery began with a small harvest of 110,961 pounds. From 1968 through the 1971/72 season, the Tanner crab fishery annual average harvest was 7 million pounds per year. The harvest peaked at 33 million pounds in 1977/78 and in the 1980s abundance and harvest began to decline. Due to a decline in a harvestable surplus of Tanner Crab in 1994/95 the commercial fishery

Table 1. Kodiak Management Area estimated community king crab subsistence harvests from the 1980s throughout 2003 (ADF&G 2010). No subsistence survey was conducted on years which are blank or after 2003.

Year	Akhiok	Karluk	Kodiak City	Kodiak Road	Kodiak Coast Guard Station	Larsen Bay	Old Harbor	Ouzinkie	Port Lions
1982	499	35	17,997			259	858	1,820	1,774
1986	71	28				41	124	315	1,231
1989	280	0				61	84	65	199
1990		0						67	
1991		0	3,470	2,945	202	53	115	9	
1992	66		5,653			157		9	
1993			4,646			194		16	92
1994									
1997						9	174	3	
2003	71					6	45	0	4

Table 2. King crab subsistence permits and harvests reported from permits for the Chiniak Area, which includes Womens Bay, 1990–2011 (Yuhas 2012, Pers. Comm).

Year	Number of Permits	Total Harvested	Per Permit
1990	537	1,530	2.8
1991	448	1,028	2.3
1992	392	1,671	4.3
1993	553	1,300	2.4
1994	444	931	2.1
1995	393	1,190	3
1996	187	204	1.1
1997	221	94	0.4
1998	230	56	0.2
1999	72	48	0.7
2000	111	63	0.6
2001	187	109	0.6
2002	143	79	0.6
2003	195	62	0.3
2004	224	77	0.3
2005	186	70	0.4
2006	150	77	0.5
2007	103	62	0.6
2008	80	42	0.5
2009	117	116	1
2010	151	41	0.3
2011	134	21	0.2

closed and remained closed for six years. During this time ADF&G developed a new harvest strategy based on a more conservative management approach, which aimed at preventing overharvest and localized depletions of Tanner crab populations. Crab populations are sampled annually through trawl surveys and a biological threshold and management threshold must be achieved prior to opening the fishery. The fishery reopened for the 2000/2001 season and has remained open since

An Alaska Department of Fish and Game subsistence permit is required to participate in the Federal subsistence Tanner crab fishery. Reported Tanner crab harvests are relatively small in the Kodiak Area and have fluctuated over the years (**Table 3**). Recorded harvests are very sporadic and none have been reported since 2003; so it is not possible to track recent harvest trends or make estimates of recent harvest levels (FSB 2002).

Table 3. Kodiak Management Area estimated community Tanner crab subsistence harvests from the 1980s throughout 2003 (ADF&G 2010). No subsistence survey was conducted on years which are blank or after 2003.

Year	Akhiok	Karluk	Kodiak City	Kodiak Road	Kodiak Coast Guard Station	Larsen Bay	Old Harbor	Ouzinkie	Port Lions
1982	73	33	11,026			145	283	228	553
1986	0	0				468	746	252	457
1989	0	49				531	453	128	364
1990		0						292	
1991		0	8,224	8,224	1,712	1,080	591	179	
1992	40		11,657	11,657		1,316		541	
1993			11,518	11,518		1,382		374	878
1994									
1997						447	607	100	
2003	15					843	734	365	732

Current Events

On March 22, 2012 at the Kodiak/Aleutians Federal Subsistence Regional Advisory Council (Council) meeting, ADF&G informed the Council that State subsistence regulations for allowable gear for the harvest king and Tanner crab in the Kodiak area had been changed (KA RAC, 2012). During the meeting, the council members stated that in the subsistence users typically have multiple people from various households travel by boat together to harvest king and Tanner crab. Because of this, more than one crab pot for the harvest of king crab may be aboard the vessel. This is done because of the high price of fuel, the need of a seaworthy boat, and the weather. Subsistence users travel out in smaller boats and skiffs, and have to use smaller crab pots. If this regulation was adopted it could make the current crab pots utilized by subsistence users illegal and force them to either modify these pots or purchase new ones. Those unable to purchase new crab pots or modify existing ones would not be able to harvest crab. Because of the hardships this regulation would place on qualified Federal subsistence users, the council was concerned about aligning Federal with State subsistence regulations for the harvest of king and Tanner crab (KA RAC, 2012).

At that same meeting a member of the State of Alaska, Kodiak Fish and Game Advisory Committee reported that a concern about illegal subsistence harvests of king crab was raised during one of their meetings. During this meeting people reported having heard of or witnessing charter vessels, commercial fishing vessels, and personal hunters with large boats going to the south side of the island, specifically

Olga Bay, and using Tanner pots to harvest king crab (KA RAC 2012). The new State regulations, described above, will help protect the king crab population by reducing the illegal harvest of king crabs in the State subsistence crab fishery (KA RAC, 2012). In waters under Federal subsistence jurisdiction only Federally qualified users are allowed to harvest crab in Federal marine waters, adding a level of protection to the king and Tanner crab fisheries.

Effects of the Proposal

If this proposal were adopted it could limit harvest opportunities for Federally qualified subsistence users to harvest king and Tanner crab limiting the number of king crab pots to one pot per vessel. This could force users to make several trips to harvest household limit of crabs, which would increase the amount of fuel needed to harvest king and Tanner crabs. In order to comply with regulations, some Federally qualified users would also be forced to modify existing crab pots or purchase new ones. Those unable to do this would be unable to harvest crab. In 2011 within the Chiniak Area, including Womens Bay, 134 king crab were harvested in both Federal and State waters. If this proposal were adopted there may be a decrease in crab harvest in Federal waters.

OSM CONCLUSION

Oppose Proposal FP13-14

Justification

There is a well-documented conservation concern for king crab in the Kodiak Area, which includes Federal public waters in Womens Bay, Gibson Cove, and near shore waters around the Karluk River mouth and Afognak Island. The Kodiak Area king crab stock remains at very low levels of abundance with no indication of improvement over the near term. Marine waters under Federal jurisdiction in Womens Bay is a known nursery area for the larger Chiniak Bay, and is easy to access from the Kodiak road system. However, Federal public waters contain only about 2% of the available crab habitat in the Kodiak area (Stovall 2001, Pers. Comm) and the subsistence harvest in those waters is small. Maintaining the current Tanner and king crab regulations in the Kodiak area would provide for subsistence harvest of crab, with minimal impacts to the crab stocks.

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SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATION

KODIAK/ALEUTIANS SUBSISTENCE REGIONAL ADVISORY COUNCIL

Council Recommendation: Oppose.

Justification: Any of the proposed changes will be detrimental and cause hardship to subsistence users. The Council strongly supports the existing regulatory language.

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 recommendations and Federal Subsistence Board action on the proposal.

Alaska Department of Fish and Game
Comments to Federal Subsistence Board

Fisheries Proposal FP13-14: This proposal establishes size limits for subsistence crab pots in the Kodiak Island area to eliminate discrepancies between state and federal regulations and alleviate complications of this discrepancy for subsistence users.

Introduction: This proposal was submitted by the Alaska Department of Fish and Game to alleviate contradictions in existing state and federal Regulation for subsistence users, enforcement authorities and management personnel. The proposal aligns the size and marking requirements for king and Tanner crab subsistence pots in the Kodiak Area for state and federal regulations.

Impact on Subsistence Users: Adoption of this proposal will eliminate the discrepancies between state and federal regulations which are currently confusing and leave subsistence users vulnerable to unintentional violation citations. Subsistence users who haul more than one king crab pot per vessel will be affected. Adoption of this proposal will require federal subsistence users to add the word “King Crab” or “Tanner Crab” on their pot buoys.

Impact on Other Users: Adoption of this proposal will eliminate confusion for subsistence users who participate in both the state and federal subsistence fisheries. Adoption of this proposal could assist with rebuilding of red king crab stocks over time, eventually leading to additional harvestable surplus for other user groups

Opportunity Provided by State: The Alaska Board of Fisheries (BOF) adopted a modified proposal #308 at the March 2011 meeting, resulting in several changes to subsistence crab fishery regulations for the Kodiak Island area. The BOF adopted the same commercial king and Tanner crab pot definitions for the Kodiak king and Tanner crab state subsistence fisheries, found in Alaska regulations 5 AAC 02.420 and 5 AAC 02.425. Previously, subsistence king and Tanner crab pots were not defined in state regulation even with pot limits for the taking king and Tanner crab.

The BOF also specified that both pots and ring nets may be used for subsistence Tanner crab, and the Tanner crab pot/ring net limit of five crab applies per person or a maximum of 10 crab per vessel. Abuses of the red king crab subsistence fishery have been documented and some fishermen are suspected of retaining king crab from pots in addition to their one allowed king crab pot.

The BOF also adopted subsistence king and Tanner crab pot buoy marking requirements to assist with enforcing pot limits and to help identify crab pots from which a person may legally retain subsistence-harvested crab. New regulations require that subsistence fishermen mark the pot buoy with the word “King Crab” or “Tanner Crab” to identify which type of pot is being fished

Conservation Issues: Conservation concern for the red king crab population prompted the BOF to adopt regulations for enforcement of the one king crab pot per person limit by modifying gear

ADF&G Comments on FP13-14
Page 2 of 2

marking requirements and by clarifying that the pot limit also applies as one king crab pot per vessel.

The BOF specified definitions of king and Tanner crab pots, including maximum crab pot dimensions, and established tunnel-eye opening perimeters which differentiate king from Tanner crab pots. The new maximum crab pot dimensions for both king and Tanner crab pots is 10 feet long by 10 feet wide by 42 inches high or a pot that is no more than 10 feet long by 10 feet wide by 42 inches high that tapers inward from its base to a top consisting of one horizontal opening of any size. The new subsistence crab pot definitions include tunnel-eye opening perimeters for king crab pots (greater than 5" in one dimension) and Tanner crab pots (less than 5" in one dimension). Restricting the tunnel-eye opening to less than 5" in Tanner crab pots excludes legal king crab from entering a Tanner crab pot. Excluding king crab from Tanner crab pots will assist with conservation efforts by reducing handling mortality and illegal king crab harvest caught in Tanner crab pots.

Enforcement Issues: Adoption of this proposal will assist enforcement personnel to differentiate between subsistence users and those operating illegally configured or incorrectly marked gear by eliminating minute differences in state and federal regulations which currently create confusion.

Jurisdiction Issues: The Federal Subsistence Board authorized a subsistence red king crab fishery near Kodiak Island in the marine waters of the Pacific Ocean enclosed by the boundaries of Womens Bay, Gibson Cove, and an area defined by a line ½ mile on either side of the mouth of the Karluk River, extending seaward 3,000 feet. Additionally, federal subsistence users can fish for red king crab in the marine waters within three miles of Afognak Island, and the waters within 1,500 feet seaward of the Afognak Island shoreline are closed to red king crab harvest by the non-federally qualified users. Detailed maps are needed in order to assure non-federally qualified and federal subsistence users can identify the boundaries and avoid risk of enforcement actions.

Other Issues: None identified at this time.

Recommendation: Support.



U.S. Fish and Wildlife Service
Bureau of Land Management
National Park Service
Bureau of Indian Affairs

Federal Subsistence Board News Release



Forest Service

For Immediate Release:

January 14, 2013

Contact:

Andrea Medeiros
(907) 786-3674 or (800) 478-1456
andrea_medeiros@fws.gov

Federal Subsistence Board Seeks Comments on Rural Determinations Process

The Federal Subsistence Board (Board) is seeking comments on the process used to determine which Alaska communities are rural for purposes of the Federal Subsistence Program. A notice requesting comment by November 1, 2013 was published in the Federal Register (FWS-R7-SM-2012-N248) on December 31, 2012.

The Alaska National Interest Lands Conservation Act (ANILCA) mandates that rural Alaskans be given a priority for subsistence uses of fish and wildlife on Federal public lands. The Board conducts a periodic review of rural determinations. Only communities or areas that are found to be rural are eligible for the subsistence priority under ANILCA.

Following a Secretarial review of the Federal Subsistence Management Program, the Secretaries of the Departments of the Interior and Agriculture tasked the Board to review the rural determination process and recommend changes. The Board has identified the following components of the rural determinations process to be a part of this review: population thresholds, rural characteristics, aggregation of communities, timelines, and information sources. Descriptions of these components and associated questions for public consideration and comment are provided below. Comments will be used by the Board to assist in making decisions regarding the scope and nature of possible changes to improve the rural determination process.

Population thresholds. A community or area with a population below 2,500 will be considered rural. A community or area with a population between 2,500 and 7,000 will be considered rural or nonrural, based on community characteristics and criteria used to group communities together. Communities with populations more than 7,000 will be considered nonrural, unless such communities possess significant characteristics of a rural nature.

1. Are these population threshold guidelines useful for determining whether a specific area of Alaska is rural?
2. If they are not, please provide population size(s) to distinguish between rural and nonrural areas, and the reasons for the population size you believe more accurately reflects rural and nonrural areas in Alaska.

Rural characteristics. The Board recognizes that population alone is not the only indicator of rural or nonrural status. Other characteristics the Board considers include, but are not limited to, the following: Use of fish and wildlife; development and diversity of the economy; community infrastructure; transportation; and educational institutions.

3. Are these characteristics useful for determining whether a specific area of Alaska is rural?
4. If they are not, please provide a list of characteristics that better define or enhance rural and nonrural status.

Aggregation of communities. The Board recognizes that communities and areas of Alaska are connected in diverse ways. Communities that are economically, socially, and communally integrated are considered in the aggregate in determining rural and nonrural status. The aggregation criteria are: 1) Do 30 percent or more of the working people commute from one community to another? 2) Do they share a common high school attendance area? and 3) Are the communities in proximity and road-accessible to one another?

5. Are these aggregation criteria useful in determining rural and nonrural status?
6. If they are not, please provide a list of criteria that better specify how communities may be integrated economically, socially, and communally for the purposes of determining rural and nonrural status.

Timelines. The Board reviews rural determinations on a 10-year cycle, and out of cycle in special circumstances.

7. Should the Board review rural determinations on a 10-year cycle? If so, why? If not, why not?

Information sources. Current regulations state that population data from the most recent census conducted by the U.S. Census Bureau, as updated by the Alaska Department of Labor, shall be utilized in the rural determination process. The information collected and the reports generated during the decennial census vary between each census; as such, data used during the Board's rural determination may vary. These information sources as stated in regulations will continue to be the foundation of data used for rural determinations.

8. Do you have any additional sources you think would be beneficial to use?
9. In addition to the preceding questions, do you have any additional comments on how to make the rural determination process more effective?

Submit written comments by one of the following methods:

Mail: Federal Subsistence Board
Office of Subsistence Management – Attn: Theo Matuskowitz
1011 East Tudor Road, MS-121
Anchorage, AK 99503

E-mail: subsistence@fws.gov

Hand delivery to Designated Federal Official at any Federal Subsistence Regional Advisory Council meeting. See the Meetings and Deadlines page of the Federal

Subsistence Management Program's website, <http://alaska.fws.gov/asm/deadline.cfm>, for dates and locations of Council meetings.

You also may call the Office of Subsistence Management at 800-478-1456 or email subsistence@fws.gov with your questions.

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

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U.S. Fish and Wildlife Service
Bureau of Land Management
National Park Service
Bureau of Indian Affairs

Federal Subsistence Board News Release



Forest Service

For Immediate Release:

January 14, 2013

Contact:

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Call for Proposals to Change Federal Subsistence Hunting and Trapping Regulations

The Federal Subsistence Board is accepting proposals through March 29, 2013 to change Federal regulations for the subsistence harvest of wildlife on Federal public lands for the 2014-2016 regulatory years (July 1, 2014-June 30, 2016).

The Board will consider proposals to change Federal hunting and trapping seasons, harvest limits, methods of harvest, and customary and traditional use determinations. The Board will also accept proposals for individual customary and traditional use determinations from residents of national park and national monument resident zone communities, or those who already hold a Section 13.440 subsistence use permit.

Federal public lands include national wildlife refuges; national parks, monuments and preserves; national forests; national wild and scenic rivers; and national conservation and recreation areas. These lands also include Bureau of Land Management areas that are not part of the national conservation system. Federal subsistence regulations do not apply on State of Alaska lands, private lands, military lands, Native allotments, or Federal lands selected by the State of Alaska or Native corporations.

Submit proposals:

- **By mail or hand delivery**
Federal Subsistence Board
Office of Subsistence Management -- Attn: Theo Matuskowitz
1011 East Tudor Road, MS-121
Anchorage, AK 99503
- **At any Federal Subsistence Regional Advisory Council meeting**
See the Meetings and Deadlines page of the Federal Subsistence Management Program's website, <http://alaska.fws.gov/asm/deadline.cfml>, for dates and locations of Council meetings.
- **On the Web at <http://www.regulations.gov>**

Search for FWS-R7-SM-2012-0104, which is the docket number for this proposed rule.

You may call the Office of Subsistence Management at 800-478-1456 or email subsistence@fws.gov with your questions.

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

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Wildlife Regulatory Proposal

To change regulations during the two-year regulatory cycle, submit a request to change the regulations by providing the following information:

- Name
- Organization
- Address
- Phone
- Fax
- E-mail

1. What regulation do you wish to change? (*Include management unit number and species. Quote the current regulation if known. If you are proposing a new regulation, please state “new regulation.”*)

2. How should the new regulation read? (*Write the regulation the way you would like to see it written.*)

3. Why should this regulation change be made?

4. What impact will this change have on wildlife populations?

5. How will this change affect subsistence uses?

6. How will this change affect other uses, such as sport/recreational and commercial?
Please attach any additional information to support your proposal.

You may submit proposals/comments by one of the following methods:

Electronically: Go to the Federal eRulemaking Portal: <http://www.regulations.gov> and search for FWS–R7–SM–2012–0104, 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, or hand delivery to the Designated Federal Official attending any of the Federal Subsistence Regional Advisory Council public meetings. See “Regional Advisory Councils” (<http://alaska.fws.gov/asm/rac.cfml>) for additional information on locations and dates of the public meetings.

Development of Tribal Consultation Policy for the Federal Subsistence Board

Members of the Federal Subsistence board include:

Three at-large members appointed by Secretaries of the Interior & Agriculture

Regional Directors of:

Department of the Interior –

Bureau of Indian Affairs

Bureau of Land Management

Fish & Wildlife Service

National Park Service

Department of Agriculture –

Forest Service

Background:

The Alaska National Interest Lands Conservation Act (ANILCA) tasked the Board with the regulating, on behalf of the Secretaries, subsistence uses of fish and wildlife on Federal public lands in Alaska. ANILCA recognized the significance of subsistence in the lives of Alaska Natives and non-Natives (Sec. 801), established conservation system units and the priority for subsistence use over other uses on Federal public lands in Alaska (Sec. 802 and Sec. 804), and requires all Federal agencies to consider the impacts of authorized land use on subsistence users (Sec. 810). In January 2011, the Secretary of Interior directed the Federal Subsistence Board (Board) to consult with federally recognized Tribes in Alaska on actions that have a significant direct impact on tribal interests. As a result, the Board commenced the development of a Tribal Consultation Policy.

Summary of Board & Consultation Workgroup Actions:

- A workgroup formed, consisting of seven Federal and seven Tribal representatives, with one Federal and one Tribal co-chair. Members include:
 - Della Trumble, first Tribal Co-Chair Agdaagux Tribe of King Cove, King Cove Village Corporation
 - Crystal Leonetti, Co-Chair, US Fish & Wildlife Service
 - Rosemary Ahtuanguaruak, Current Tribal Co-Chair, Barrow/Nuiqsut
 - John W. Andrew, Organized Village of Kwethluk
 - Lillian Petershoare, US Forest Service
 - Jean Gamache, National Park Service
 - Nancy Swanton, National Park Service
 - Shawna Larson, Native Village of Chickaloon
 - Richard Peterson, Organized Village of Kasaan
 - Pete Probasco/Andrea Medeiros, Fish & Wildlife Service, Office of Subsistence Management
 - Brenda Takeshorse, Bureau of Land Management
 - George Carlson Yaska, Jr., Huslia/Fairbanks
 - Bobby Andrew, Native Village of Ekwok
 - Glenn Chen/Pat Petrivelli, Bureau of Indian Affairs

- New members added to the workgroup as a result of solicitation for nominations from all Tribes and ANCSA Corporations (June, 2012) and OSM hiring a Native Liaison (August, 2012)
 - Charles Ekak, Olgoonik Corporation of Wainwright
 - Cliff Adams, Beaver Kwit'chin Corporation
 - Gloria Stickwan, Ahtna, Inc.
 - Roy Ashenfelter, Bering Straits Native Corporation, Kawerak, Inc.
 - Gary Harrison, Chickaloon Native Village
 - Edward Rexford, Native Village of Kaktovik
 - Michael Stickman, Nulato Tribal Council
 - Jack Lorrigan, Office of Subsistence Management

- Over the period of 18 months:
 - the Board and workgroup conducted 16 consultation meetings with over 200 Tribes and more than 15 ANCSA corporations (there are 229 Tribes and about 200 ANCSA corporations in Alaska);
 - the workgroup met in person twice for two to three days each time and once by teleconference, and met twice with the Interagency Staff Committee (a committee made up of employees from each of the five federal agencies and from the Office of Subsistence Management); and
 - five letters were sent to all Tribes and ANCSA corporations from the Federal Subsistence Board Chairman, Tim Towarak, inviting comments on the policy. Nineteen written comments were received from Tribes and ANCSA corporations during policy development.

- The Board adopted the Tribal Consultation Policy on May 9, 2012. They directed the workgroup to commence writing “implementation guidelines” and an ANCSA corporation consultation policy for their consideration. The Workgroup is currently in development of those two documents and will use a similarly inclusive process.

Chronology:

May 2011 – The Board directed Crystal Leonetti to lead a federal-tribal workgroup in drafting a Policy on consultation.

Late May 2011 – A team of seven federal and seven tribal representatives formed, called the “Consultation Workgroup”.

June 2011 – The consultation workgroup met for three days. Tribal representatives elected a tribal co-chair, Della Trumble. Under the leadership of the co-chairs, the workgroup drafted a preamble for the policy as well as a consultation protocol to use for the federal subsistence wildlife regulations proposals for the fall cycle of Regional Advisory Council meetings and for the January 2012 Federal Subsistence Board meeting. The workgroup also developed a plan for consulting with Tribes at the BIA Tribal Service

Providers Conference in December 2011, and for consulting with ANCSA corporations at the annual Alaska Federation of Natives conference in October 2011.

July 2011 – Board Chair Tim Towerak sent a letter to all 229 federally recognized tribes and all regional and village ANCSA corporations inviting them to participate in the upcoming teleconference consultations on the federal subsistence wildlife regulations proposals. The letter also invited them to participate in the upcoming in-person consultation regarding drafting of the new Tribal consultation policy and ANCSA corporation consultation policy.

August-September 2011 – A series of 12 teleconference consultations were held, one for the tribes in each RAC region, and two for ANCSA corporations which were available to corporations statewide. These teleconferences were focused on the federal subsistence wildlife regulation proposals as well as the new consultation policies.

October 2011 – In-person consultation on the draft policy with (did we also have teleconference?) Tribes and ANCSA corporations during the Alaska Federation of Natives conference.

December 2011 – In-person consultation on the draft policy with Tribes during the Bureau of Indian Affairs Tribal Service Providers conference in Anchorage. At least 300 people representing over half of the 229 Tribes were present. Additionally, Board members from F&WS, NPS, Forest Service, BIA, BLM and at-large member Tim Towarek were present

December 2011 – The Workgroup met for two days to develop the tribal consultation policy based on the comments received during consultations and on written recommendations from Tribes and ANCSA corporations. The Workgroup met for a third day with the Regional and State directors of the five federal agencies to review the draft policy and gain direction for future action related to specific aspects of the draft policy.

January 2012 – Workgroup co-chairs Leonetti and Trumble presented the Draft Tribal Consultation Policy to the Board. The Board approved the draft language and supported the Workgroup in providing this draft to all Tribes and ANCSA corporations and to the Regional Advisory Councils for their review and comment.

January-March 2012 – Regional Advisory Councils reviewed the draft policy and provided feedback to the workgroup.

February 2012 – A letter was sent to Tribes and ANCSA corporations from Board Chairman Tim Towerak to ask for their comment on the draft policy.

April 2012 – The Workgroup met to review and incorporate changes based on feedback from Tribes, ANCSA corporations, and Regional Advisory Councils.

May 2012 – The consultation workgroup co-chairs Leonetti and Trumble presented the Draft Tribal Consultation Policy to the Board. The Board discussed and unanimously approved the adoption of the Policy!

June 2012 – Board Chairman Tim Towerak sent a letter to all Tribes and ANCSA corporations providing them with the adopted policy and soliciting nominations for more members on the Workgroup. Additional members were needed from ANCSA corporations since their input is needed in drafting a supplemental policy for ANCSA corporations.

August- December 2012 – The Workgroup sought input and guidance from field-level managers from each of the five agencies, and the Interagency Staff Committee to further develop the draft guidelines.

January 2013 – the Workgroup met, improved the draft guidelines, and prepared for the Winter Federal Subsistence Board meeting. The Tribal and ANCSA representatives nominated and elected a new Tribal Co-Chair, Rosemary Ahtuangaurak, who is on the North Slope RAC and has been on the Workgroup since its inception.

January 2013 – Federal Subsistence Board gave minor edits to the guidelines.

February-April 2013 – Guidelines, with letter from Chair Tim Towarak, was sent to all Tribes for review and feedback. Guidelines and short summary were provided to RACS for review and feedback.

Government-to-Government Tribal Consultation Policy

“Tribes and Alaska Native peoples have been this lands’ first conservationists and first multiple use land managers.” - Lillian Petershoare, Workgroup Member, United States Forest Service

Federal Subsistence Board

Government-to-Government Tribal Consultation Policy

Preamble

The Federal Subsistence Board (Board) recognizes that indigenous Tribes of Alaska are spiritually, physically, culturally, and historically connected to the land, the wildlife and the waters. These strong ancestral ties to the land, wildlife and waters are intertwined with indigenous ceremonies such as songs, dances, and potlatches. The customary and traditional way of life has sustained the health, life, safety, and cultures of Alaska Native peoples since time immemorial. To effectively manage the Federal Subsistence Program, the Board will collaborate and partner with Federally recognized Tribes in Alaska to protect and provide opportunities for continued subsistence uses on public lands.

The United States has a unique legal and political relationship with Indian tribal governments, which has been established through and confirmed by the Constitution of the United States, statutes, executive orders, judicial decisions and treaties. In recognition of that special relationship, and pursuant to direction given by the Secretaries of the Interior and Agriculture to implement Executive Order 13175 of November 2000, “Consultation and Coordination with Indian Tribal Governments,” and to meet the requirements of the Presidential Memorandum of November 5, 2009, “Tribal Consultation,” the Board is developing this Government-to-Government Tribal Consultation Policy. This Policy sets out the Board’s responsibility to engage in regular and meaningful consultation and collaboration with Federally recognized Indian Tribes in Alaska on matters that may have substantial effects on them and their members. This Policy also upholds the Congressional mandate to implement the provisions of the Alaska National Interest Lands Conservation Act (ANILCA) of 1980, P.L. 66-487, which, with its implementing regulations, defines the roles and responsibilities of the Departments of the Interior and Agriculture in administering subsistence management of fish and wildlife on Federal public lands.

Government-to-government consultation undertaken through the Board’s process is a direct two-way communication conducted in good faith to secure meaningful participation in the decision-making process to the full extent allowed by law. The Board will consider and respond to the Tribes’ concerns brought forth through the consultation process (as defined in this policy) before making final decisions.

Two Department-level consultation policies provide the foundation for this policy. They are the Department of the Interior’s *Policy on Consultation with Indian Tribes (2011)* and the Department of Agriculture’s *2010 Action Plan for Consultation and Collaboration*. This policy is consistent with the

Government-to-Government Tribal Consultation Policy

Department-wide consultation policies, and it expands on them to apply the policies to the Federal subsistence management program.

The intent of this policy is to describe a framework under which the Board and Federally recognized Tribes in Alaska may consult on ANILCA Title VIII subsistence matters under the Board's authority.

Background

The Federal Subsistence Program, as established by ANILCA and implemented by the Secretaries of the Interior and Agriculture, is a multi-agency program consisting of five agencies: Bureau of Indian Affairs, Bureau of Land Management, U.S. Forest Service, National Park Service, and U.S. Fish and Wildlife Service. These bureaus and rural subsistence users maintain the opportunity for a subsistence way of life by rural Alaskans on Federal public lands while managing for healthy populations of fish and wildlife. The Federal Subsistence Regional Advisory Councils have a foundational role in the Federal Subsistence Program. By statute, the Board must defer to Federal Subsistence Regional Advisory Council recommendations related to the taking of fish and wildlife on public lands unless they are: a) not supported by substantial evidence, b) violate recognized principles of fish and wildlife conservation, or c) would be detrimental to the satisfaction of subsistence needs (ANILCA § 805(c)). The Board distinguishes the deference to Federal Subsistence Regional Advisory Councils from the Tribal government-to-government relationship enjoyed by Federally recognized Tribes, and this Policy will not diminish in any way either the consultation obligations towards Federally recognized Tribes or its deference obligations to the Federal Subsistence Regional Advisory Councils.

The Federal Subsistence Management Program regulations are published twice in the Code of Federal Regulations (CFR): 50 CFR Part 100 and 36 CFR Part 242. The regulations have four subparts. Subparts A and B are within the sole purview of the Secretaries of the Department of the Interior and the Department of Agriculture. Responsibility and decisions relating to the provisions of Subparts C and D are delegated by the Secretaries to the Federal Subsistence Board. Subpart C concerns Board Determinations, including rural and customary and traditional use determinations, while subpart D consists of the regulations for taking fish, wildlife and shellfish.

Goals

The goals of the Federal Subsistence Management Program are to:

1. Create and maintain effective relationships with Federally recognized Tribes in Alaska.
2. Establish meaningful and timely opportunities for government-to-government consultation.
3. Be responsive to requests from Federally recognized Tribes in Alaska to engage in consultation.
4. Work with Federally recognized Tribes in Alaska to improve communication, outreach and education.
5. Acknowledge, respect and use traditional ecological knowledge.
6. Recognize the importance of coordination, consultation and follow-up between the Federal Subsistence Board and Federally recognized Tribes in Alaska.

Government-to-Government Tribal Consultation Policy

7. Integrate tribal input effectively into the decision-making process for subsistence management on public lands and waters while maintaining deference to the Federal Subsistence Regional Advisory Councils.

Consultation

1. Communication

It is the Board's intention that information sharing between Tribes and the Board/Federal staff will occur early and often. Information sharing includes, but is not limited to, sharing of traditional knowledge, research and scientific data. Communication between the Federal agencies and Tribes will occur in a timely manner to maximize opportunities to provide input to the Board's decisions. For in-season management decisions and special actions, consultation is not always possible, but to the extent practicable, two-way communication will take place before decisions are implemented. When Tribes bring up issues over which the Board does not have jurisdiction, the Board and Federal staff will provide Tribes with contact information for the state or Federal agency that can address the issue and will also provide the tribes' contact information to the relevant state or Federal agency

2. Roles and Responsibilities

Board members are responsible for implementing this policy and ensuring its effectiveness. The Native Liaison in the Office of Subsistence Management is the key contact for the Board's consultations with Tribes. The Native Liaison will also assist Federal land managers and Tribes with their consultations, as requested and as needed. Federal land managers and staff have a local relationship with Tribes and will maintain effective communications and coordination.

3. Topics for consultation are listed under the definition for "Action with Tribal Implications." They may include, but are not limited to:

- Regulations (e.g., taking of fish, wildlife and shellfish - harvest amounts, methods and means, cultural and educational permits and funerary/mortuary ceremonies; emergency and temporary special actions; customary and traditional use determinations and customary trade)
- Policies and guidance documents [Note: this is consistent with page 3 "Definitions" of DOI Policy "Departmental Action with Tribal Implication".]
- Budget and priority planning development [Note: this is consistent with page 16 USDA Action Plan for Tribal Consultation and Collaboration (Nov 2009) and page 3 "Definitions" of DOI policy – "Departmental Action with Tribal Implication" – specifically "operational activity".]
- Agreements (e.g. Cooperative Agreements, Memorandum of Understanding, Funding Agreements)

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4. Timing

Timing of consultation will respect both the Federal subsistence management cycle and the Tribal timeframes for doing business. The requirement of early notification, methods of notice, availability of Federal analyses and time and place of Federal Subsistence Regional Advisory Council meetings and Board meetings are described in Appendix A of the “Federal Subsistence Consultation Implementation Guidelines.” A chart showing the Federal subsistence management cycle is in Appendix B of the same document

5. Methods

No single formula exists for what constitutes appropriate consultation. The planning and implementation of consultation will consider all aspects of the topic under consideration. The Board will be flexible and sensitive to Tribal cultural matters and protocols. Familiarity with and use of Tribes’ constitutions and consultation protocols will help ensure more effective consultation. Consultation may be prompted by a Federally recognized Tribe in Alaska or by the Board. Methods for correspondence, meetings, and communication are further described in Appendix A: “Federal Subsistence Consultation Implementation Guidelines.”

Accountability and Reporting

The Board will monitor consultation effectiveness and report information to the Secretaries, pursuant to the Department of the Interior and Department of Agriculture policies. On an annual basis, the Board will evaluate whether the policy has been implemented and is effective and what progress has been made towards achieving the seven goals outlined in this policy. The Board will actively seek feedback from Federally recognized Tribes in Alaska on the effectiveness of consultation, and the Board’s evaluation will summarize and reflect this feedback. The Board will modify the consultation process to incorporate needed enhancements, as identified through the annual review. The Board will provide Tribes an oral and written summary of the evaluation and changes, if any, in Board meetings with Tribes.

Training

Training on this policy for Federal staff will conform to the requirements of the Department of the Interior and Department of Agriculture consultation policies. The Board recognizes the unique traditional values, culture and knowledge that Tribes can impart and shall incorporate Tribes into the training for the Board and staff. The Board will accompany subsistence users in the field to gain direct experience in traditional Alaska Native hunting and fishing activities. In addition, Federal Subsistence Management training will be offered to representatives of Tribal governments and Tribal members on a regular basis as funding allows. A list of possible venues for training is included in Appendix C: “Venues for Training.”

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Alaska Native Corporation Consultation

Refer to the supplemental policy for consultation with Alaska Native Claims Settlement Act (ANCSA) corporations.

Adopted by the Board on May 9, 2012

Government-to-Government Tribal Consultation Policy

Definitions

Action with Tribal Implications – Any Board regulations, rulemaking, policy, guidance, legislative proposal, grant funding formula changes, or operational activity that may have a substantial effect on an Indian Tribe in Alaska.

Alaska National Interest Lands Conservation Act of 1980 (ANILCA) – Title VIII of the Act provides for the protection and continuation of subsistence uses of fish and wildlife by rural Alaskans on Federal public lands.

ANCSA Corporations – As defined in 43 U.S.C. § 1606, those regional and village corporations formed by Congress through the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 et seq., to provide for the settlement of certain land claims of Alaska Natives.

Consensus Agenda – The Federal Subsistence Board’s consensus agenda is made up of regulatory proposals for which there is agreement among the affected Regional Advisory Councils, a majority of the Interagency Staff Committee members, and the Alaska Department of Fish and Game concerning a proposed regulatory action. Anyone may request that the Board remove a proposal from the consensus agenda and place it on the non-consensus (regular) agenda. The Board votes on the consensus agenda after deliberation and action on all other proposals.

Consultation – The process of effective and meaningful government-to-government communication and coordination between the appropriate Federal agency and Tribe(s) conducted before the Federal government takes action or implements decisions that may affect Tribes.

Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) – Requires regular and meaningful consultation and collaboration with Tribal officials in the development of Federal policies that have Tribal implications to strengthen the United States government-to-government relationships with Indian Tribes, and to reduce the imposition of unfunded mandates upon Indian Tribes.

Federal Subsistence Board – The Board administers the subsistence taking and uses of fish and wildlife on public lands and exercises the related promulgation and signature authority for regulations of subparts C and D. The voting members of the Board are: a Chair, appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture; two public members appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture who possess personal knowledge of and direct experience with subsistence uses in rural Alaska; the Alaska Regional Directors of the U.S. Fish and Wildlife Service, National Park Service, and Bureau of Indian Affairs; the Alaska Regional Forester of the U.S. Forest Service; and, the Alaska State Director, Bureau of Land Management.

Federally Recognized Tribe in Alaska – Any Alaska Native Tribe, band, nation, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. §479a.

Interagency Staff Committee (ISC) – The ISC is made up of senior staff from the National Park Service, U.S. Fish and Wildlife Service, Bureau of Indian Affairs, Bureau of Land Management, and USDA Forest Service. The ISC members serve as the primary advisors for their agency’s respective Board member.

Office of Subsistence Management (OSM) – The OSM provides support to the Federal Subsistence Board and the Federal Subsistence Regional Advisory Councils. The staff includes fish and wildlife biologists, cultural anthropologists, technical and administrative staff, an Alaska Native liaison and liaisons to the Alaska Department of Fish and Game, and the Alaska Boards of Fish and Game.

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Regional Advisory Councils – Title VIII of ANILCA provides a foundational role for the ten Regional Advisory Councils in the development of regulations guiding the taking of fish and wildlife on Federal public lands in Alaska. Council members, a majority of whom are rural subsistence users, are appointed by the Secretary.

Special Action – An out-of-cycle change in the seasons, harvest limits or methods and means of harvest. The two types include: 1) emergency, which are effective for up to 60 days, and 2) temporary, which are effective for the remainder of the regulatory cycle.

List of Appendices

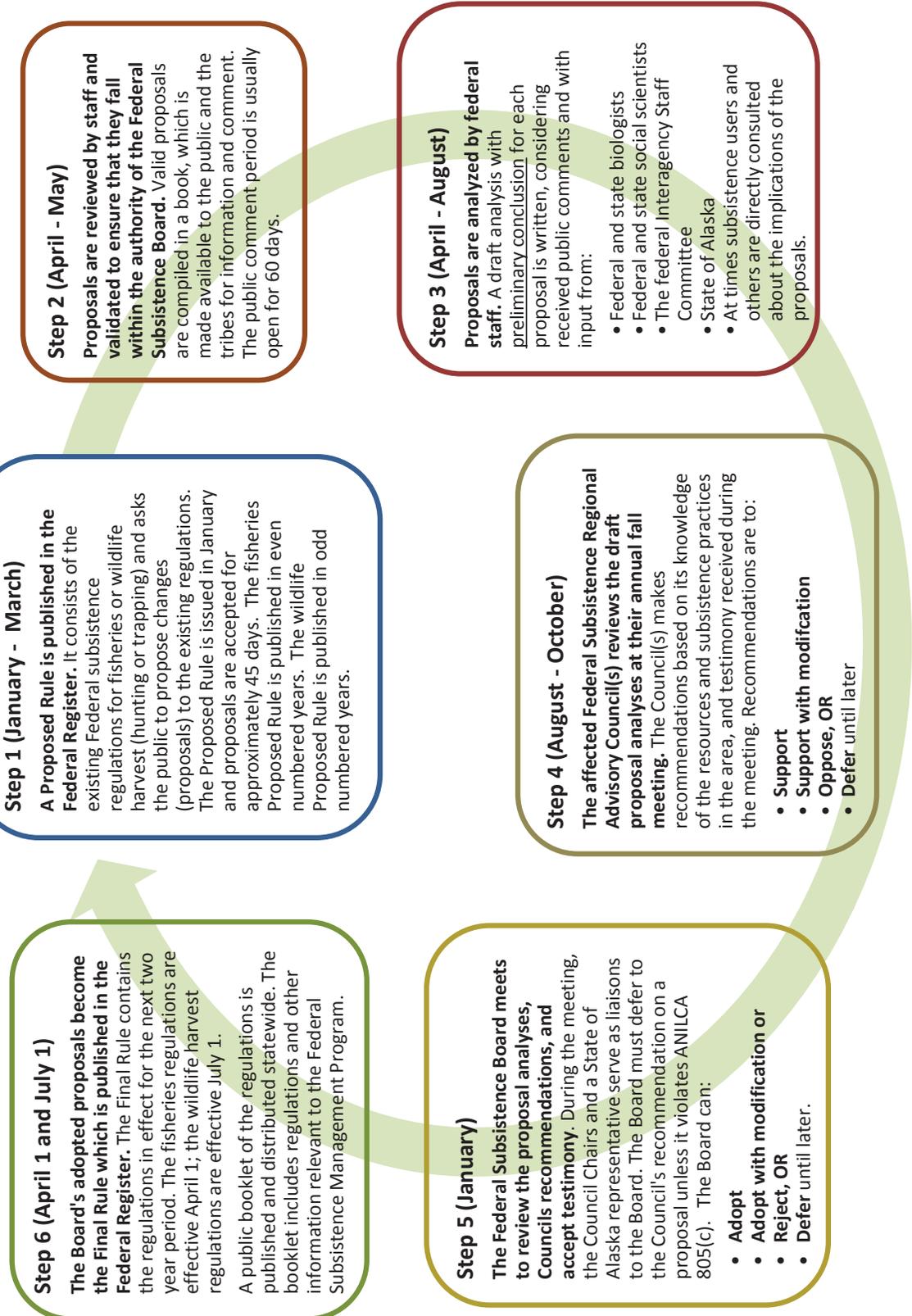
APPENDIX A: Federal Subsistence Consultation Implementation Guidelines

APPENDIX B: Federal Subsistence Management Cycle

APPENDIX C: Venues for FSMP Training



Appendix B FEDERAL SUBSISTENCE MANAGEMENT PROGRAM ANNUAL REGULATORY PROCESS AT A GLANCE



Step 6 (April 1 and July 1)
 The Board's adopted proposals become the Final Rule which is published in the Federal Register. The Final Rule contains the regulations in effect for the next two year period. The fisheries regulations are effective April 1; the wildlife harvest regulations are effective July 1.
 A public booklet of the regulations is published and distributed statewide. The booklet includes regulations and other information relevant to the Federal Subsistence Management Program.

Step 1 (January - March)
 A Proposed Rule is published in the Federal Register. It consists of the existing Federal subsistence regulations for fisheries or wildlife harvest (hunting or trapping) and asks the public to propose changes (proposals) to the existing regulations. The Proposed Rule is issued in January and proposals are accepted for approximately 45 days. The fisheries Proposed Rule is published in even numbered years. The wildlife Proposed Rule is published in odd numbered years.

Step 2 (April - May)
 Proposals are reviewed by staff and validated to ensure that they fall within the authority of the Federal Subsistence Board. Valid proposals are compiled in a book, which is made available to the public and the tribes for information and comment. The public comment period is usually open for 60 days.

Step 5 (January)
 The Federal Subsistence Board meets to review the proposal analyses, Councils recommendations, and accept testimony. During the meeting, the Council Chairs and a State of Alaska representative serve as liaisons to the Board. The Board must defer to the Council's recommendation on a proposal unless it violates ANILCA 805(c). The Board can:
 • Adopt
 • Adopt with modification or
 • Reject, OR
 • Defer until later.

Step 4 (August - October)
 The affected Federal Subsistence Regional Advisory Council(s) reviews the draft proposal analyses at their annual fall meeting. The Council(s) makes recommendations based on its knowledge of the resources and subsistence practices in the area, and testimony received during the meeting. Recommendations are to:
 • Support
 • Support with modification
 • Oppose, OR
 • Defer until later

Step 3 (April - August)
 Proposals are analyzed by federal staff. A draft analysis with preliminary conclusion for each proposal is written, considering received public comments and with input from:
 • Federal and state biologists
 • Federal and state social scientists
 • The federal Interagency Staff Committee
 • State of Alaska
 • At times subsistence users and others are directly consulted about the implications of the proposals.

Implementation Guidelines

for the

Federal Subsistence Board Government-to-Government Tribal Consultation Policy

This document provides federal staff additional guidance on the Federal Subsistence Management Program's Tribal Consultation Policy.

REGULATORY PROCESS: The Federal Subsistence Board (Board) is committed to providing Federally Recognized Tribes with the opportunity to be meaningfully involved in the wildlife and fisheries regulatory process. On an annual basis, the Board accepts proposals to change wildlife or fisheries regulations on seasons, harvest limits, methods and means and customary and traditional use determinations. In some instances, regulations are modified in-season, and that is typically accomplished through in-season or special actions taken by either the Board or the relevant land manager. The Board will provide Tribes with the opportunity to consult on the regulatory process, which includes proposal development and review, proposal analysis and review, and decision making by the Board. The process for such involvement is described below.

Tribes must be given the opportunity to consult throughout the Federal Subsistence Management process when a "departmental action with tribal implications"¹ is taken. A regulatory proposal is potentially a departmental action with tribal implications. As information becomes available which changes the recommendations or potential decision on a proposal, affected Tribes will be notified.

Tribal Officials are elected or appointed Tribal leaders or officials designated in writing by a federally recognized Tribe to participate in government-to-government consultations. Federal Officials are those individuals who are knowledgeable about the matters at hand, are authorized to speak for the agency and/or Board, and exercise delegated authority in the disposition and implementation of a federal action.

Step² 1.A.: Call for Proposals (January – March): This step is where changes to fish or wildlife harvesting regulations (seasons, harvest limits, methods and means and customary and traditional use determinations) can be offered. Office of Subsistence Management (OSM) staff or land managers can assist Tribes in developing proposals.

Federal Agencies Contacts representatives of affected Tribes, when possible, prior to submitting regulatory proposals.

OSM Sends a return receipt letter to Tribes:

- announcing the call for proposals and describing what this means;
- providing an overview and timeline of the annual Federal Subsistence

¹ Department of Interior Policy on Tribal Consultation

² Steps in these guidelines correspond to the steps in the Board's Tribal Consultation Policy *Appendix B: Federal Subsistence Management Program Annual Regulatory Process at a Glance*.

Regulatory process;

- providing name and contact information for OSM staff who can provide assistance in reviewing and developing proposals.

Step 1.B.: Federal Subsistence Regional Advisory Council (RAC) Meetings: (Winter Meetings February-March): During these meetings, the RACs develop proposals to change subsistence regulations. The Tribes have the opportunity to work with the RACs to draft proposals.

OSM Sends public notice to all Tribes announcing all RAC meetings.

- If available, teleconference information is included in announcements and posted to the Federal Subsistence Management Program’s website.

Arranges teleconference line for RAC meeting(s) so Tribes can participate in the RAC meetings. Tribes may discuss proposals with the RACs and relevant federal staff.

Posts meeting materials on the Federal Subsistence Management Program’s website so Tribes can review the materials.

Coordinates with Interagency Staff Committee and Tribal representatives to draft summary reports on Tribal Consultations (if any have taken place since the fall RAC meetings). These written summaries are provided to the RACs. Tribal representatives are encouraged to share in delivery of this report.

Step 2-3: Review of Regulatory Proposals (April-May) Once the Proposals are received by OSM, they are compiled into a book that includes all proposals from throughout Alaska. Tribes will have the opportunity to review the proposals.

OSM Sends Tribes the proposal book with a link to the Federal Subsistence Management Program website, and a description of the process schedule. Name and contact information for OSM staff will be included in the proposal book.

Coordinates with appropriate Federal staff to notify Tribes if a particular proposal might impact them.

If Tribe(s) is interested in consulting at this step, they should contact OSM Native Liaison and discuss course of action.

STEP 3: Proposal Analysis (April – August): Each of these proposals will be analyzed by agency staff to determine their effects on the resource, other resources, other users, etc.

OSM Draft analyses will be made available to Tribes one month prior to RAC meetings.

One or more teleconferences will be scheduled to provide consultation open to all Tribes to discuss all proposals.

Step 4: Federal Subsistence Regional Advisory Council (RAC) Meetings (Fall meetings August - October): During these meetings, RACs develop recommendations on the proposal based on their review of the analysis, knowledge of the resources and subsistence practices in the area, testimony received during the meeting, and Tribal input.

OSM Sends public notice to all Tribes announcing all RAC meetings, including teleconference information if available.

Arranges teleconference line for RAC meeting(s) so that Tribes can participate. Tribes may discuss proposals with the RACs, and appropriate federal staff.

Posts meeting materials and teleconference information on the Federal Subsistence Management Program's website so that the Tribes can review the materials.

Coordinates reports on prior Tribal consultations during the regulatory cycle to the RACs, and encourages Tribal representatives to share in delivery of this report.

A written summary of relevant consultations will be provided to RACs.

Step 5: Federal Subsistence Board Meeting (January): This is where the Board reviews the staff analyses, considers recommendations provided by the RACs, input provided by the State, consults with Tribes, and makes a decision as to whether to adopt, reject, defer, or take no action on each proposed change to the subsistence regulations. Tribal Consultation will occur at the Board meeting in person or via telephone.

OSM Sends meeting announcement to Tribes, including teleconference call information.

Posts meeting materials on the Federal Subsistence Management Program's website so that Tribes can review the materials before the meeting.

During the meeting, OSM staff and/or Tribal representatives will report on the results of prior Tribal consultations.

Following the meeting, OSM will send notification on meeting results to the Tribes. Tribes who consulted on proposals will be notified of the outcome by telephone.

In-Season Management and Special Actions (Emergency and Temporary): Because the regulatory process occurs on a bi-annual basis (fish one year, wildlife the next), sometimes issues come up that

require immediate action; these actions may be taken as needed to address harvest regulations outside of the normal regulatory process.

In-season management actions and decisions on Special Action requests usually require a quick turnaround time and consultation may not be possible. When possible, in-season and land managers will work with Tribes that are directly affected by a potential action prior to taking action. Regular public meeting requirements are followed for special actions that would be in effect for 60 days or longer. Tribes will be notified of actions taken.

Other:

Consultation on non-regulatory issues will be considered by the Federal Subsistence Board on a case-by-case basis.

Training: The Board's policy directs that the Federal Subsistence Management Program follow the Department of the Interior and Agriculture's policies for training of Federal staff.

- OSM staff will work with the ISC to develop training modules on the subsistence regulatory process, customary & traditional use determinations, rural versus non rural criteria, proposal development, Tribal consultation, and the federal budget process. Additionally, OSM staff will work with the ISC and agency Tribal liaisons to develop a training module that federal staff can deliver at regional Tribal meetings (see Appendix C of the FSB's Tribal Consultation Policy) and to interested Tribal councils.
- Other entities responsible for management of subsistence resources, such as marine mammals, migratory birds, halibut, etc. should be invited to the trainings.
- Board members should make every opportunity to directly participate in or observe subsistence activities.
- Board members, OSM, ISC, & Federal Land Management Staff directly involved in Tribal consultation as part of their work responsibilities are recommended to attend regional cross-cultural training to learn the unique communication and cultural protocols of the Tribes with which they interact.

Recommended Training Topics for Federal Staff and Tribal Citizens

- Alaska Native identity, language, cultures, traditions, history, and differences
- Alaska Native perspectives on natural resource management
- Customary and Traditional relationship to land, water, and wildlife
- Tribal Government
- Effects of colonialism on Alaska Native peoples
- Alaska National Interest Lands Conservation Act subsistence provisions
- Natural resource law, especially pertaining to fisheries and wildlife management and conservation

- Subsistence regulations
- Federal subsistence regulatory process
 - Special actions
 - In-season management
 - Customary and traditional use determinations
- Rural Determinations
- Jurisdiction (State of Alaska/Federal Government/Tribal)
- Relevant information about Tribe(s), including history of Tribal interactions with the United States government, Tribal constitutions, and traditional knowledge
- Foundations of the government-to-government relationship and trust responsibility within Federal Indian law as expressed through the U.S. Constitution, U.S. Code, Supreme Court decisions, and executive actions.
- Tribal and Federal consultation policies
- Wildlife and fisheries monitoring, including the Fisheries Resource Monitoring Program
- Co-management or shared stewardship opportunities

Accountability, Reporting, and Information Management

- 1) **Tribal Contact Information:** Department of the Interior (DOI) employees will utilize the DOI Tribal Consultation SharePoint site contact list. U.S. Department of Agriculture (USDA) employees will utilize the Forest Service contact database.
- 2) **Tracking Consultations:** USDA has a consultation database which tracks Forest Service Tribal consultations. Office of Subsistence Management and DOI employees shall utilize the DOI Tribal Consultation SharePoint site database to track and record consultations.
- 3) **Report on Consultations** annually as required by DOI and USDA consultation policies. The OSM Native Liaison provides a summary report annually to the Board on Federal Subsistence Management Program consultations and notes any feedback received from Tribes regarding the policies and the implementation of them.
- 4) **Review of the Tribal Consultation Policy:** Annually, the Consultation Workgroup, OSM Native Liaison, land managers, and ISC should assess the effectiveness of the Tribal Consultation Policy. The Workgroup will report to the Board at its annual winter meeting.
- 5) **Follow-up to Consultations at the Federal Subsistence Board Meeting:** OSM is responsible to follow up on action items from Tribal Consultations at Federal Subsistence Board meetings. Post-Board meeting follow-up includes notification to Tribes of Board actions.



Appendix B FEDERAL SUBSISTENCE MANAGEMENT PROGRAM ANNUAL REGULATORY PROCESS AT A GLANCE



Step 6 (April 1 and July 1)

The Board's adopted proposals become the Final Rule which is published in the Federal Register. The Final Rule contains the regulations in effect for the next two year period. The fisheries regulations are effective April 1; the wildlife harvest regulations are effective July 1.

A public booklet of the regulations is published and distributed statewide. The booklet includes regulations and other information relevant to the Federal Subsistence Management Program.

Step 5 (January)

The Federal Subsistence Board meets to review the proposal analyses, Councils recommendations, and accept testimony. During the meeting, the Council Chairs and a State of Alaska representative serve as liaisons to the Board. The Board must defer to the Council's recommendation on a proposal unless it violates ANILCA 805(c). The Board can:

- Adopt
- Adopt with modification or
- Reject, OR
- Defer until later.

Step 1 (January - March)

A Proposed Rule is published in the Federal Register. It consists of the existing Federal subsistence regulations for fisheries or wildlife harvest (hunting or trapping) and asks the public to propose changes (proposals) to the existing regulations. The Proposed Rule is issued in January and proposals are accepted for approximately 45 days. The fisheries Proposed Rule is published in even numbered years. The wildlife Proposed Rule is published in odd numbered years.

Step 2 (April - May)

Proposals are reviewed by staff and validated to ensure that they fall within the authority of the Federal Subsistence Board. Valid proposals are compiled in a book, which is made available to the public and the tribes for information and comment. The public comment period is usually open for 60 days.

Step 3 (April - August)

Proposals are analyzed by federal staff. A draft analysis with preliminary conclusion for each proposal is written, considering received public comments and with input from:

- Federal and state biologists
- Federal and state social scientists
- The federal Interagency Staff Committee
- State of Alaska
- At times subsistence users and others are directly consulted about the implications of the proposals.

Step 4 (August - October)

The affected Federal Subsistence Regional Advisory Council(s) reviews the draft proposal analyses at their annual fall meeting. The Council(s) makes recommendations based on its knowledge of the resources and subsistence practices in the area, and testimony received during the meeting. Recommendations are to:

- Support
- Support with modification
- Oppose, OR
- Defer until later

Southeast Alaska Subsistence Regional Advisory Council

January 22, 2013

Customary and Traditional Use Determination Recommendation Briefing

Issue:

The Southeast Alaska Subsistence Regional Advisory Council (SE Council) does not agree that the current method of restricting access to fish and wildlife resources through a customary and traditional use determination process was intended in ANILCA.

Although SE Council recognizes that there are a number of possible solutions, its preferred solution is to eliminate the customary and traditional use determination regulations (36 CFR 242.16 and 50 CFR 100.16) and allocate resources as directed in Section 804 of ANILCA.

Background:

The current regulations on the Federal customary and traditional use determination process, including the eight factors, were based on pre-existing State regulations. The Federal program adopted this framework, with some differences, when it was thought that Federal subsistence management would be temporary.

The primary purpose of customary and traditional use determinations by the State is to limit the subsistence priority by adopting "negative" determinations for specific fish and wildlife species in specific areas. The customary and traditional use determination process is also used to establish non-subsistence use areas where no species are eligible for subsistence use.

A "positive" customary and traditional use determination in State regulations recognizes subsistence use and provides residents with a legal protection to engage in priority subsistence activities.

Unlike the State process, in which some lands are excluded from subsistence use (nonsubsistence use areas), most Federal public lands are available for subsistence use by rural residents (with some exceptions).

The Federal program uses the customary and traditional use determination process to restrict which rural residents can participate in subsistence. The abundance of fish or wildlife is not a factor in deciding which rural residents can participate in subsistence and some residents may be restricted in times of abundance.

The Federal customary and traditional use determination process is actually a means of closing an area to some rural residents, but there are no provisions for periodic review of this action similar to the review policy on other closures.

A draft policy on customary and traditional use determinations was subject to public comment during the fall 2007 Regional Advisory Council meeting window. The Federal Subsistence Board decided not to take action on the policy in March of 2008.

In October of 2009, Secretary of the Interior Ken Salazar announced that there would be “a review of the Federal subsistence program to ensure that the program is best serving rural Alaskans and that the letter and spirit of Title VIII are being met.”

In a detailed report from the U.S. Department of the Interior in September 2009, the Secretary of the Interior, with concurrence of the Secretary of Agriculture, directed the Federal Subsistence Board to do several tasks:

The first relevant task was to “review, with RAC input, federal subsistence procedural and structural regulations adopted from the state in order to ensure federal authorities are fully reflected and comply with Title VIII (changes would require new regulations).”

The second relevant task was to “review customary and traditional determination process to provide clear, fair, and effective determinations in accord with Title VIII goals and provisions (changes would require new regulations).”

In a letter to Mr. Tim Towarak in December 2010, Secretary of the Interior Ken Salazar requested that the FSB “review, with RAC input, the customary and traditional use determination process and present recommendations for regulatory changes.”

In their 2011 Annual Report, the SE Council suggested that the Board consider modifying current regulations to be more representative of the way people use subsistence resources. The SE Council suggested the following specific regulatory change:

*Modify 50 CFR 100.16 (a). The regulation should read: “The Board shall determine which fish and wildlife have been customarily and traditionally used for subsistence. These determinations shall identify the specific community’s or area’s use of ~~{specific fish stocks and wildlife populations}~~ **all species of fish and wildlife that have been traditionally used, in their (past and present) geographic areas.**”*

In the Annual Report reply, the Board encouraged the SE Council to develop recommendations in a proposal format for additional review. The Office of Subsistence Management pledged staff assistance if the Council wished to pursue the matter further.

During the March 2012 meeting in Juneau, an update on the Secretarial Review stated that nine Councils felt the customary and traditional use determination process was adequate and only the SE Council had comments for changes to the process.

The SE Council formed a workgroup to review materials and provide a report on the issue during the March 2012 SE Council meeting and develop a recommendation for consideration by the SE Council at the September 2012 meeting.

Southeast Council Findings:

An eight factor framework for Federal customary and traditional use determination analysis was first adopted by the Alaska Board of Fisheries and is not found in ANILCA.

Although there are clearly some instances where it is appropriate to provide a preference to local residents (for instance, an early start to the moose season in Yakutat), the SE Council has a history of recommending customary and traditional use determinations for a large geographic area.

When necessary, the Federal Subsistence Board can restrict who can harvest a resource by applying ANILCA Section 804 criteria:

- Customary and direct dependence upon the populations as the mainstay of livelihood;
- Local residency; and
- The availability of alternative resources.

The ANILCA Section 804 process is a management tool that allows seasons on Federal public lands and waters to remain open to all rural residents until there is a need to reduce the pool of eligible harvesters.

Replacing the Federal customary and traditional use determination eight factors with ANILCA Section 804 three criteria may be a preferred method of restricting who can harvest a resource.

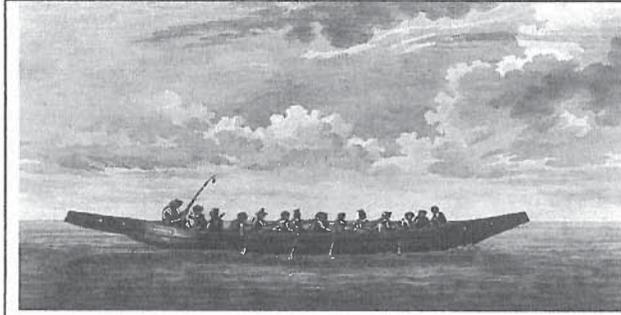
Action:

In January 2013, the SE Council sent a letter to the other Federal regional advisory councils regarding the deficiencies in the current customary and traditional use determination process. This letter asks the other councils to review, during their fall 2013 meetings, whether the process is serving the needs of the residents of their region and report their findings to the SE Council. If it is the desire of the other councils, a proposal for amending or eliminating current regulations could be developed for consideration by all the councils.

Key Contacts:

Bert Adams, Chair SE Council – 907-784-3357

Robert Larson – SE Council Coordinator – 907-772-5930



**Southeast Alaska Subsistence Regional
Advisory Council**

Bertrand Adams Sr., Chair
P. O. Box 349
Yakutat, Alaska 99689

kaadashan@alaska.net

RAC SE13001.RL

JAN 11 2013

Mr. Speridon M. Simeonoff, Sr., Chair
Kodiak Aleutians Alaska Subsistence
Regional Advisory Council
P.O. Box 5008
Akhiok, Alaska 99615

Dear Mr. Simeonoff:

During the spring of 2011, pursuant to the Secretarial Review of the Federal Subsistence Program, the Federal Subsistence Board (Board) sought input from the Federal Subsistence Regional Advisory Councils (Councils) on the current customary and traditional use determination process. The Board subsequently reported to the Secretaries that 9 of the 10 Councils thought the process was working. The Southeast Alaska Subsistence Regional Advisory Council (SE Council) does not agree that the process is being implemented as intended in the Alaska National Interest Lands Conservation Act (ANILCA). We are asking your Council to review your evaluation of the current customary and traditional use determination process (36 CFR 242.16 and 50 CFR 100.16) and join with us in crafting a petition to the Secretaries to address deficiencies in the current regulations. The SE Council's preferred solution is to eliminate the customary and traditional use determination regulations and allocate resources as directed in Section 804 of ANILCA.

The SE Council has formed a workgroup to assist us in evaluating the current customary and traditional use determination process. The workgroup reviewed the 2007 draft Customary and Traditional Use Determination Policy, the public comments to this policy, the 2011 transcripts from all 10 Council meetings, and the 2012 Board transcripts where each of the Councils' input was summarized. The 2007 draft Customary and Traditional Use Determination Policy and the public comments to this policy are enclosed with this letter.

The SE Council workgroup noted that there were inconsistent briefings in 2011 regarding the input sought from the Councils. Different staff presented different levels of information, and in some instances Councils were led to believe other Councils thought the process was working.

Mr. Speridon M. Simeonoff, Sr.

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In addition, there was a lack of direction or background information provided to the Councils that would be necessary to formulate an informed opinion. There was no mention or discussions of the strengths and deficiencies of the current customary and traditional use determination process as detailed in the review of the 2007 draft Customary and Traditional Use Determination Policy.

During its March 2011 meeting, the SE Council included the topic in its 2011 Annual Report. The SE Council made the following recommendation to the Board:

Given that ANILCA does not require the Board make customary and traditional use determinations, the Council recommends the Federal Subsistence Board eliminate the current regulations for customary and traditional use determinations, and task the Office of Subsistence Management (OSM) with drafting regulations which adhere to provisions contained within Section 804 of ANILCA.

The current Federal customary and traditional use determination regulations (and the eight factors) were based on pre-existing State regulations. Customary and traditional use determinations are a necessary step in State of Alaska management because only fish and wildlife with a “positive” determination are managed for the subsistence preference and those with a “negative” determination do not have the preference. The decision whether there is or is not a subsistence priority is not necessary under Federal rules because ANILCA already provides rural residents a preference for subsistence uses on Federal public land. The current customary and traditional use determination process is being used to allocate resources between rural residents, often in times of abundance. This is an inappropriate method of deciding which residents can harvest fish or wildlife in an area and may result in unnecessarily restricting subsistence users. The SE Council has a history of generally recommending a broad geographic scale when reviewing proposals for customary and traditional use determinations. Subsistence users primarily harvest resources near their community of residence and there is normally no management reason to restrict use by rural residents from distant communities. If there is a shortage of resources, Section 804 of ANILCA provides direction in the correct method of allocating resources.

The SE Council has determined that the Office of Subsistence Management did not give the directive from the Secretaries the due diligence it deserves and the program would benefit from additional evaluation and dialog. We request your Council reconsider its recommendation to the Board on how well the current customary and traditional use process is serving the needs of the residents in your region. The SE Council is interested in either eliminating or improving the process but, since this is a statewide issue, we do not want to propose a solution that is not supported by the other Councils. We encourage your Council to read the briefing paper provided to you by the SE Council at a winter 2013 Council meeting and review the enclosed background information. We would like your Council to consider what would be most beneficial to your region: eliminate customary and traditional use determinations, change the way customary and traditional use determinations are made, or make no change. After reviewing these materials, we

Mr. Speridon M. Simeonoff, Sr.

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encourage your Council to include this subject as an agenda action item at its fall 2013 meeting. The Office of Subsistence Management has committed personnel to help in your further consideration of the customary and traditional use process at your fall 2013 meeting.

Please address any questions and report any actions taken regarding this request either directly to me or through Mr. Robert Larson, Council Coordinator, U. S. Forest Service, Box 1328, Petersburg, Alaska 99833, 1-907-772-5930, robertlarson@fs.fed.us.

Gunalchéesh (thank you).

Sincerely,
/S/

Bertrand Adams Sr., Chair

Enclosures

cc: Peter J. Probasco, Assistant Director, OSM
Kathy O'Reilly-Doyle, Deputy Assistant Director, OSM
Federal Subsistence Board
Interagency Staff Committee
Administrative Record

This draft incorporates comments from the Federal Regional Advisory Councils during the fall 2007 meetings, public comments, and internal agency reviews.
Revised March 4, 2008

DRAFT
POLICY ON IMPLEMENTATION OF CUSTOMARY AND
TRADITIONAL USE DETERMINATIONS
FEDERAL SUBSISTENCE BOARD

PURPOSE

This policy describes the internal management of the Federal Subsistence Board (Board) and provides explanation to the public regarding the process for making customary and traditional use determinations pertaining to management of hunting, trapping, and fishing on Federal public lands and waters in Alaska. This policy recognizes the unique status of the Regional Advisory Councils and does not diminish their role in any way. This policy is intended only to clarify existing practices under the current statute and regulations. It does not create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its agencies, officers, or employees, or any other person.

INTRODUCTION

The Alaska National Interests Lands Conservation Act (ANILCA) defines subsistence uses as "...the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption such as food, shelter, fuel, clothing, tools or transportation...." (ANILCA § 803). Title VIII of ANILCA established a priority for the taking on Federal public lands of fish and wildlife for these subsistence uses by rural Alaska residents (ANILCA § 804). While ANILCA does not require that customary and traditional use determinations be made, nor that the eight factors be utilized in evaluating subsistence uses, implementing regulations require the Board to make customary and traditional use determinations

where the eight factors ¹ set forth in the regulations are generally exhibited. Pursuant to the regulations, the Board determines which rural Alaska areas or communities have customary and traditional uses of fish stocks and wildlife populations by evaluating whether or not a community or area seeking a customary and traditional use determination “shall generally exhibit” the eight factors [36 CFR 242.16(b) and 50 CFR 100.16(b)]. For public lands managed by the National Park Service, where subsistence uses are allowed, customary and traditional use determinations may be made on an individual basis [36 CFR 242.16(b) and 50 CFR 100.16(a)]. While the Board has generally focused on the eight factors since the inception of the Federal Subsistence Management Program, it recognizes that the discretion of ANILCA is much broader. And that all of these factors need not be present or given equal weight in considering whether to make a specific customary and traditional use determination.

BOARD AUTHORITIES

- ANILCA, 16 U.S.C. 3101 et seq.
- The regulatory framework for the Federal Subsistence Board is contained in 36 CFR Part 242 and 50 CFR Part 100.

¹ The eight factors are as follows [36 CFR 242.16(b) and 50 CFR 100.16(b)]:

1. A long-term consistent pattern of use excluding interruptions beyond the control of the community or area;
2. A pattern of use recurring in specific seasons for many years;
3. A pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local characteristics;
4. The consistent harvest and use of fish or wildlife as related to past methods and means of taking; near, or reasonably accessible from, the community or area;
5. A means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations, including consideration of alteration of past practices due to recent technological advances where appropriate;
6. A pattern of use which includes the handing down of knowledge of fishing and hunting skills, values, and lore from generation to generation;
7. A pattern of use, in which the harvest is shared or distributed within a definable community of persons; and;
8. A pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social, and nutritional elements to the community or area.

POLICY

The purpose of ANILCA is to provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so [ANILCA § 101(c)]. The users provided for under ANILCA are rural Alaska residents, and the uses which are subsistence uses are those that are customary and traditional.

The customary and traditional use determinations that the Board makes must be based on a community's long term consistent pattern of use of a fish stock or wildlife population. But nothing in 36 CFR 242.16(b) and 50 CFR 100.16(a) states that a specific wildlife population or fish stock has to be defined in terms of a specific geographical area.

The taking of resources for subsistence uses, and those uses themselves may be dynamic and adaptive, and change over time in response to environmental, technological, demographic, and social influences. The Board provides for these changes, in part by considering regional, temporal, and cultural variation.

ANILCA describes subsistence use as that which is by rural Alaska residents and customary and traditional. Not all uses are customary and traditional. In the absence of a specific customary and traditional use finding, all rural residents are the eligible pool of users. If a customary and traditional use finding was adopted from the State program, the Board may expand or further limit that finding. In the event that the Board has already made a customary and traditional use finding, the Board also may expand the existing finding, or more narrowly delineate the finding. In all instances, the Board makes a decision based upon the best available information.

Customary and traditional use determinations are not intended to be an additional hurdle that subsistence users must pass in order to qualify as a subsistence user under ANILCA. Rather, customary and traditional determinations are a means of identifying uses as provided for under ANILCA.

ANILCA Section 803 defines subsistence uses to mean "customary and traditional uses of wild, renewable resources" and Section 804 requires that the taking for "nonwasteful subsistence uses" be given a priority over the taking for other uses. All "subsistence uses" as defined in Section

803 qualify for the Section 804 subsistence priority. To the extent that a particular population is relatively unimportant for subsistence purposes, this likely would be reflected in relatively low taking and thus customary and traditional use of the population. For all customary and traditional use determinations, Section 804 requires that the taking for subsistence uses be given a priority over nonsubsistence uses.

Decision Making

The Board shall:

- Adhere to the statutory standard of customary and traditional use in making customary and traditional use determinations. Need for sustenance is not the standard.
- Base its determination of customary and traditional use on information of a reasonable and defensible nature contained within the administrative record.
- Make customary and traditional use determinations based on a holistic and flexible application of eight factors outlined in 36 CFR 242.16(b) and 50 CFR 100.16(b), and whether a community or area generally exhibits them. Together, the eight factors elucidate the economic, nutritional, cultural, and social character of customary and traditional resource harvest and use.
- Consider the knowledge, reports, and recommendations of the appropriate Regional Advisory Council regarding customary and traditional use of subsistence resources in making its decisions [36 CFR 242.16(b) and 50 CFR 100.16(b)].
- Consider comments and recommendations from the State of Alaska and the public [ANILCA § 816 (b)].

Additional Guiding Considerations:

The Board recognizes that:

- It may extrapolate based on information from other, similarly situated communities or areas if no information exists for a certain community or area.
- Assessment of the eight factors can vary due to regional, cultural and temporal variations.

- It has discretion in deciding whether the eight regulatory factors are generally exhibited. Inherent in that general discretion is the specific discretion to determine the geographical extent of the area relevant to the use of a specific fish stock or wildlife population. There is no rigid regulatory requirement that a customary and traditional use determination be made only for an area for which actual use had been demonstrated; the area encompassed by a customary and traditional use determination may be broader.
- ANILCA does not differentiate between natural, introduced, reintroduced or recently migrated species.

Definitions:

As defined in ANILCA (§ 803), “subsistence uses” means . . . “[T]he customary and traditional uses by rural Alaska residents of wild renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade.”

The term “policy” means the general principles by which the Board is guided in the management of its affairs. Nothing in this policy is intended to enlarge or diminish the rights and responsibilities mandated by Title VIII. Nor is it intended to create any right or benefit enforceable at law by any party against the United States or any person.

**PUBLIC COMMENTS SUBMITTED IN RESPONSE TO
THE FEDERAL SUBSISTENCE BOARD'S
DRAFT POLICY
ON
IMPLEMENTATION OF CUSTOMARY AND TRADITIONAL USE
DETERMINATIONS**

**OFFICE OF SUBSISTENCE MANAGEMENT
ANCHORAGE, ALASKA
JANUARY 25, 2008**

Introduction: Comments on the draft policy on implementation of customary and traditional use determinations were submitted by thirteen different entities, including the State of Alaska, the Alaska Federation of Natives, as well as two Subsistence Regional Advisory Councils (Southcentral and Western Interior), two individuals (Erik Weingarth and Chuck Burkhardt), three tribal councils (Mount Sanford Tribal Consortium, Ninilchik Traditional Council, Yakutat Tlingit Tribe), two Regional Corporations/Nonprofits (Ahtna, Inc., and Central Council of Tlingit and Haida Indian Tribes of Alaska), and two statewide fisheries groups Kenai River Sportfishing Association and United Fishermen of Alaska). Some sets of comments mirrored each other, so that while fourteen sets of comments were received, there was considerable overlap among some of them. Opinions on the draft policy varied, ranging from supporting the draft policy in principle, to recommending complete overhaul of how the Federal Subsistence Board implements customary and traditional use determinations. The full set of comments follows.

Southcentral Subsistence Regional Advisory Council

Comments on Draft C&T Policy

Decision Making

The Board shall:

- Adhere to the statutory standard of customary and traditional use in making customary and traditional use determinations. Need for sustenance is not the standard.
- Base its determination of customary and traditional use on information of a reasonable and defensible nature contained within the administrative record.
- Make customary and traditional use determinations based on a holistic application of eight factors, as outlined in 36 CFR 242.16(b) and 50 CFR 100.16(b), and whether a community or area generally exhibits them.

Together,

the eight factors elucidate the economic, nutritional, cultural, and social character of customary and traditional resource harvest and use.

- Defer to the Regional Advisory Councils' ~~Consider the~~ knowledge, reports, and recommendations of the appropriate Regional Advisory Council regarding customary and traditional use of subsistence resources in making its decisions [36 CFR 242.16(b) and 50 CFR 100.16(b)].
- Consider comments ~~and recommendations~~ from the State of Alaska and the public [ANILCA § 816 (b)].

Additional Guiding Considerations:

The Board recognizes that:

- It may extrapolate based on information from other, similarly situated communities or areas if no information exists for a certain community or area..
- Assessment of the eight factors can vary due to regional, cultural, and temporal Variations, and Regional Advisory Council knowledge are particularly important, or study standards.
- It has discretion in deciding whether the eight regulatory factors are generally exhibited. Inherent in that general discretion is the specific discretion to determine the geographical extent of the area relevant to the use of a specific fish stock or wildlife population. There is no rigid regulatory requirement that a customary and traditional use determination be made only for an area for which actual use had been demonstrated; the area encompassed by a customary and traditional use determination may be broader.
- ANILCA does not differentiate between natural, introduced, reintroduced or recently migrated species.

**WESTERN INTERIOR REGIONAL COUNCIL'S ACTIONS ON THE
DRAFT POLICY ON IMPLEMENTATION OF CUSTOMARY AND TRADITIONAL USE
DETERMINATIONS**

During the October 30 – 31, 2007 public meeting in Galena, Alaska, the Western Interior Regional Council passed unanimously to support the Southcentral Regional Council's modifications to the policy. Those modifications are summarized below. Underlined text is an addition and lined through text are deletions.

On Page 3 of the Draft Policy:

Decision Making

The Board shall:

- Defer to the Regional Advisory Councils' Consider the knowledge, reports, and recommendations of the appropriate Regional Advisory Council regarding customary and traditional use of subsistence resources in making its decisions.
- Consider comments ~~and recommendations~~ from the State of Alaska and the public.

Chuck Burkhardt
PO Box 272
Gustavus, AK. 99826

Federal Subsistence Board
Attn: Theo Matuskowitz
Office of Subsistence Management
3601 C Street, Suite 1030
Anchorage, AK. 99503

Federal Subsistence Board and Staff:

I am writing to you with my comments in regards to your "Customary and Traditional Use Determination" policy draft paper that is out for comment from the public until December 1, 2007.

I think that your policy for Customary and Traditional Use (C&T) determinations is basically illegal and against the letter and intent of ANILCA Title VIII. It appears you have adopted the way the State of Alaska has used C&T determinations to restrict subsistence users. As you are well aware, the State of Alaska is not in compliance with ANILCA Title VIII. This is why you are charged with providing a preference for subsistence uses on Federal public lands.

As you may know, I have been the author of a couple of proposals to modify C&T determinations in the Federal lands around Gustavus. My request for C&T for fish in the Gustavus area was met by opposition from Hoonah, the Southeast Regional Advisory Council and even you before I filed a request for reconsideration and threatened getting an attorney to your staff. The whole process took a couple of years and an incredible amount of my time (not to mention yours), just so I could fish on federal lands under Federal regulations in an area as close or closer to my residence as it is to Hoonah. Much of the opposition that I could surmise was based on race. (Gustavus was not considered "native enough", even though we are just as dependant on fish and game as any other similarly situated rural community in general and Hoonah in particular). Your C&T policy has succeeded in pitting rural community against rural community, and is illegal under ANILCA Title III. You are using your C&T policy to restrict subsistence users from their subsistence rights under ANILCA Title VIII.

Nowhere in ANILCA Title VIII do I read that rural residents have to pass a "C&T use test" the way you are applying it. ANILCA is simple, all rural residents are supposed to be afforded a priority for the non-wasteful taking of wild renewable resources on Federal public lands no matter where they are. ANILCA requires that no restrictions can be placed on rural residents unless all other non subsistence uses are first restricted, and then only based on three criteria set out in Section 804; Customary and direct dependence upon the populations as the mainstay of livelihood, local residency, and the availability of alternative resources. To do otherwise, which you have been doing violates the letter,

spirit, and intent of ANILCA Title VIII. I am amazed that you have not yet been sued over this egregious violation of Federal law.

By way of this letter I am formally requesting that the Federal Subsistence Board take immediate and positive action to promulgate formal rulemaking to eliminate the need and requirement of C&T determinations. In addition, all existing C&T determinations should be removed from Federal regulations so that all rural residents have a preference for subsistence uses of wild renewable resources on all Federal lands in the State of Alaska. Any additional restrictions on rural residents should only be done under ANILCA section 804, and only after all other competing non-subsistence uses have been eliminated. To do less, violates the letter, intent, and spirit of ANILCA Title VIII and risks additional litigation against the Federal government in this matter.

Respectfully,

Chuck Burkhardt

/s/

To: Theo Matuskowitz and Subsistence Board

From: Erik Weingarh, Box 74, St. Marys Ak. 99658

Re: Customary and Traditional use Policy Draft.

To me some of this draft is o.k. as I am a rural subsistence user . Though I am constantly fighting for my right to feed my family. Example gear restrictions that we have used for generations and times when we can fish. Let be known my subsistence has changed because of rash ideas by people who know nothing of what I go thru to feed my family. Why do you allow the sale of subsistence fish??? This draft should prohibit the sale of subsistence caught fish. I am not well represented by the fed. government when High Seas fishing has degraded my subsistence. We should come first. Us on the lower Yukon have suffered enough. There is to much confusion on what to do. Do not point the finger at I who feeds a family.

Thanks for listening.

Erik Weingarh



PO Box 357 • Gakona Alaska 99586 • (907) 822-5399 • Fax (9

November 28, 2007

Theo Matuskowitz
Office of Subsistence Management
3601 C Street, Suite 1030
Anchorage, Alaska 99503

RE: Comments on Draft Customary & Traditional Use Policy

Dear Mr. Matuskowitz:

I have reviewed the Draft Policy and these are my comments. They are in order of the paragraphs as presented in the Draft.

Purpose

I would delete the word "INTERNAL" in the opening sentence. There is and have been considerable criticism in the past of there being too much internal activities with in the Federal Agencies on ANIKCA matters. I suggest you replace the wording with, "Subsistence Management Policies of the Federal Subsistence Board", or words to that effect.

Line 5. "This Policy is intended only to clarify existing practices under current statue and regulations". This should be the heading for this paragraph. The last sentence should be deleted as it already under Definitions, (further, it may well be that readers would only go this far and not continue, feeling that nothing of any value could be added to this discussion).

Introduction

Line 10 & 11, top of page two is problematic. The term "shall generally exhibit" should be recalled and perhaps reinstated with something like.. "shall reflect in general community practices or consumptive uses, as measured by the eight factors".

Board Authorities:

No Comment

Policy

Paragraph one - No comment

Paragraph two - The second sentence confuses the issue. It should be footnoted and/or correlated in a separate discussion on GMU Boundaries.

Paragraph three - Need to reflect the severity of the impact of Climate changes since the time that ANILCA came into being.

Paragraph four - No comment

Paragraph five - I agree, however the costs of attending meetings and contending with the regulatory framework is cost prohibitive for small Tribes and communities that can only be serviced by planes. Whether intended or not this is the reality and some means must be developed within the draft policy to offset this plain fact.

Paragraph six - Line four beginning with..."to the extent that a particular population..." is problematic and should be deleted in its entirety. I think I know what it means but by the time I have read the whole sentence I don't anymore.

Decision Making

Bullet one - No comments

Bullet two - Very problematic. I would delete and rewrite. Information related to Subsistence is in part artistic, in part, practices and in part science. It is never, ever just administrative.

Bullet three - What we do as a subsistence people can at times be called sacred or even noble, or intrinsic ably valuable but I resist it being called "Holistic". The question here is: why should we not have the term "practices" instead of "character" in the sentence?

Bullet four - I would feel much more comfortable in the regulatory framework if the sentence would be expanded to read, "Consider, rely, or utilize the knowledge etc. et al..."

Bullet five - No comments

Additional Guiding Considerations

No comment

Definitions

No comment

Summary

Although good, I don't consider the Policy as complete yet. It certainly lacks reference or recognition of the tremendous burden we have to contend with in Habitat, due to Climate changes. There is also, the tendencies of Policy to overlook the fact that trails are not roads. All hunters or gatherers in a customary sense rely on trails as a tool to acquire the resources, whether it be berries, wood or game. ATVs are only a tool no more important than the trail itself. This principle should be outlined in these drafts. Finally missing is the issue of shelter. Too properly accommodate subsistence uses or patterns, the issue of shelter needs to be addressed. At one time cabins were used for all subsistence purposes in the rural arena. They were shared and maintained for those purposes. With the advent of ATVs it seems that shelter is no longer recognized as a

valid part of Subsistence. I differ with that thought. Shelter gives me the opportunity to practice that which I have always practiced. It is much more important to the subsistence way of life than an ATV.

Thank you for the opportunity to provide these comments.

Sincerely,

/S/

Wilson Justin

Cc MSTC Board
Elaine Sinyon
Shawn Sanford



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NINILCHIK TRADITIONAL COUNCIL
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November 30, 2007

Federal Subsistence Board
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Office of Subsistence Management
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Anchorage, Alaska 99503
Fax: (907) 786-3898
Email: subsistence@fws.gov

Re: Comments of the Ninilchik Traditional Council (NTC) on the proposed Policy on Implementation of Customary and Traditional Use Determinations

Dear Federal Board Members,

Below are the comments of the Ninilchik Traditional Council (NTC) on the Federal Subsistence Board's proposed Policy on Implementation of Customary and Traditional Use Determinations.

1. Pursuant to the applicable FSB regulations, C&T use determinations are made for an area or community. Thus, the FSB may include a community within a larger rural area when making a C&T use determination. This is a problem for Native Villages that have been surrounded in their traditional territory by an ever-expanding non-Native population. The FSB, for example, included the Happy Valley area with the community of Ninilchik in making C&T use determinations for salmon and other fish in the Kenai drainage. Some members of the FSB argued that the percentage of the area's population using salmon in the Kenai drainage was not significant enough to demonstrate C&T use of those fish stocks. Fortunately, this argument did not succeed for salmon.¹ A

¹ The draft Policy does not directly address the "significant" percentage of the area population argument made primarily by Board member Edwards when he opposed a positive finding for salmon and other fish in the Kenai drainage for Ninilchik. NTC's arguments regarding the bad policy implications and illegality of applying some arbitrary threshold percentage when making C&T use determinations are made in detail in its RFR filed with the FSB on 30 May 2006. Ninilchik incorporates those arguments here and will not repeat them. The Policy should be amended to explicitly reject the "significant" percentage rationale and argument made by Board member Edwards and rejected by the majority of the Board when it found that Ninilchik has C&T use of salmon stocks in the Kenai drainage.

surrounded Tribe's C&T use determinations and thus its subsistence rights are in constant jeopardy if the FSB misuses its discretion and dilutes the Tribal community's established patterns of use by including it as a small part of a large area dominated by non-tribal residents.

The draft Policy should be amended to limit the FSB discretion when making C&T determinations for Native Villages surrounded by a growing non-Native population. Congress clearly intended to protect the subsistence way of life of Alaska Native Villages. And there can be no dispute that Native Villages have C&T uses of the resources in their traditional areas. Their C&T uses should not be put at risk because other non-tribal members who do not share the tribal subsistence way of life choose to reside in the area surrounding the Village. The FSB has the discretion to make "community" versus area determinations, and it should exercise this discretion when looking at surrounded Native Villages. A Native Village's C&T uses should be determined separately from a larger area or larger community in cases where the larger area or community does not share the Native Village's subsistence culture and way of life.

2. The Policy should clarify that a positive C&T use determination does not necessarily mean that all communities with C&T use of the same fish stock or wildlife population have identical needs or uses of that resource, or are entitled to the same harvest regime. For example, Lime Village is only one of many communities with C&T use of moose and caribou populations in that area of Alaska. Lime Village, however, has a unique harvest and reporting regime for those wildlife populations due to the Village's C&T use patterns and its subsistence needs. On the other hand, OSM has advised the SCRAC that it cannot allow Ninilchik to use a fish wheel in the Kenai for salmon unless all other eligible communities (or even all other eligible individual rural residents) are also entitled to use a fish wheel. OSM so advises despite the fact that no other community has expressed any interest in a fish wheel on the Kenai River. Moreover, only Ninilchik has demonstrated to the SCRAC a community pattern of sharing, preserving and other C&T uses that require the harvest of larger numbers of fish at specific times of the season, thus the need for a more efficient means of harvest like a fish wheel.

When a community with a positive C&T use determination seeks a method, means or bag limit for a particular resource, that community's use patterns and needs should be allowed to proceed on the merits without the FSB following a policy that every other community (or individual) with C&T use of that resource must be afforded the same harvest opportunity even if no other community has expressed any interest in such an opportunity. The Policy should provide the FSB with discretion to provide different harvest regulations for communities based on each individual community's use patterns, needs and regulatory proposals. Moreover, the Policy should recognize that the RACs

are uniquely suited to sort through these kinds of harvest issues for the distinct communities in their respective regions, and such RAC recommendations should be given great deference.

3. NTC supports the position adopted by the South Central RAC at its meeting in Anchorage in October, 2007 that amends the draft Policy to explicitly acknowledge that RAC recommendations regarding C&T use determinations are due deference by the Federal Subsistence Board (FSB).

The fourth bullet under the heading "Decision Making" in the draft Policy states that the FSB shall "consider the knowledge, reports and recommendations of the appropriate Regional Advisory Council" (RAC). Section 805(c) of ANILCA (16 U.S.C § 3115(c)), however, requires the FSB to follow a RAC recommendation unless the recommendation is "not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs." As acknowledged in the 24 January 2007 brief of the FSB in Alaska v. Fleagle (the "Chistochina" case) at footnote 25, page 36:

If . . . the ANILCA priority extends only to the specific resources which have been customarily and traditionally taken, then the C&T determination would "concern the taking of fish and wildlife." In that situation a Regional Advisory Council's recommendation regarding a C&T determination would appear to be subject to the provisions of 16 U.S.C. § 3115(c).

Once the FSB has made a determination that a rural area or community does not have C&T use of a fish stock or wildlife population, current FSB regulations and practice foreclose the application of the ANILCA priority to that subsistence resource for that area or community. Therefore, consistent with the FSB litigation position taken above, and the letter and intent of ANILCA, RAC recommendations regarding C&T use determinations are due section 805(c) deference. The Policy should explicitly acknowledge this requirement.

4. NTC also supports the SCRAC position that the final bullet under the "Decision Making" section of the draft Policy should be amended to strike any reference to considering "recommendations" from the State of Alaska and the public. The term "recommendations" has a specific and important meaning related to the authority and deference given to RACs in section 805(c) of ANILCA as described above. Title VIII of ANILCA neither requires nor allows the FSB to defer to "recommendations" from the State or public. The Policy should not confuse the issue by stating that the FSB will "consider the comments and recommendations from the State of Alaska and the public."

5. NTC also agrees with the SCRAC that the second bullet of the "Additional Guiding Considerations" section of the draft policy should be amended to explicitly

acknowledge that RAC knowledge and recommendations are particularly important in cases where "assessment of the eight factors can vary due to regional, cultural, and temporal variations." During enactment of ANILCA, Congress recognized the value and necessity of ensuring that rural residents with knowledge of local conditions were empowered in the subsistence management regime.

[T]he national interest in the proper regulation, protection and conservation of fish and wildlife on the public lands in Alaska and the continuation of the opportunity for a subsistence way of life by residents of rural Alaska require that an administrative structure be established for the purpose of enabling rural residents who have personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands in Alaska.

Section 801(5) of ANILCA. Assessing the eight criteria in light of regional, cultural and temporal variations is a task particularly well suited for RACs, and this expertise should be recognized in the policy and deferred to by the FSB.

6. The Policy should be amended to include a section under Guiding Considerations that states that after the FSB has made a positive C&T determination for a community or area, there will be a strong presumption that the determination is valid, and that the Board will only consider a proposal to modify or rescind a C&T use determination if the proponent has demonstrated substantial new information supporting the proponent's claim. This will prevent a community from having to constantly defend a C&T determination from a hostile State Administration or sport/commercial user group hoping to find a changed Board or more favorable political situation. It will also save OSM staff time and effort better spent on more productive areas supportive of subsistence uses. C&T uses are established over a substantial period of time and do not just disappear over a few years because some group disagrees with the priority for subsistence uses. Once a positive C&T use determination has been made, it should remain in place except for highly unusual circumstances.

7. The Policy should be amended to require that, for Native Villages, C&T uses of all fish stocks and wildlife populations shall be presumed in the entire area traditionally used by the Village. Above all else, the subsistence way of life as customarily and traditionally practiced by Alaska Tribes is characterized by the opportunistic use of resources where available and when needed. Alaska Tribes used their entire territory to hunt, fish and gather. They took what they needed when and where resources were available. They used all the resources available. They did not catch and release, but used what they caught and gathered. It should be presumed that Alaska Native Villages have C&T uses of all resources within the areas traditionally used by the Village. Moreover, the Policy should acknowledge that Village traditional use areas may overlap

because of kinship relationships, sharing, bartering and other Tribal relationships, agreements and circumstances. In passing the 1992 Alaska State Subsistence law the legislature recognized that "customary and traditional uses of Alaska's fish and game originated with Alaska Natives." Section 1 of chapter 1, SSSLA 1992. The Policy should recognize this fact and incorporate the presumption that Native Villages have C&T use of all resources throughout the Tribe's traditional use area.

8. The Policy should state that it is the FSB's intent to implement C&T use determinations such that all rural communities and areas shall have the use of sufficient "public lands" to satisfy their subsistence needs, thereby satisfying the clear intent of Title VIII of ANILCA. The federal subsistence priority only applies to federal "public lands." Some rural areas and communities, however, are surrounded by State and private lands. Moreover, many lands selected by Alaska Native Village and Regional corporations were selected primarily because of their importance for subsistence hunting, fishing and gathering. Congress recognized in Title VIII that the continuation of the opportunity for subsistence uses "by Alaska Natives on Native lands is essential to Native physical, economic, traditional, and cultural existence." Section 801(a) of ANILCA. Yet, in a great oversight and injustice, and because of the McDowell decision and the continued refusal of the Alaska Legislature to allow a vote on a "rural" constitutional amendment, Native lands are considered "private" lands under State jurisdiction, and do not fall under the protection of the ANILCA subsistence priority. Some Native lands are even classified as non-subsistence use areas under Alaska law and regulations. ANILCA's purpose of ensuring the opportunity for the continuation of subsistence uses cannot be accomplished if C&T use determinations do not provide sufficient opportunity for surrounded rural communities to take the amount of fish and wildlife resources they need from those public lands accessible to the community. C&T subsistence uses are above all opportunistic. Subsistence users go where they must to harvest what they need. In the case of surrounded Villages, C&T uses must be recognized on the public lands accessible to the community, and must include sufficient public lands to provide the opportunity to fully satisfy the community's subsistence needs. The Policy should acknowledge the FSB's responsibility when making C&T use determinations to ensure that all rural communities have the right to subsistence hunt, fish and gather on public lands to the extent necessary to fully satisfy their subsistence needs.

NTC thanks the Federal Board for the opportunity to make the above comments. NTC looks forward to working with FSB and OSM if there are questions regarding the above comments.

Sincerely,
/S/

Ivan Encelewski
NTC Executive Director



YAKUTAT TLINGIT TRIBE

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December 7, 2007

Mr. Theo Matuskowitz
Federal Subsistence Board
Office of Subsistence Mgmt
3601 C Str., Suite 1030
Anchorage, AK 99501

Subject: Policy on Implementation of Customary and Traditional Use Determinations

The Yakutat Tlingit Tribe would like to make a few comments regarding your draft policy to be discussed at the upcoming Federal Subsistence Board meeting next week.

Although your draft policy state that your board feels it needs to “provide explanation to the public regarding process” we have concern that this is just another layer of policy to be interpreted.

We have concern about the use of State customary and traditional use findings. The State of Alaska’s refusal to comply with ANILCA is what necessitated Federal takeover. We believe that the State is continuing to fight the subsistence rural customary and traditional use.

Your draft policy states: “In all instances, the Board makes a decision based upon best available information. You don’t elaborate on where and how that information is gathered. We believe that the Federal Subsistence Board should state somewhere in their policy that they will strongly consider information received from the Regional Advisory Councils, Tribes and ANSCA Corporations.

We ask that you keep in the forefront the reason that ANILCA provides for customary and traditional uses by Alaska residents of wild and renewable resources. The majority of users are Alaska Native although Congress was not willing to say so. We as a people have fought long and hard to continue our traditional and cultural ways. We want to continue as a people; yet it seems that laws, policies, and regulations are made to chip away at our rights.

Thank you for the opportunity to respond.

Sincerely,

/S/

Victoria L. Demmert, President
Yakutat Tlingit Tribe

Cc: YTT Tribal Council
YTT General Manager
Carrie Sykes, Subsistence & Sustainable Development Specialist



November 28, 2007

Federal Subsistence Board
Attn: Theo Matuskowitz
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Email: subsistence@fws.gov

Re: Comments of the Ahtna Tene Nene' Subsistence Committee on the proposed Policy on Implementation of Customary and Traditional Use Determinations

Dear Federal Board Members,

Below are the comments of the Ahtna Tene Nene' Subsistence Committee on the Federal Subsistence Board's proposed Policy on Implementation of Customary and Traditional Use Determinations. The Subsistence Committee represents the Federally recognized tribes in the Ahtna region on subsistence uses.

1. The Subsistence Committee supports the position adopted by the South Central RAC at its meeting in Anchorage in October, 2007 that amends the draft Policy to explicitly acknowledge that RAC recommendations regarding C&T use determinations are due deference by the Federal Subsistence Board (FSB).

The fourth bullet under the heading "Decision Making" in the draft Policy states that the FSB shall "consider the knowledge, reports and recommendations of the appropriate Regional Advisory Council" (RAC). Section 805(c) of ANILCA (16 U.S.C § 3115(c)), however, requires the FSB to follow a RAC recommendation unless the recommendation is "not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs." As acknowledged in the 24 January 2007 brief of the FSB in Alaska v. Fleagle (the "Chistochina" case) at footnote 25, page 36:

If . . . the ANILCA priority extends only to the specific resources which have been customarily and traditionally taken, then the

C&T determination would “concern the taking of fish and wildlife.” In that situation a Regional Advisory Council’s recommendation regarding a C&T determination would appear to be subject to the provisions of 16 U.S.C. § 3115(c).

Once the FSB has made a determination that a rural area or community does not have C&T use of a fish stock or wildlife population, current FSB regulations and practice foreclose the application of the ANILCA priority to that subsistence resource for that area or community. Therefore, consistent with the FSB litigation position taken above, and the letter and intent of ANILCA, RAC recommendations regarding C&T use determinations are due section 805(c) deference. The Policy should explicitly acknowledge this requirement.

2. The Subsistence Committee also supports the SCRAC position that the final bullet under the “Decision Making” section of the draft Policy should be amended to strike any reference to considering “recommendations” from the State of Alaska and the public. The term “recommendations” has a specific and important meaning related to the authority and deference given to RACs in section 805(c) of ANILCA as described above. Title VIII of ANILCA neither requires nor allows the FSB to defer to “recommendations” from the State or public. The Policy should not confuse the issue by stating that the FSB will “consider the comments and recommendations from the State of Alaska and the public.”

3. Ahtna Tene Nene’ also agrees with the SCRAC that the second bullet of the “Additional Guiding Considerations” section of the draft policy should be amended to explicitly acknowledge that RAC knowledge and recommendations are particularly important in cases where “assessment of the eight factors can vary due to regional, cultural, and temporal variations.” During enactment of ANILCA, Congress recognized the value and necessity of ensuring that rural residents with knowledge of local conditions were empowered in the subsistence management regime.

[T]he national interest in the proper regulation, protection and conservation of fish and wildlife on the public lands in Alaska and the continuation of the opportunity for a subsistence way of life by residents of rural Alaska require that an administrative structure be established for the purpose of enabling rural residents who have personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands in Alaska.

Section 801(5) of ANICLA. Assessing the eight criteria in light of regional, cultural and temporal variations is a task particularly well suited for RACs, and this expertise should be recognized in the policy and deferred to by the FSB.

4. The Policy should be amended to include a section under Guiding Considerations that states that after the FSB has made a positive C&T determination for a community or area, there will be a strong presumption that the determination is valid, and that the Board will only consider a proposal to modify or rescind a C&T use determination if the proponent has demonstrated substantial new information supporting the proponent's claim. This will prevent a community from having to constantly defend a C&T determination from a hostile State Administration or sport/commercial user group hoping to find a changed Board or more favorable political situation. It will also save OSM staff time and effort better spent on more productive areas supportive of subsistence uses.

5. The Policy should be amended to require that, for Native Villages, C&T uses of all fish stocks and wildlife populations shall be presumed in the entire area traditionally used by the Village. Above all else, the subsistence way of life as customarily and traditionally practiced by Alaska Tribes is characterized by the opportunistic use of resources where available and when needed. Alaska Tribes used their entire territory to hunt, fish and gather. They took what they needed when and where resources were available. They used all the resources available. They did not catch and release, but used what they caught and gathered. It should be presumed that Alaska Native Villages have C&T uses of all resources within the areas traditionally used by the Village. Moreover, the Policy should acknowledge that Village traditional use areas may overlap because of kinship relationships, sharing, bartering and other Tribal relationships, agreements and circumstances. In passing the 1992 Alaska State Subsistence law the legislature recognized that "customary and traditional uses of Alaska's fish and game originated with Alaska Natives." Section 1 of chapter 1, SSSLA 1992. The Policy should recognize this fact and incorporate the presumption that Native Villages have C&T use of all resources throughout the Tribe's traditional use area.

6. The Policy should state that it is the FSB's intent to implement C&T use determinations such that all rural communities and areas shall have the use of sufficient "public lands" to satisfy their subsistence needs, thereby satisfying the clear intent of Title VIII of ANILCA. The federal subsistence priority only applies to federal "public lands." Some rural areas and communities, however, are surrounded by State and private lands. Moreover, many lands selected by Alaska Native Village and Regional corporations were selected primarily because of their importance for subsistence hunting, fishing and gathering. Congress recognized in Title VIII that the continuation of the opportunity for subsistence uses "by Alaska

Natives on Native lands is essential to Native physical, economic, traditional, and cultural existence.” Section 801(a) of ANILCA. Yet, in a great oversight and injustice, and because of the McDowell decision and the continued refusal of the Alaska Legislature to allow a vote on a “rural” constitutional amendment, Native lands are considered “private” lands under State jurisdiction, and do not fall under the protection of the ANILCA subsistence priority. Some Native lands are even classified as non-subsistence use areas under Alaska law and regulations.

ANILCA’s purpose of ensuring the opportunity for the continuation of subsistence uses cannot be accomplished if C&T use determinations do not provide sufficient opportunity for surrounded rural communities to take the amount of fish and wildlife resources they need from those public lands accessible to the community. C&T subsistence uses are above all opportunistic. Subsistence users go where they must to harvest what they need. In the case of surrounded Villages, C&T uses must be recognized on the public lands accessible to the community, and must include sufficient public lands to provide the opportunity to fully satisfy the community’s subsistence needs. The Policy should acknowledge the FSB’s responsibility when making C&T use determinations to ensure that all rural communities have the right to subsistence hunt, fish and gather on public lands to the extent necessary to fully satisfy their subsistence needs.

7. Ahtna Tene Nene’ also takes the position that C&T use determinations for public lands managed by the National Park Service (NPS) should not be made on an individual basis, but rather on a community or area basis like all other public lands in Alaska. The current applicable regulation (36 CFR 242.16(a)) provides that the FSB “may” make C&T use determinations for NPS public lands on an individual basis. Thus, the regulations provide the FSB with discretion to make such C&T determinations for NPS public lands either by area or community or on an individual basis. The Policy should provide that the FSB will not exercise its discretion to make C&T use determinations on an individual basis.

The FSB regulations demonstrate the fallacy and inconsistency with attempting to make C&T use determinations on an individual basis. The regulations (36 CFR 242.16(b)) set forth eight criteria for making C&T use determinations for “a community or area.” Many of the eight criteria apply explicitly to community or area patterns of use. The first criterion, for example, which the FSB in practice considers one of the most important factors, is a “long-term consistent pattern of use, excluding interruptions beyond the control of the **community or area**”. 36 CFR 242.16(b)(1)(emphasis added). Several other of the eight criteria speak explicitly in terms of community or area, and many of the rest imply community or area patterns of use rather than merely individual use. In fact the only place “individual” C&T use is even mentioned in the regulations is to provide discretion to make such determinations for NPS public lands. The regulations are completely void of any criteria for making C&T use determinations for an

individual. Individual determinations would thus be arbitrary and illegal under the current regulations. The Policy should express the FSB's position that it will not use its discretions to make C&T use determinations on an individual basis.

The Ahtna Tene Nene' Subsistence Committee thanks you for the opportunity to make the above comments, all of which we firmly believe are vital to protect our way of life and to ensure a fair, legal and successful federal subsistence management program.

Sincerely,

/S/

Linda Tyone,
Chairperson



CENTRAL COUNCIL

Tlingit and Haida Indian Tribes of Alaska

ANDREW P. HOPE BUILDING

Office of the President

320 W. Willoughby Avenue • Suite 300

Juneau, Alaska 99801-9983

December 7, 2007

Mr. Theo Matuskowitz
Federal Subsistence Board
Office of Subsistence Management
3601 C Street, Suite 1030
Anchorage, AK 99501

Subject: Policy on Implementation of Customary and Traditional Use Determinations

The letter is to provide comments on the draft Customary and Traditional Use Determination Policy proposed by the Federal Subsistence Board.

The Central Council Tlingit and Haida Indian Tribes of Alaska (CCTHITA) is a federally recognized Indian Tribe that serves 20 villages and communities and represents over 26,000 members.

The proposed policy has been thoroughly reviewed and it is our position that the Customary and Traditional Use Determination Policy not be implemented. ANILCA does not require, define or provide criteria for customary and traditional use; rather it is a recommendation from the State of Alaska to the Secretary of the Interior. (According to the, "White Paper: Policy Administrative Direction Needed To Resolve Significant Issues Between State and Federal Subsistence Programs" of the Alaska Department of Fish and Game.) There have been many problems with interpretation of Title VIII of ANILCA; this additional policy will just provide another layer which would lead to further misinterpretation of the intent of Title VIII. In addition, there are issues with the eight factors that have been used to make the determinations; assessment of the factors can vary due to regional, cultural and temporal variations making consistent use of factors difficult.

The policy is not required to recognize customary and traditional users of subsistence and the Federal Subsistence Board should keep with ANILCA Title VIII as the policy to determine subsistence uses.

If the Federal Subsistence Board decides to proceed with the proposed policy, there are due deference issues that need to be addressed. Because the State of Alaska did not comply with ANILCA, federal takeover occurred and state regulations were adopted by reference in the federal regulations. This has caused much confusion and has also given the State more due deference than was intended by ANILCA. It is our position that stronger due deference must be provided to the Regional Advisory Councils and if their recommendations are not adopted that written rationale be provided. This requirement needs to be followed for customary and traditional use determinations, rural determinations, special and temporary actions including emergency closures, and all other proposed policies.

Because of the possible impacts to Native subsistence rights, we strongly recommend that you carefully consider all comments from all Native organizations prior to making any decisions on this policy and ask that you respond in writing the comments that we have provided.

Thank you for considering our comments for this proposed policy. Please contact CCTHITA at (907) 463-7197 or 209-0792 if you have any questions or need additional information about our comments.

Sincerely,

/S/


William E. Martin
President

ALASKA FEDERATION OF NATIVES
1577 "C" Street, Suite 300 – Anchorage, Alaska 99501
(907) 274-3611 Fax: (907) 276-7989

December 1, 2007

Federal Subsistence Board via email: subsistence@fws.gov
Attention: Theo Matuskowitz
Office of Subsistence Management
3601 C Street, Suite 1030
Anchorage, AK 99503

RE: Comments on Draft Customary and Traditional Use Policy

Dear Federal Board Members:

On behalf of the Alaska Federation of Natives (AFN), thank you for the opportunity to comment on the Federal Subsistence Board's proposed Policy on Implementation of Customary and Traditional Use Determinations. While we believe the eight criteria used for identifying customary and traditional (C&T) uses should be amended, we recognize that current regulations require the Board to make its determinations using the eight factors. For the most part we support the proposed Policy regarding the making of C&T use determinations. We do believe it needs to be amended in several important ways.

1. First, AFN supports the position taken by the South Central Regional Advisory Council (SCRAC) at its meeting in Anchorage in October, 2007, which called for amendments to the draft policy to expressly acknowledge that RAC recommendations regarding customary and traditional (C&T) use determinations are due deference by the Federal Subsistence Board (FSB) in accordance with Section 805(c) of ANILCA (16 U.S.C. §3115(c). *See also* 50 CFR §100.16 (c) and §100.10(e). The fourth bullet under the heading "Decision Making" calls upon the FSB to merely "consider" the RAC recommendations regarding C&T use of subsistence resources, and does not expressly state that the FSB will give deference to the RAC recommendation in accordance with Section 805(c). Indeed, the Policy does not make a clear distinction between the consideration given to the recommendations of the RACs and the comments and "recommendations" it receives from the State and the general public. *Compare* the fifth bullet under "Decision Making," which provides that the FSB will "consider comments and recommendations from the State of Alaska and the public" *with* the fourth bullet which states that the FSB will "consider . . .the recommendations of the appropriate [RAC]."

Section 805(c) of ANILCA provides that the Secretary *shall consider . . . the recommendations of the regional advisory councils concerning the taking of fish and wildlife on the public lands within their respective regions for subsistence uses.*" In the

past, the FSB has taken the position that C&T determinations are not due 805(c) deference because they do not concern the taking of fish and wildlife. Under current regulations, the ANILCA priority only extends to those fish stocks or wildlife populations that have been customarily and traditionally taken by residents of a particular community or area. Therefore, the C&T determinations clearly concern a subsistence user's ability to take fish and wildlife. Moreover, the FSB, in its briefing in *Alaska v. Fleagle*, (at page 35, n.25), has acknowledged that the C&T determinations "concern the taking of fish and wildlife." That interpretation is the correct one and should be expressly acknowledged in the draft Policy. RAC recommendations regarding C&T use are entitled to deference under section 805(c) to the same degree as their recommendations with regard to seasons, bag limits and other factors relative to the taking and use of fish and wildlife. Accordingly, the fourth bullet under the heading of "Decision Making" should be amended to read as follows:

- Shall accord Section 805(c) deference to Regional Advisory Council recommendations regarding customary and traditional use of subsistence resources in making its decisions.

2. AFN also recommends that the second bullet under the heading of "Additional Guiding Considerations" be amended to read as follows:

- Assessment of the eight factors can vary due to regional, cultural, and temporal variations, making the knowledge, reports and recommendations of the appropriate Regional Advisory Council particularly important.

ANILCA mandates that local rural residents with knowledge of the conditions and requirements have a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands. Congress found it to be in the national interest "that an administrative structure be established for the purpose of enabling rural residents who have personal knowledge of local conditions and requirements to having a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands in Alaska." Section 801(5) of ANILCA, 16 U.S.C. 3111(5). That role is essential in assessing the eight criteria and should be expressly recognized in the Policy.

3. AFN also recommends amending the policy to provide that once an Alaska Native Village has established C&T uses of all fish stocks and wildlife populations, that the finding will be presumed to extend to all public lands near or reasonably accessible to the Village, including all areas traditionally used by the Village. Congress fully expected Native communities to be able to retain the opportunity to maintain local subsistence practices and customs and understood that subsistence use activities were grounded in and by local self-regulating forces:

[T]he phrase "customary and traditional" is intended to place particular emphasis on the protection and continuation of the taking of fish, wildlife, and other renewable resources in areas of, and by persons (both Native and non-Native) resident in, areas of Alaska in which such uses have

played a long established and important role in the economy and culture of the community and in which such uses incorporate beliefs and customs which have been handed down by word of mouth or example from generation to generation. H.R. No. 96-97, 96th Cong., 1st Sess. Part I at 279 (1979).

The policy goal of ANILCA is to preserve cultural systems and activities which underlie subsistence uses. A primary component of subsistence use patterns involves opportunistic taking of fish or game *as needed and as available*. Subsistence uses historically took place within particular areas customarily used by the Villages. In other words, Alaska Natives used all the resources available to them within their community's traditional use area. Therefore, the Policy should state that Alaska Native Villages have C&T uses of all resources within the area they traditionally used for hunting, fishing and gathering.

4. Because many Villages are now surrounded by state and private lands, the Policy should also provide that the FSB will implement its C&T regulations and determinations in such a way that ensures communities surrounded by State and private lands will have reasonable access to federal "public lands" in order to harvest all subsistence resources that were customarily and traditionally used by the Native Villages.

5. AFN also concurs in the comments of the Ahtna Tene Nene' Subsistence Committee that the Policy should prevent opponents of subsistence from filing repeated requests for reconsideration of the FSB's positive C&T determinations. The Policy should state that the Board will only consider a proposal to modify or rescind a positive C&T determination if the proponent of the proposal has demonstrated substantial new information supporting the proponent's claim.

Thank you for consideration of our comment. Please let us know if you have questions.

Sincerely,

/S/

Julie Kitka
President

/chd

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

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December 7, 2007

Mr. Michael Fleagle, Chairman
Federal Subsistence Board
3601 C Street, Suite 1030
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Attn: Theo Matuskowitz
e-mail at subsistence@fws.gov

Dear Mr. ^{Mike}Fleagle:

On September 12, 2007, the Federal Subsistence Board (Board) published a draft policy on implementation of "customary and traditional use" (C&T) determinations for public comment. I am providing comments concerning the draft policy on behalf of the State of Alaska (State).

In response to issues repeatedly raised by the State, on October 27, 2005, the Deputy Secretary of Department of the Interior and the Under Secretary for Natural Resources and Environment in the Department of Agriculture directed that a policy be developed for making C&T determinations. The directive acknowledged that the "lack of written procedures or policies allows misunderstandings to develop." The Secretarial direction stated that "for customary and traditional use determinations, the Board should review whether analytic thresholds and benchmarks for certain criteria are needed and appropriate for inclusion in the decision process."

Since receiving Secretarial direction two years ago, Board deliberations on C&T determinations continue to demonstrate that a lack of specific procedures and criteria result in more than just mere "misunderstandings." Continuing problems with the Board's inconsistent application of the federal regulations resulted in numerous requests for reconsideration, one or more lawsuits, and a petition for rulemaking. The Board itself repeatedly has struggled with C&T determinations, asking for clarification from legal counsel during Board deliberations. Many of these problems could be resolved by a policy requiring consistent and documented application of the federal regulations at 36 CFR 242.16 and 50 CFR 100.16.

The State welcomes the Board's pursuit of a policy to "improve understanding and promote consistency . . . [by] clarifying the Board's approach to these decisions," but the draft policy does not accomplish either objective. Instead it attempts to justify prior inconsistent applications of Board regulations and promote unlimited discretion in the Board's determination process. It

does not provide guidance in the form of procedural steps, identifiable criteria, or analytic thresholds that are necessary to prevent inconsistent and unjustified C&T determinations. The record clearly confirms that such thresholds, criteria, and procedural steps are needed in order to reduce the ongoing contentious debate by the Board members, their advisors and staff, the State, and the public and in order to reduce avoidable litigation.

We request the draft policy be revised to provide clear administrative procedures for Board evaluation of the eight regulatory factors for making C&T determinations, as the Secretaries directed. The Board must consider specific criteria and establish a record for its determinations showing they are consistent with existing regulatory provisions and are supported by substantial evidence, as required by the federal Administrative Procedures Act when factual determinations, such as C&T determinations, must be made. This request supports the intent of ANILCA to provide a priority for federal subsistence uses of fish and wildlife without causing unnecessary restriction of state subsistence and other nonsubsistence harvests. In Attachment A, please find section specific comments that address deficiencies in the draft policy that must be addressed in order to comply with ANILCA and Board regulations.

Two years have transpired since the Board received Secretarial direction and over a year since the Secretarial response to the State promised imminent adoption of a policy. If the Board cannot provide clear procedural steps, criteria, and threshold analyses for making C&T determinations in a policy, then timely rulemaking is needed. Attachment B requests very simple changes to the current regulations which are designed to resolve apparent ambiguities that contribute to the need for policy guidance. We request that this language be incorporated into the policy to guide interpretation and establishment of procedures in application of existing regulations, or in the alternative, that this language be adopted into revised regulations. Adoption of these changes in the policy or regulations would require the Board to establish a record demonstrating compliance with ANILCA and Board regulations when addressing proposals related to customary and traditional determinations.

Sincerely,

/s/ 


Ken Taylor
Deputy Commissioner

Attachment A: Section Specific Comments on the Draft Policy

Attachment B: Requested amendments to regulations clarifying procedures by the Board

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ATTACHMENT A: Section Specific Comments on Draft C&T Policy

Title: The title, “POLICY ON IMPLEMENTATION OF CUSTOMARY AND TRADITIONAL USE DETERMINATIONS,” is not reflective of the intent of the draft policy. Consistent with Secretarial direction, the intent is to explain the process for making C&T use determinations. Nothing in the draft policy speaks to “implementation” of the determinations once they are made, nor should the policy do so.

PURPOSE: The first sentence states: “This policy describes the internal management of the Federal Subsistence Board . . .” However, nothing in the draft policy describes “internal management” of the Board; e.g., who gathers available information and conducts analyses of C&T proposals, the mechanism for presenting information and analyses to the Board, whether or not those analyses are available for public review, consultation with the State, and the Board procedures for establishing an administrative record of the information that is used to evaluate C&T proposals.

The first sentence continues: “This policy . . . provides explanation to the public regarding the process for making customary and traditional use determinations . . .” The policy fails to meet this objective. No process is contained within the policy. Instead, the policy attempts to describe and justify the Board’s broad and inconsistent range of interpretations of the regulatory factors for making C&T determinations.

The first sentence specifies that the policy addresses C&T use determinations “pertaining to management of hunting, trapping, and fishing on Federal public lands and waters in Alaska.” The Board’s authority granted in ANILCA is to ensure a priority for C&T harvest of fish and wildlife by rural residents on federal public lands—not management of hunting, trapping, and fishing. The State of Alaska retains its traditional authority and responsibility for sustainable management of fish and wildlife on state, private, and federal lands under ANILCA Section 1314, while Title VIII provides the mechanism by which the Board shares authority with the State to regulate taking for subsistence uses through the Board’s limited authority to authorize take by rural residents that would otherwise be prohibited under state law and its authority to close federal public lands to nonsubsistence harvest where necessary in order to ensure the subsistence priority. Regulating harvest is only one management tool. It is not the management of hunting, trapping, and fishing. The sentence could be modified to “management of subsistence take on federal public lands . . .”

The second sentence states: “This policy recognizes the unique status of the Regional Advisory Councils . . .” No explanation is provided for what constitutes “unique” status. The policy in fact fails to explain the federal Solicitor’s recent instructions to the Board that it does not give deference to the councils when making C&T determinations. This is a major policy decision that must be included in the policy, along with the procedural steps for consideration of information from the councils specified in regulation (36 CFR 242.16(c) and 50 CFR 100.16(c)).

Policy: The draft policy selectively quotes the purposes of ANILCA contained in Title I: “The purpose of ANILCA is to provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so [ANILCA § 101(c)].”

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This section of Title I actually states:

It is further the intent and purpose of this Act consistent with management of fish and wildlife in accordance with recognized scientific principles and the purposes for which each conservation system unit is established, designated, or expanded by or pursuant to this Act, to provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so.

In context, providing “the opportunity” is conditioned upon consistency with (1) scientifically principled fish and wildlife management, and (2) enabling purposes of each conservation system unit. Nowhere does the draft policy provide any guidance that reflects these conditions in the decisionmaking process. The authors might argue that these conditions are considered when the Board authorizes actual harvest regulations, but they are not; and because a legal priority attaches once the C&T determination is made, it is much more difficult to consider these conditions after a determination is made. In practice, this procedure leads to unnecessary restrictions on other uses where there are conservation concerns and ignores the enabling purposes of units. Consistency with the state’s highly successful management of sustainable fish and wildlife populations and consistency with enabling purposes of the units are rarely discussed in the Board’s administrative record or deliberations.

The draft policy’s selective quote from Title I implies that providing the subsistence opportunity is the only purpose of ANILCA. The Board’s procedures echo this implication by omitting any deliberation of other uses and purposes despite numerous directives. For example, purposes in Title I include, among many others: preserving lands with recreational values for benefit and use (Section 101(a)); preserving recreational opportunities such as fishing and sport hunting (Section 101(b)); and “adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people” (Section 101(d)). In addition, section 815 of Title VIII prohibits restrictions on the taking of fish and wildlife for nonsubsistence uses unless necessary for conservation of fish and wildlife, public safety, administration, continuing subsistence uses, or pursuant to other law. Despite the fact that C&T determinations nearly always lead to direct or indirect restrictions on other users, the Board, ignoring the prohibition in section 815, has frequently failed to ensure that a positive C&T determination is necessary.

In the second paragraph, the first sentence states unambiguously: “The customary and traditional use determinations that the Board makes **must be based on** a community’s long term consistent pattern of use of a fish stock or wildlife population.” (Emphasis added) Nothing in the rest of this section comports to that statement, as detailed below:

1. The first sentence is clear, but nothing in the draft policy indicates how the Board distinguishes a “long term consistent pattern of use” from the absence of such a pattern. Recent C&T use determinations by the Board were based on as little use as “infrequent,” “sporadic,” “incidental,” and only once in 70 years. Each of the eight regulatory factors refers to a “pattern of use,” a “consistent” use, or a traditional use, yet the policy and the Board’s current process includes no requirement to evaluate or find substantial evidence of any harvest before making a C&T determination.

2. The first sentence also makes it clear that the C&T determination must be based on a “fish stock or wildlife population.” That statement is somewhat consistent with but less complete than 50 CFR §100.16(a) and 36 CFR §242.16(a): “These determinations shall identify the specific community’s or area’s use of specific fish stocks and wildlife populations.” (Emphasis added) This direction is contradicted by the second sentence of this paragraph in the draft policy, which states: “nothing in [federal regulations] states that a specific wildlife population or fish stock has to be defined in terms of a specific geographic area.” This comment is contrary to the regulation’s intent, prior Board standards, and responsible management.

First, fish stocks and wildlife populations inhabit specific geographic areas and are managed accordingly. The draft policy however, is so vague and attempts to convey so much discretion to the Board that it arguably could be interpreted, for example, to allow the Board to treat all moose in Alaska as a single population or all salmon as a single stock.

Second, the Board must evaluate whether a community generally exhibits eight regulatory factors for the C&T determination based on community use of specific stocks or populations, resulting in that community’s C&T eligibility for priority takings of those specific stocks or populations on federal lands. The regulatory factors include: “The consistent harvest and use of fish or wildlife . . . near, or reasonably accessible from, the community or area.” Only specific geographic areas are reasonably accessible to the community. Otherwise the draft policy could apply a C&T determination across the state.

3. The third paragraph in the Policy section states “Subsistence uses are dynamic and adaptive . . .” We agree. But the statute and regulations provide a priority use for those subsistence uses, specifically takings, that are customary and traditional—not all uses anywhere anytime of any fish and wildlife. The regulations direct that such uses “shall generally exhibit” eight factors and all of those factors address a long-term “pattern,” “consistent,” or “traditional” use. This paragraph appears intended instead to justify the Board’s rendering C&T determinations without evidence of any prior long-term, consistent pattern of harvest and consumption.
4. The fourth paragraph in the Policy section states: “In the absence of a specific customary and traditional use finding, all rural residents are the eligible pool of users.” This statement, taken at face value, would mean that all rural residents from Barrow to Hyder have a priority use for fish and wildlife where federal harvests are authorized but the Board has not made a C&T determination. Some of these priorities have remained in place since inception of the federal program in 1990 — 17 years later. If one of these populations were to decline, the harvest could be closed to the nonrural residents, retaining a subsistence priority harvest opportunity for residents who have never harvested in the area and for fish and wildlife that are not reasonably accessible. The draft policy provides no guidance for completing C&T determinations for all subsistence uses of fish and wildlife. The policy needs to define the phrase “more narrowly delineate”

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- an existing C&T finding and other terms used in this paragraph and also explain the circumstances that would compel such action and the required information to support it.
5. The fifth paragraph of the Policy section of the draft policy abhors “Overly narrow standards,” yet rhetorically notes: “overly broad standards for customary and traditional use could extend protections of ANILCA to uses that are not customary and traditional.” Such protections are allocations of fish and wildlife and are prohibited by section 815 of ANILCA. Such broad C&T determinations immediately establish a priority for harvest by certain residents over other residents. While the allocation may not be readily apparent until the federal land is closed to the non-federally qualified residents, the allocation is in effect even where federal harvest limits mirror state limits. Unnecessary, overbroad C&T determinations made in violation of section 815’s clear directive may result in allocations to unqualified users by authorizing uses of methods and means, extra seasons and bag limits, and customary trade, despite the fact that such taking and use is not customary and traditional. Unnecessary and overbroad C&T determinations may also exempt rural residents from the purchase of state fishing licenses, decreasing the funds available for conservation and management of fisheries. Such overly broad and missing C&T determinations must be rectified within a time frame clearly established in this policy. No guidelines in the draft policy address this issue.
 6. The statement “[c]ustomary and traditional use determinations are not intended to be an additional hurdle . . .” is rhetorical. The law provides a priority for customary and traditional subsistence use. To have such protection as defined, the Board must make a determination based on some criteria. Administrative determinations are not a hurdle but a necessary step for effective allocation of limited resources among resource users. The law also requires no unnecessary restriction on nonsubsistence use, but the policy provides no timeline or clear criteria for correcting prior overly broad C&T determinations in order to prevent those determinations from being a hurdle to federal nonsubsistence users (including state subsistence users).
 7. The last paragraph of the policy section indicates that a population that “is relatively unimportant for subsistence purposes” should still receive a C&T determination, and surmises that the lack of importance “likely would be reflected in relatively low customary and traditional use of the population.” This assertion is inconsistent with the Board’s regulations and requires further explanation and revision because a population that is relatively unimportant for subsistence purposes and is harvested at a relatively low level would not demonstrate several of the eight factors that define a C&T use and would rarely “generally exhibit” the factors required for a positive determination. The draft policy implies that any level of use constitutes a C&T use. This is an example of “overly broad standards for customary and traditional use” described above. If a use of a “specific fish stock or wildlife population” generally exhibits the eight regulatory factors, it is an important use. The policy should require the Board to evaluate substantive evidence and find that a use generally exhibits the eight factors before making a positive C&T determination and should require the Board to revisit and remove C&T determinations for those specific fish stocks and wildlife populations in those areas and for those communities where such harvest does not exhibit the factors.

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Decision Making:

The second bullet needs to be revised to clarify that the Board must establish criteria for substantial evidence demonstrated on the administrative record to support C&T determinations. Instead, the draft policy loosely directs that the determination be based “on information of a reasonable and defensible nature contained within the administrative record.” The policy must include definitions for the phrase “reasonable and defensible,” as well as criteria for evaluating information as substantial evidence to justify a C&T determination. Too often the past conflicts involving C&T determinations occurred because the determinations were based on hearsay, opinion, or philosophy regarding community uses that never occurred, or determinations were made for locations not reasonably accessible for subsistence uses of fish or wildlife. Similarly, the Board does not generally discuss the eight factors on the record but instead relies on analyses done by federal staff that are in the written record but not evaluated by the Board on the record.

The third bullet states that the federal Board will make C&T use determinations “based on a holistic application of the eight factors . . . and whether a community or area generally exhibits them.” This provision appears to provide the federal Board with unlimited flexibility in how it evaluates and assigns weight to the eight factors. Such unlimited discretion is the foundation for what courts commonly refer to as “arbitrary and capricious” agency decisionmaking. The phrase “Together, the eight factors elucidate the economic, nutritional, cultural, and social character . . .” offers no guidance to the Board on the use of these important evidentiary guides. The draft policy would better serve the Board by clarifying the procedures and evidence necessary to address the eight regulatory factors rather than including an additional undefined “character” as a requirement.

The fourth bullet needs to clarify what “consider” means in terms of the weight of council information. Also, the regulation citations should be corrected to 36 CFR 242.16(c) and 50 CFR 100.16(c).

The fifth bullet omits other references in ANILCA that require consultation with the State of Alaska, such as 802(3). It fails to recognize the state’s authority and responsibility for the management of fish and wildlife on all lands except as specifically diminished by federal law.

Additional Guiding Considerations

The third bullet states: “There is no rigid regulatory requirement that a customary and traditional use determination be made only for an area for which actual use has been demonstrated; the area encompassed . . . may be broader.” If a C&T determination can be made for an area in which actual harvest has not been demonstrated, then the policy should indicate which of the eight regulatory factors allows this. If neither historical nor contemporary taking of a specific fish or wildlife stock or population in a particular geographic area has been documented, there is no rationale to support making a positive C&T determination. This overly broad direction is unsupported by the regulations in 50 CFR §100.16(a) and 36 CFR §242.16(a), which specifically require: “These determinations shall identify the specific community’s or area’s use of specific fish stocks and wildlife populations.” A C&T determination is expressed in the regulations at 50

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CFR §100.24 and 36 CFR §242.24 as a geographic area for which there is a demonstrated customary and traditional use of specific stocks of fish or wildlife populations. If the Board intends to expand its C&T determination process to allow positive C&T determinations unsupported by demonstrated use, then the Board must adopt changes to its regulations. It cannot rely on a policy that requires violation of its regulations or which “interprets” its regulations so as to give them no effect.

Additional Guiding Considerations

The first bullet on this page states that ANILCA does not differentiate between natural, introduced, reintroduced, or recently migrated species. The draft policy should clearly explain how the Board will evaluate the eight factors for each of these four categories of species. More specifically, it must consider under what circumstances the Board would conclude that there is a C&T use of an introduced or reintroduced species. We realize that the Board has granted C&T and a subsistence use priority for recently introduced species and believe that these determinations should be revisited and corrected because there can be no substantial evidence documenting a long term pattern of use for such populations.

Definitions

“Policy” is defined as being the general principles by which the federal Board is guided in the management of its affairs. However, this draft “policy” fails to provide any meaningful principles to guide the Board’s actions in the management of its affairs. Instead, it provides incorrect and incomplete opinions and representations. It does not provide specific criteria, analytical thresholds, an established step-by-step process, or any procedures for the Board to use to ensure that its C&T determinations are subject to uniform standards and supported by substantial evidence.

ATTACHMENT B

Petition for Rulemaking: Modify 50 CFR Part 100, Subpart B—Program Structure and 36 CFR Part 242, Subpart B—Program Structure

According to 50 CFR §100.18(b) and 36 CFR §242.18(b), “Proposals for changes to subparts A and B of this part shall be accepted by the Secretary of the Interior in accordance with 43 CFR part 14.” This petition requests that Subpart B be modified to incorporate the following changes, as shown with additions underlined and deletions by strikethrough:

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

(a) The Board shall determine which specific fish stocks and wildlife populations have been customarily and traditionally used for subsistence. These determinations shall identify the specific community’s or area’s use of specific fish stocks and wildlife populations. The Board shall consistently apply the regulatory definition of “customary and traditional use” found at 50 CFR 100.4 and 36 CFR 242.4 and make findings on the record based on substantial evidence for any decisions concerning customary and traditional use. For areas managed by the National Park Service, where subsistence uses are allowed, the determinations may be made on an individual basis.

(b) A community or area shall generally exhibit the following factors, which exemplify customary and traditional use. The Board shall make customary and traditional use determinations based on consistent application of each of the following factors, providing a written record of the Board’s thorough analysis of each criterion, and specifically enumerating each use and the substantial evidence of such use:

- (1) A long-term consistent pattern of use, excluding interruptions beyond the control of the community or area;
- (2) A pattern of use recurring in specific seasons for many years;
- (3) A pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local characteristics;
- (4) The consistent harvest and use of fish or wildlife as related to past methods and means of taking; near, or reasonably accessible from, the community or area;
- (5) A means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations, including consideration of alternation of past practices due to recent technological advances, where appropriate;
- (6) A pattern of use which includes the handing down of knowledge of fishing and hunting skills, values, and lore from generation to generation;
- (7) A pattern of use in which the harvest is shared or distributed within a definable community of persons; and
- (8) A pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social, and nutritional elements to the community or area.

(c) The Board shall take into consideration the reports and recommendations of any appropriate Regional council and the State of Alaska regarding customary and traditional uses of subsistence resources.

(d) The Board shall not authorize closures of fish and wildlife uses by non-federally qualified users, while allowing use by federally qualified users, unless the Board first makes specific written findings of customary and traditional use of the specific fish stock or wildlife population by each community or area for which use is allowed. The Board shall apply customary and traditional use findings only to an area in which there is substantial evidence that the customary and traditional use occurred.

(e) Current determinations are listed in § 100.24. The Board shall review all current determinations within three years to ensure that such determinations are supported by a written record including substantial evidence of each customary and traditional use of a specific fish stock or wildlife population.



December 4, 2007

Theo Matuskowitz
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subsistence@fws.gov

FAX: (907) 786-3898

Re: Comments on *Draft Customary and Traditional Use Determination Policy*

Dear Mr. Matuskowitz,

The Office of Subsistence Management has called for public comment concerning a *Draft Customary and Traditional Use Determination Policy* which is currently posted on the Federal website <http://alaska.fws.gov/asm/pdf/draftctpolicy.pdf>. According to a press release, dated November 30, 2007 from the Office of Subsistence Management, comments on this Draft Policy are due by email, FAX or mail by 5 p.m. Alaska Time, December 7, 2007.

The following comments are provided by Kenai River Sportfishing Association (KRSA) and specifically address the *Draft Customary and Traditional Use Determination Policy*.

Policy Purpose and Background:

At the outset the stated purpose of the draft policy is to:

“describe the internal management of the Federal Subsistence Board (Board) and provide explanation to the public regarding the process for making customary and traditional use determinations pertaining to management of hunting, trapping, and fishing on Federal public lands and waters in Alaska” and “This policy is intended only to clarify existing practices under the current statute and regulations.”

This is an important effort that if done properly will facilitate a greater level of understanding among the affected publics and a clear and predictable set of guidelines that are useful to Board members. Without policy that defines clear and predictable guidelines for determination of what is and is not customary and traditional use, there is an inherent risk that over time C and T determinations by the Board become arbitrary and capricious. The purpose of policy should be to prevent the appearance of arbitrary and capricious decision making by the Board, not enshrine it under the guise of needing a “dynamic” or “flexible” approach to decision making.

Additionally, such policy can give clear direction to the Regional Advisory Councils (RACs) that make C and T recommendations to the Board. To date, such clear policy direction to the RACs has been absent. As such over time there has not been consistent and coherent rationale for C and T recommendations from RACs, both individually and collectively, to the Board. Without a policy of clear and understandable guidelines for RACs to follow, the administrative record of their recommendations has become inconsistent, and thus incoherent, when viewed as a whole.

Review and Comments:

KRSA's review of the policy suggests that the current draft lacks specifics, is ambiguous in its application and does little to address its stated purpose. The current draft policy fails to provide the public, the RACs and the Board with any meaningful clarity to:

- how the Board will make C&T determinations,
- what information will be considered, and
- what weight the eight criteria play in the decision making process.

KRSA finds it disturbing that although the eight criteria are found in the document (as a footnote) there are several places within the draft policy where their application to the decision making process is muddled and/or diminished.

When the Federal government in 1990 took over the subsistence program in the wake of the *McDowell* decision, it promulgated express regulations to govern the critical C&T determinations. 50 CFR 100.16. The mandatory criteria (i.e., "the Board **SHALL** make customary and traditional use determinations based on the following factors:" (emphasis added) 100.16(b)) reflect the statutory language of Title VIII and Congressional intent. Specifically, the criteria focus on "long term consistent pattern[s] of use", handing down customs and practices over "generations", and demonstrations of community "reliance" on subsistence resources including "substantial cultural, economic, social and nutritional" reliance. 100.16 (b) (1)-(8).

The primary message within this draft policy seems to be that the Board has unlimited flexibility in how it evaluates and assigns weight to the eight factors. That misses the mark entirely relative to the earlier stated purpose of the policy. Specific examples of our concerns follow:

- The draft references the Federal Board charge to make C&T determinations "*based on a community's long term consistent pattern of use of a fish stock or wildlife population.*"

Yet within the draft there is no definition of *long term* and we are left to wonder how this statement is aligned with past board decisions which granted C&T to species that were not available to communities in any long term sense. What is meant by long term – a day, month, or decade?

- Two statements appear in the draft policy: "*The customary and traditional use determinations that the Board makes must be based on a community's long term consistent pattern of use of a fish stock or wildlife population*" and "*nothing in 36 CFR*

242.16(b) and 50 CFR 100.16(a) states that a specific wildlife population or fish stock has to be defined in terms of a specific geographical area”.

The statements appear contradictory and as such make application of either portion of the policy meaningless.

- The draft policy lacks specifics. For example, does the draft policy intend to give unlimited latitude to the Board to assign C&T on a species level or a stock level? Stocks are geographically defined as subsets of species. So which is it? And exactly which of the eight criteria grant the authority to the Board to utilize this expanding and more liberal interpretation?
- The draft policy states that the Federal board will make C&T use determinations “*based on a holistic application of the eight factors... and whether a community or area generally exhibits them.*”

This statement is the root of the problem with how the Federal Board has preceded in the past with regard to C&T determinations and highlights the exact area where the Board needs to clarify their process. The eight criteria exist for a reason. We strongly believe the substance of this policy, and service to the public, will be greatly enhanced with a more structured discussion of how the eight criteria will be applied and what weight the individual criteria carry. This draft goes in exactly the wrong direction by muddling the application of criteria and leaving unfocused the degree to which a community must meet them and how the Board intends to apply them.

- The draft states: “*There is no rigid regulatory requirement that a customary and traditional use determination be made only for an area for which actual use has been demonstrated; the area encompassed... may be broader.*”

If a determination can be made for an area in which actual use has never been demonstrated, then the policy should indicate which of the eight factors allows for this and what extension of the stock or population level it applies.

If neither historical nor contemporary use of a particular geographic area can be documented, what rationale could possible support making a positive C&T use finding?

- The draft states: “*ANILCA does not differentiate between natural, introduced, reintroduced, or recently migrated species.*”

While this may possibly be true, it is so illogical and inconsistent with the concept of long term use that it escapes all but the most seasoned bureaucrat. How can one possibly conclude that a long term consistent pattern of use can exist for a species that is only recently present?

- In addition to making positive C and T determinations, the draft policy notes the board is responsible for determining which uses are not customary and traditional: “*Not all rural*

uses are customary and traditional, and it is the responsibility of the Board to determine, based on the information before it, which rural uses are customary and traditional,” and “At the same time, overly broad standards for customary and traditional use could extend protections of ANILCA to uses that are not customary and traditional.”

By advocating unlimited flexibility in how to evaluate and assign weight to the eight factors, the draft policy, by default, generates overly broad standards for determining what customary and traditional use is and absolutely no framework to evaluate what it is not.

KRSA believes the Board’s effort to be all inclusive and broad in their determinations is the fundamental problem the draft policy was supposed to address. In that vein, this draft policy fails miserably to provide consistent and coherent guidelines.

If the “flexibility” and intentional vagueness of the draft policy for C and T determinations is adopted, the Board will have essentially moved from a realm of having no policy on such guidelines to the realm of having a policy that has no guidelines.

Institutionalizing an arbitrary and capricious course of action seems contrary to the intent of ANILCA and to the very reason of having a bureaucratic process in place. Adoption of this draft policy as presented will continue to cloud C and T determinations with the appearance of an arbitrary and capricious nature and leave members of the public, the RACs and the Board itself with serious questions and concerns about the process for how such C and T determinations are made.

Summary:

In sum, KRSA believes the draft policy does little to clarify or lend structured predictability to the process of determining C and T. Rather, language within the draft intentionally muddles the decision making process with contradictory and qualifying statements.

KRSA firmly believes the public and the process will be far better served by a more direct effort to place in policy the Board’s application of the eight criteria, a definition of long term use, and an unambiguous explanation of the geographic area of use is factored in when making C and T determinations. KRSA looks forward to working with staff in an effort to make those improvements.

Thank you for the opportunity to provide comment on this very important matter.

Respectfully,

Ricky Gease, Executive Director
Kenai River Sportfishing Association



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December 7, 2007

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

Re: Draft Customary and Traditional Use Policy

Dear Mr. Matuskowitz:

United Fishermen of Alaska (UFA) is an umbrella association representing 36 Alaska commercial fishing organizations participating in fisheries throughout the state and its offshore waters. We also represent hundreds of individual fishermen members, many of whom are federally qualified rural subsistence users.

After reviewing the draft "Policy on Implementation of Customary and Traditional [C&T] Use Determinations", at our annual Fall meeting, the UFA Board of Directors believes that additional issues need to be considered before adoption of a policy. While it is encouraging to note that the Federal Subsistence Board (FSB) has recognized the need for a formally adopted C&T policy, we are concerned that the proposed language does not adequately address some of the basic shortcomings of the FSB process. UFA appreciates the opportunity to comment and offers the following points to express some of our concerns with the draft document as it is written.

While the "Purpose" section indicates that "the intention of the policy is to clarify existing practices under the current statute and regulations", the existing practice is widely perceived to be biased and arbitrarily applied and has drawn criticism for not providing clear criteria and a defensible record of the process.

Although the "Introduction" section states that implementing regulations require that the FSB make C&T determinations using the eight factors, the body of the policy is not explicit enough in establishing the mechanism to ensure this required consideration. For example, the wording "based on a holistic application of eight factors" is vague and subject to different interpretations. Also, the existing process whereby the FSB seems to function as a rubber stamp for RAC recommendations will not adequately provide the defensible record of how and by whom the eight factors are considered.

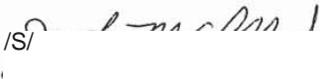
The policy also states that determinations "must be based on a community's long term consistent pattern of use" and that "in all instances, the Board makes a decision based upon the best available information." However, without accountability in the decision making process, it is unclear how the "best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

Theo Matuskowitz

Under “Additional Guiding Considerations:” UFA is concerned that the “[FSB] may extrapolation based on information from other, similarly situated communities or areas if no information exists for a certain community or area.” without substantive definition of what constitutes “similarity”.

Although UFA has additional concerns about specific wording of the draft document, we hope that the previous comments will assist the FSB in establishing a publicly accepted set of procedures based on valid information reviewed by using a consistently applied set of well defined criteria.

Thank you for your consideration,



Joe Childers
President

MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Druggers Association • Alaska Independent Tendermen's Association • Alaska Longline Fishermen's Association
Alaska Shellfish Association • Alaska Trollers Association • Armstrong Keta • At-sea Processors Association • Bristol Bay Reserve
Cape Barnabas • Concerned Area "M" Fishermen • Cook Inlet Aquaculture Association • Cordova District Fishermen United
Crab Group of Independent Harvesters • Douglas Island Pink and Chum • Fishing Vessel Owners Association • Groundfish Forum
Kenai Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association • North Pacific Fisheries Association
Northern Southeast Regional Aquaculture Association • Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation
Purse Seine Vessel Owner Association • Seafood Producers Cooperative • Sitka Herring Association • Southeast Alaska Fisherman's Alliance
Southeast Alaska Regional Dive Fisheries Association • Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association
United Catcher Boats • United Cook Inlet Drift Association • United Salmon Association • United Southeast Alaska Gillnetters
Valdez Fisheries Development Association • Western Gulf of Alaska Fishermen

BRIEFING ON CONSULTATION WITH TRIBES AND ANCSA CORPORATIONS

I. INTRODUCTION

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) requires that rural Alaskans be given a priority for the subsistence uses of fish and wildlife on Federal public lands and waters in Alaska. In addition, Executive Order 13175 of November 2000 and the Presidential Memorandum of November 5, 2009 “Tribal Consultation” gave the Secretaries of the Interior and Agriculture specific direction to develop Departmental policy on government-to-government consultation and collaboration with Native American Tribes. The Department of the Interior, in turn, directed the Federal Subsistence Board to develop a government-to-government Tribal consultation policy. In addition, Public Law 108-199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452 as amended by Public Law 108-447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267 provides that “the Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native Corporations on the same basis as Indian Tribes under Executive Order No. 13175.” The Executive order and Presidential Memorandum together with the Congressional mandate defines the Board’s responsibility to engage in regular and meaningful consultation and collaboration with Tribes and Alaska Native Corporations on subsistence matters that may have significant effects on them and their members.

II. BACKGROUND

ANILCA declares that the “...continuation of the opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, on the public lands and by Alaska Natives on Native lands is essential to Native physical, economic, traditional and cultural existence and to non-Native physical, economic, traditional, and social existence. . .” The Federal government has provided for the subsistence priority on Federal public lands and waters in Alaska since 1990. ANILCA also created a system of regional advisory councils to enable rural residents to have a meaningful role in Federal subsistence management. Ten regional advisory councils provide recommendations and information to the Federal Subsistence Board and provide a public forum for issues related to subsistence uses. By regulation the Federal Subsistence Board gives deference to the regional advisory councils’ positions concerning the taking of fish and wildlife unless a regulatory proposal is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. Board deference to regional advisory councils does not affect the government-to-government relationship enjoyed by Tribes.

At its May 2011 meeting, the Board directed that a consultation workgroup comprised of Federal and Tribal representatives be formed to develop Tribal and Alaska Native Claims Settlement Act (ANCSA) corporation consultation policies, with the goal of adopting final policies at its May 2012 meeting. The workgroup subsequently developed draft consultation policies. The Board met with Tribes, ANCSA Corporation representatives, and subsistence regional advisory councils, and sought written comment on these draft policies.

In May of 2012, the Federal Subsistence Board adopted its Tribal Consultation Policy. The policy is founded on the Department of the Interior’s Tribal Consultation Policy and Department of Agriculture’s Action Plan for Tribal Consultation and Collaboration and establishes the framework for regular and meaningful consultation with Federally recognized Tribes in Alaska on ANILCA, Title VIII subsistence matters. The policy includes in its goals provisions for training of Federal staff on government-to-government consultation, offering training to Tribes on the Federal subsistence regulation making process, and a regular review of the policy by the Board. Based on comments received from ANCSA corporations,

the Board delayed adoption of the ANCSA Corporation consultation policy until after the Department of Interior finalized its ANCSA Corporation consultation policy. The Board directed that the consultation workgroup continue to develop implementation guidelines for the Tribal consultation policy and the draft ANCSA Corporation consultation policy. The Board has been following interim implementation guidelines pending the adoption of final implementation guidelines in 2013.

Consultations have been ongoing with Alaska Native Tribes and Corporations during the fiscal year of 2012. Several consultations occurred beginning in December of 2011 at the Providers Conference in Anchorage on the guidelines for consultations, on issues of subsistence and regulatory proposals, during the Board and Southeast RAC combined spring meeting in Juneau on the Angoon Extra-Territorial Jurisdiction petition in March, again in May 2012 to consider the draft guidelines and comments, and also a two day consultation conference call with the Tribes and ANCSA corporations affected by the 2013–2015 proposed fisheries regulations in September 2012. The Regional Advisory Councils were briefed on the Consultation Policy progress at their fall 2012 meetings. These consultations have been entered into the Department of the Interior’s data share-point website to satisfy accountability requirements from the Secretaries.

III. POSITION OF INTERESTED PARTIES

Feedback from Tribes and Corporations has been favorable. It is observed that consultations will more likely take place when regulations are viewed to be prohibitive or restrictive than regulations that liberalize harvest.

IV. FWS POSITION

Consistent with the policy of the Departments of the Interior and Agriculture, the Service will continue to strive to improve the government-to-government relations with Federally recognized Tribes. We will also consult with ANCSA Corporations in Alaska. We are committed to carrying out the Federal Subsistence Board’s Tribal and ANCSA Corporation consultation policies and the development of implementation guidelines.



United States Department of the Interior



FISH AND WILDLIFE SERVICE
 Kodiak National Wildlife Refuge
 1390 Buskin River Road
 Kodiak, Alaska 99615-0323
 (907) 487-2600

Federal Subsistence Activity Report Kodiak National Wildlife Refuge September 2012 – February 2013

Subsistence Permit Summary

Federal Subsistence regulations allow for customary and traditional harvest of Roosevelt elk, Sitka black-tailed deer, and brown bear on Kodiak Refuge lands. Rural residents qualify for federal elk and deer hunts, and a small number of brown bear permits are issued to village residents (Table 1). Federal designated deer hunter and subsistence elk permits can be obtained at the Kodiak Refuge headquarters. Permittees are required to carry their Federal subsistence permits, and current state licenses and tags while hunting.

Table 1. Federal subsistence permits issued and animals harvested, Unit 8, 2006-2013.

Species	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
Deer*	63(59)	83(29)	81(74)	56(38)	67(42)	70(52)	22(8)**
Bear	5(2)	5(0)	6(1)	6(1)	7(1)	5(2)	2(0)**
Elk	10(0)	6(0)	3(0)	5(0)	8(1)	6(0)	2(0)

*multiple deer eligible to be harvested per permit

**incomplete reporting

Brown Bears

Population Assessment

The Refuge, in cooperation with ADF&G, conducts annual surveys to assess trends in population size and composition (e.g., cubs per maternal female). In May 2012, unsuitable weather prevented biologists from surveying bear densities within the Karluk Intensive Aerial Survey area. We will attempt this survey again this May.

Biologists completed 7 bear stream use surveys between 9 July and 7 August, 2012, on tributaries of Karluk Lake, Red Lake, Fraser Lake, Sturgeon River, and Dog Salmon River. We observed an average of 48 bears/survey, which was lower than 2011 survey results (64 bears/survey) and almost half of the 27-year average (1985-2002, 90 bears/survey). Single bears represented a larger fraction of composition in the 2012 survey (76%) than the long-term average (46%).

Research

Last summer, we continued our fieldwork on bear movement and resource use within southwest Kodiak Island, focused on the lake-river systems of Karluk Lake, Red Lake, and Frazer Lake. This collaborative project involving Refuge, University of Montana-Flathead Lake Biological Station, University of Idaho, and ADF&G biologists will improve bear management capacity on Kodiak by increasing our understanding of how bear movements, habitat use, and cub survival are influenced by variations in environmental conditions and availabilities of important seasonal food resources, primarily salmon.

In 2012, Refuge biologists developed a cooperative research program with the University of Montana to better understand how fluctuations in salmon abundance influence brown bear movements, distribution, and exploitation of anadromous streams in southwestern Kodiak Island. Goals of the project include: (1) characterizing variations in salmon runs in 12 spawning streams using a time-lapse camera system; (2) determining how salmon abundance, the timing of salmon runs, and salmon energy contents affects Kodiak brown bear exploitation of salmon; (3) quantifying the physical and biological characteristics of salmon runs that trigger bears to travel among streams; (4) and quantifying the physical characteristics of preferred salmon foraging sites. The first season of fieldwork occurred from early June to mid-September 2012. We fitted with GPS radio-collars and monitored 18 sows; operated 12 time-lapse camera monitoring systems on salmon spawning streams, and non-lethally measured lipid contents of 575 salmon.

Sitka Black-tailed Deer

Sitka black-tailed deer harvest results on the Kodiak Archipelago, including subsistence and recreational sport hunter efforts, had traditionally been assessed annually by the ADF&G via a hunter questionnaire. Since 2006, the Refuge had cooperated with ADF&G on harvest assessments and included a question regarding harvest on federal land. In 2011, ADF&G migrated from a paper-based to an online deer harvest reporting system. Since then, the Refuge has been working with ADF&G to insure that harvest data specific to federal lands continues to be available and used for more informed management of deer.

Results from the updated web-based reporting system indicated that 4,500 to 5,200 deer were harvested during the 2011-2012 season. Although hunter questionnaire results from the 2012-2013 season are pending, harvest success was low this past season because an estimated 40-60% of the deer population did not survive the unusually snowy and cold winter of 2011-2012. Kodiak Island deer populations are primarily regulated by winter conditions, and the population has historically undergone numerous sharp declines following cold winters with heavy snowfall.

In May 2012, Refuge biologists tested a new approach to aerially survey deer in non-forested habitats on Kodiak. Using the new method, we successfully estimated the deer population size, with statistical confidence, within an experimental survey area on the Aliulik Peninsula (115 deer, SE = 15.82) using a statistical correction factor that accounts for deer present in a survey area, but not sighted during the survey. We plan to expand the scope of the survey this May to include additional non-forested habitats of southern Kodiak. The long-term goal is to provide

wildlife managers with an index of annual changes in deer abundances, which will allow for improved sustainable harvest management.

Elk

Radio-collared elk provide a basis for ADF&G's efforts to track herd locations and estimate herd composition, population size, and harvest quotas. The fall 2012 survey indicated that the population size was 685 elk, which was down slightly from an estimated population of 700 elk in 2011. The size of the Waterfall herd, which utilizes Refuge lands on Afognak Island, was had not changed from 2011 (40 elk). Unlike deer, it appears that Archipelago's elk population did not decline substantially in response to the unusually snowy and cold winter conditions in 2011-2012.

Sea Otters

Population Monitoring

In the Kodiak region, monitoring results provide information on the general health, size, and distribution of a substantial portion of a federally threatened sea otter stock. Results from the latest survey, conducted in 2004, revealed a count of 6,284 sea otter. This population estimate did not differ substantially from the previous 2001 survey. In 2012, the Fish and Wildlife Service's Marine Mammal Management Division (MMM) initiated a review of the sea otter survey methodology. We hope that results from this review will be available soon, and they may include recommendations to update the survey methodology in southwestern Alaska including the Kodiak area. Following completion of the review, the Refuge, in collaboration with MMM, plans to survey sea otter in the Kodiak area.

Diets

MMM is studying sea otter diets in the Kodiak and Homer areas by analyzing stable isotopes of prey items and archived sea otter whiskers collected from beach cast, hunter-harvested, and live-captured animals. Kodiak Refuge, in cooperation with NOAA, has assisted this study by collecting samples of otter prey species. Samples are being used to establish reference data for isotope levels found in different food prey species. Although sea otter consume a diversity of marine foods, a few usually compose the bulk of the diet. Monitoring changes in diet can facilitate management by providing a means of explaining change in reproductive fitness, survival, abundance, and distribution.

Causes of Mortality

Dead sea otters reported by the public, and collected by Kodiak Refuge subsistence staff, are sent to MMM for detailed necropsies to determine their causes of death. There were no dead sea otters reported to Refuge staff during this reporting period.

Marine Mammal Marking and Tagging Update (MMMTP)

Under the 1972 Marine Mammal Protection Act, qualified Alaskan coastal natives may harvest sea otters and use the pelts for handicrafts. Legally harvested sea otter hides and skulls must be officially tagged by a USFWS-approved representative ("tagger"). Currently, there are 15

taggers distributed in the villages of Kodiak Island. During this reporting period, Refuge headquarters staff tagged 8 sea otters.

Migratory Birds

Coastal Waterbird Surveys

In 2012, the Refuge continued a survey initiated in 2011 on marine nearshore birds that use both the intertidal zone and shallow inshore waters. We conduct surveys in June and August when the majority of resident breeding birds had established nests and populations are relatively stable. August surveys allow us to estimate productivity of species with distinctive juvenile plumages including marbled murrelets and pigeon guillemots. We conduct surveys from small skiffs using the refuge research vessel, *Ursa Major II*, as a mobile home base. Refuge staff surveyed 93 transects along 2,000 km of shoreline from Spruce Island and Kizhuyak Bay northward, and including Raspberry, Afognak, and Shuyak Islands. The most commonly encountered birds were black-legged kittiwakes, glaucous-winged gulls, tufted and horned puffins, marbled murrelets, pigeon guillemots, and harlequin ducks (Table 2). This new survey is an improvement over the previous approach, which only included marine waters adjacent to refuge lands on Afognak, and had limited ability to detect increasing, decreasing or stable populations over the larger region.

Sea Duck Banding and Contaminants Sampling

Refuge biologists band sea ducks, primarily harlequin ducks, almost annually. We have banded over 1,300 birds since 1996. By recapturing banded birds, biologists learn about annual changes in bird survival rates. Banded birds that hunters return also provide important information on local movements, harvest patterns, and hunter demographics. Results from hunter-returned bands show that waterfowl hunters from over 20 states outside Alaska harvest harlequins on Kodiak Refuge, and provide evidence for the widespread popularity for hunting this species.

In 2006, Refuge biologists discovered a group of over 100 female Barrow's goldeneye molting in Blue Fox Bay, a part of Kodiak Refuge on Afognak Island. Although Barrow's goldeneye are a common breeding bird on Kodiak, this finding was surprising because they more commonly molt in large freshwater lake complexes in interior boreal forests. Blue Fox Bay, where the group of females have been banded for three years (2006, 2010 and 2012), may be one of a few locations where this species molts in a marine environment.

Table 2. Population estimates for select marine birds and mammals surveyed in June and August, 2012, by Kodiak Refuge biologists on the northeastern third of Kodiak Archipelago, including Spruce Island and Kizhuyah Bay north to Raspberry, Afognak, and Shuyak Islands.

Species	June 2012 Population Estimate	SE	August 2012 Population Estimate	SE
Nearshore Transects				
Harlequin Duck	2441	603	7348	1210
Barrow's Goldeneye	68	22	151	72
Black Oystercatcher	776	109	1643	366
Nearshore & Offshore Transects				
Pelagic Cormorant	8058	2248	2784	613
Red-faced Cormorant	371	161	214	80
Glaucous-winged Gull	34362	6993	34851	6158
Black-legged Kittiwake	34700	10554	74106	29232
Common Murre	359	103	2549	829
Pigeon Guillemot	14382	1476	18095	1738
Kittlitz's Murrelet	6	6	225	56
Marbled Murrelet	13447	1481	51599	7509
Tufted Puffin	15171	3511	17083	3034
Horned Puffin	3957	609	8728	1360
Marine Mammals				
Harbor Seal	5898	2866	2572	556
Sea Otter	11540	1507	15576	2095
Steller Sea Lion	300	89	225	91



A pair of marbled murrelets. (Jenna Cragg/USFWS)

In 2012, the Refuge was awarded funding from FWS's Region 7 Avian Health and Disease Program to take blood samples from a subset of ducks banded for contaminants analysis. Biologists are specifically interested in establishing baseline information for polychlorinated biphenyl (PCB) and trace metal (lead, selenium, mercury, cadmium, and copper) levels in both species, and to compare contaminant levels in ducks banded at remote locations on the Refuge to ducks close to Kodiak town, where exposure to contaminants may be higher. In summer 2012, we banded 50 harlequin ducks and 49 Barrow's goldeneye, and we recaptured 4 harlequin ducks and 7 Barrow's goldeneye that we had banded previously. We collected blood samples from 51 of the banded birds, which will be analyzed for contaminants this winter. We are awaiting the results of the 2012 sampling efforts, and hope to expanding banding and collecting blood samples next season to additional sites on the Refuge.



Red-faced cormorants. (Robin Corcoran/USFWS)

Fisheries

The 2013 salmon forecast for salmon returning to the Kodiak Management Area has been projected to range from fair to poor. The projections are based on the low parent-year salmon stock returns. However, it is anticipated that most of the subsistence user groups targeting sockeye salmon will be successful in meeting their needs for the upcoming year.

In 2013, a joint mark-recapture project will be conducted by Koniag Inc., Alaska Department of Fish and Game (Sport and Commercial Fish Division) and Kodiak Refuge to in an effort to estimate the steelhead population size of the Karluk River.

Upcoming Education and Outreach

Refuge staff plans to visit Larsen Bay this summer to deliver an “open house” event for the community and school aboard the *Ursa Major II*. The event will include displays covering nature in the Refuge and current wildlife research and monitoring efforts. We working with the Karluk school to provide a potential means to allow student from Karluk to travel to participate in the event at Larsen Bay.

Wildlife programs and kits continue to be available for instructors in village schools. Please contact Tonya Lee (907-487-0235) if you are interested in a specific program, or if you would like more information on wildlife educational programs in the villages.



United States Department of the Interior



U.S. Fish and Wildlife Service
Izembek National Wildlife Refuge
P.O. Box 127
Cold Bay, Alaska 99571

**Izembek National Wildlife Refuge Report for the
Kodiak/Aleutians Federal Subsistence Regional Advisory Council**
Spring Meeting – March 2013
(Compiled in February 2013)

CARIBOU

Unit 9D (Southern Alaska Peninsula)

The Alaska Department of Fish and Game (ADF&G) conducted a fall composition survey of the Southern Alaska Peninsula (SAP) caribou on 9 October 2012. A total of 500 caribou were classified by age and sex composition (Table 1). The calf to cow ratio did not change since the fall 2011 survey (20 calves per 100 cows). The bull to cow ratio increased (45 bulls per 100 cows) since the fall 2011 survey, and is above the management objective for this caribou herd (35 bulls per 100 cows) for the second consecutive year.

Year	Winter minimum population count	Fall Bulls : 100 Cows	Fall Calves : 100 Cows	Fall composition sample size
2004-2005	1,872	36	7	966
2005-2006	1,651	30	6	1040
2006-2007	770	16	1	713
2007-2008	NA	15	1	431
2008-2009	NA	10	39	570
2009-2010	NA	21	43	679
2010-2011	NA	28	47	532
2011-2012	1061	40	20	920
2012-2013	NA	45	20	500

"NA" indicates no data was collected.

"Year" covers the period October-April. USFWS winter minimum population counts are normally conducted December through April; ADF&G fall composition ratios are calculated from an October survey.

Table 1. Summary of Southern Alaska Peninsula caribou herd minimum population counts and fall composition surveys (2004 to 2013) conducted by U.S. Fish and Wildlife Service and Alaska Department of Fish and Game.

A winter minimum population count of the SAP caribou herd on Game Management Unit 9D has not been completed this winter at the time of this report due to insufficient snow

cover conditions. Izembek NWR conducted two radio tracking flights (December 2012 and January 2013) for the SAP caribou. Groups of caribou observed without radio collars were also counted opportunistically during the flights.

The first federal subsistence caribou hunt for unit 9D since emergency closure in the fall of 2007 occurred on Izembek NWR from 10 August to 20 September 2012, and 15 November 2012 to 31 March 2013. Four bull permits were allocated per community (Cold Bay, King Cove, Sand Point, False Pass, and Nelson Lagoon). Permit applicants were drawn randomly by each community. Seven bulls have been harvested at the time this report was compiled.

Unit 10 (Unimak Island)

ADF&G conducted fall composition counts of the Unimak Caribou Herd (UCH) on 9 October 2012. Age and sex composition were classified for 83 caribou (Table 2). The calf to cow ratio observed remained low (3 calves per 100 cows). The bull to cow ratio observed (9.5 bulls per 100 cows) was higher than the previous four years, but remains below the management objective of 35 bulls per 100 cows.

Year	Winter minimum population count	Fall Bulls : 100 Cows	Fall Calves : 100 Cows	Fall composition sample size
2004-2005	1,006	NA	NA	NA
2005-2006	1,009	45	7	730
2006-2007	806	NA	NA	NA
2007-2008	NA	31	6	433
2008-2009	NA	9	6	260
2009-2010	400	5	3	221
2010-2011	224	8	8	284
2011-2012	94	6	7	117
2012-2013	NA	9.5	3	83

“NA” indicates no data was collected.

“Year” covers the period October-April. USFWS winter minimum population counts are normally conducted December through April; ADF&G fall composition ratios are calculated from an October survey.

Table 2. Summary of Unimak Island caribou herd minimum population counts and fall composition surveys (2004 to 2013) conducted by U.S. Fish and Wildlife Service and Alaska Department of Fish and Game.

Izembek NWR attempted to conduct an aerial population survey of caribou on Unimak Island in mid-January 2013. Survey conditions were assessed and were inadequate to conduct counts. Survey conditions will continue to be monitored and a complete population survey is planned once conditions become favorable.

Two radio tracking flights were conducted to locate a satellite collared caribou when GPS locations indicated she had moved from Unimak Island to the southern tip of the Alaska Peninsula in early December. On 15 December 2012, the collared caribou was located on the southern peninsula in a group with 5 other caribou; another group of 25 caribou was located nearby (~1.7 miles). The collared caribou remained on the southern Alaska Peninsula until the first week of January when the GPS collar locations indicated she had

moved to the Ikatan peninsula (Unimak Island). The caribou was radio tracked again on 17 January 2013, and was located in a group with 14 other caribou. The caribou has remained on Unimak Island.

BROWN BEAR

An index of brown bear population and productivity is estimated annually in the fall from aerial surveys flown along streams on the refuge and Unimak Island. On 9 October 2012, Izembek NWR began conducting the annual aerial brown bear stream surveys on the north side of Unimak Island. Consistently deteriorating weather conditions resulted in only one day of surveying completed. A total of 19 brown bears were observed during the survey. This included ten single bears, four sows accompanied by cubs, and five cubs. Of the sows observed with cubs, there was one cub of the year and four 2.5 year olds observed.

WATERFOWL

Pacific brant

The fall aerial Pacific brant survey was conducted at Izembek NWR from 28-30 September 2012 (conducted by Migratory Bird Management Office), as part of the entire Pacific flyway fall survey. Three replicate surveys were conducted and the average count was 154,481 (95% CI \pm 2,928) brant (Fig. 1). This estimate is a 22.6 percent increase from the 2011 estimate (mean=126,027 brant; 95% CI \pm 4,092).

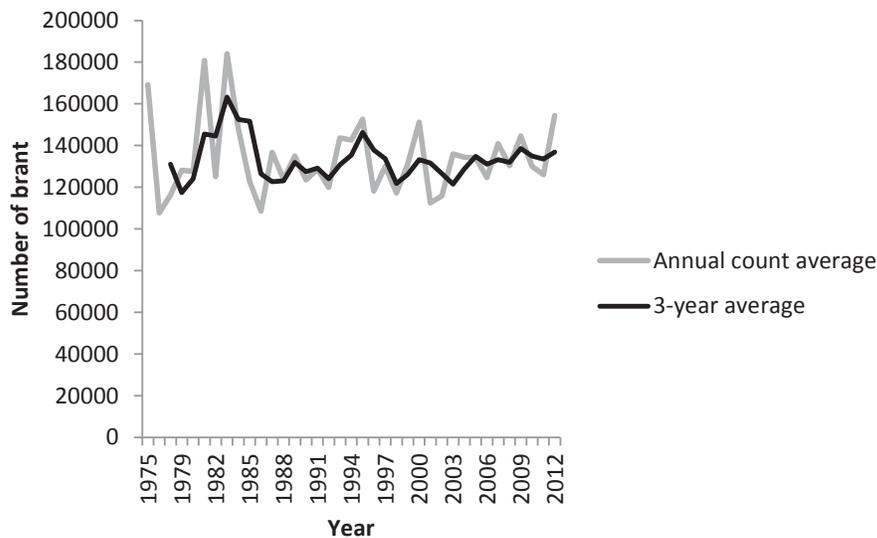


Fig. 1. Pacific brant annual and 3-year running average fall population estimates based on aerial brant count data (1975 to 2012) collected at Izembek National Wildlife Refuge, southwest Alaska.

The annual mid-winter aerial survey at Izembek NWR for Pacific brant in 2012 resulted in an average count of 44,252 brant (Fig. 2). The mid-winter survey for 2013 has not been conducted at the time of this report.

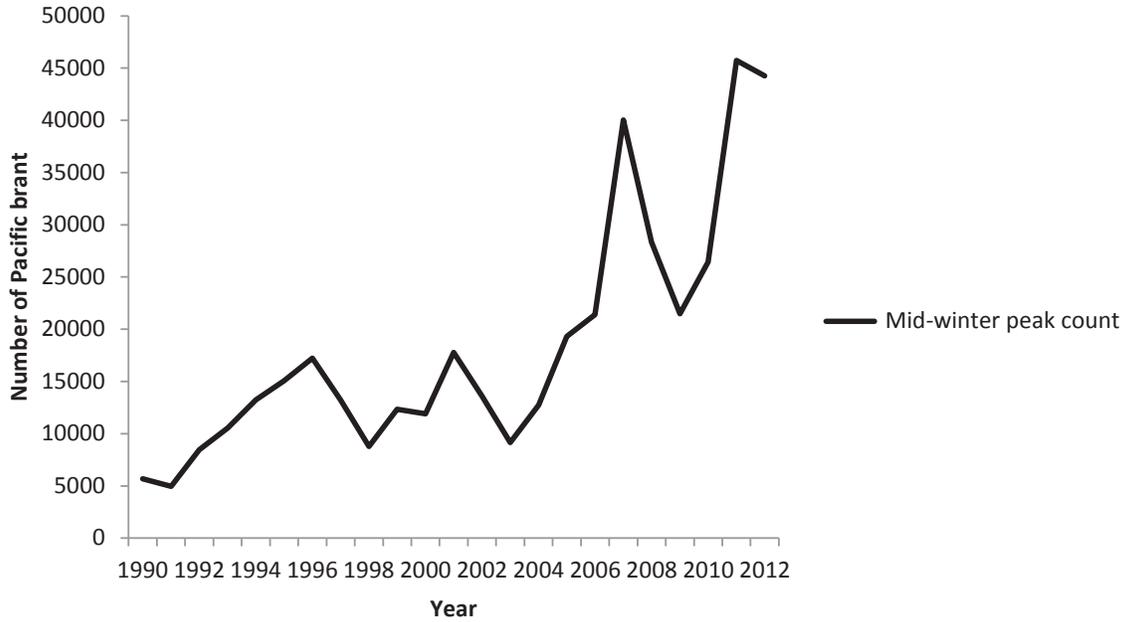


Fig. 2. Annual mid-winter survey (1990-2012) for Pacific brant at Izembek National Wildlife Refuge, southwest Alaska.

An index of productivity for the entire Pacific population of brant is generated from ground-based counts conducted at Izembek Lagoon and adjacent areas each fall when the birds are staging for migration. Brant productivity data have been collected at Izembek NWR for 50 consecutive years. Brant production counts (Fig. 3) were conducted between 18 September and 10 October 2012 at observation points throughout Izembek Lagoon including: Grant's Point, Round Island/Outer Marker, Glen/Operl Island mud flats, and the areas between Neuman Island and Blaine Point. Additionally, a trip was made to the northern areas inside Moffet Lagoon. Counts were also conducted in southwestern areas of Izembek Lagoon inside Norma Bay, from the south shoreline of Norma Bay, and from the shoreline in the south central area of the lagoon between Norma Bay and Applegate Cove.

In 2012, 18,091 brant were classified by age (adult or juvenile). A total of 144 brant family groups were counted during fall staging. Juveniles comprised 13.8% of the brant classified. This proportion is lower than last year's estimate of 17.6% juveniles, and continues a 3 year decline since 2009. The 50 year long-term average (1963-2012) is 22.3% juvenile brant.

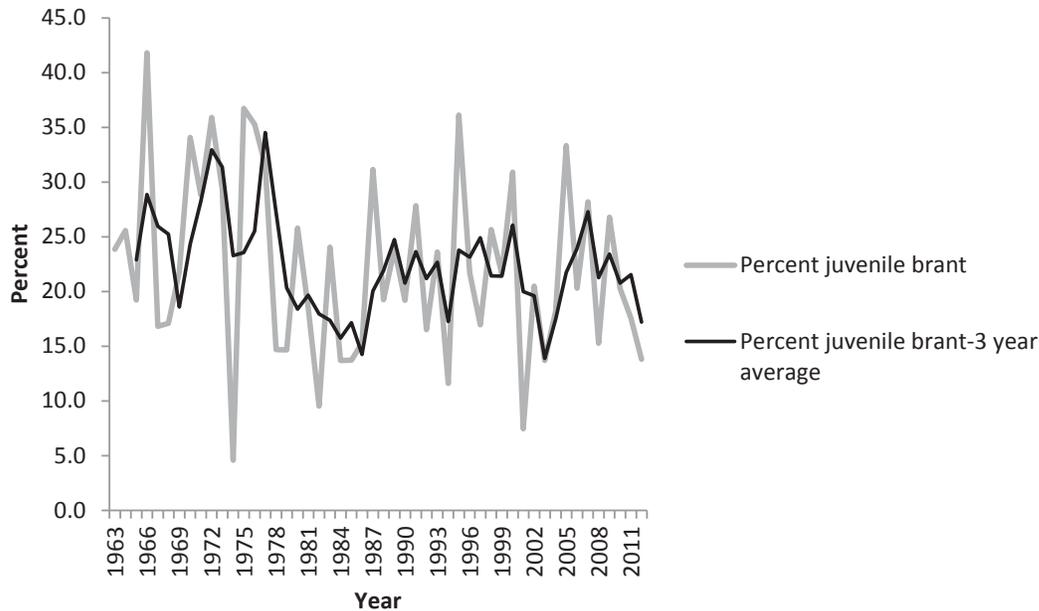


Fig. 3. Pacific brant fall productivity index (percent juvenile brant) 1963-2012, Izembek National Wildlife Refuge, southwest Alaska.

Emperor Goose

The spring 2012 aerial Emperor geese survey observed a total of 67,588 birds, a decrease of 9 percent from spring 2011 (Fig. 4). The spring 3-year average is 68,772 geese. This is the number used for management seasons (currently a 3-year spring average of 80,000 geese is needed to consider opening any hunting season). The spring 2013 aerial survey has not been conducted at the time of this report (spring surveys are conducted in late April).

The Emperor geese are also surveyed via aerial counts in the fall. Surveys were conducted 28-30 September 2012, but the south side of the Alaska Peninsula east of Cold Bay was not surveyed in 2012. To compensate for this area missed during the survey, the average of the most recent three years counts for the missed segments was used to determine the total count of 58,680 geese (Fig. 4). The 3-year average for fall population counts (60,388 geese) declined 10 percent from fall 2011.

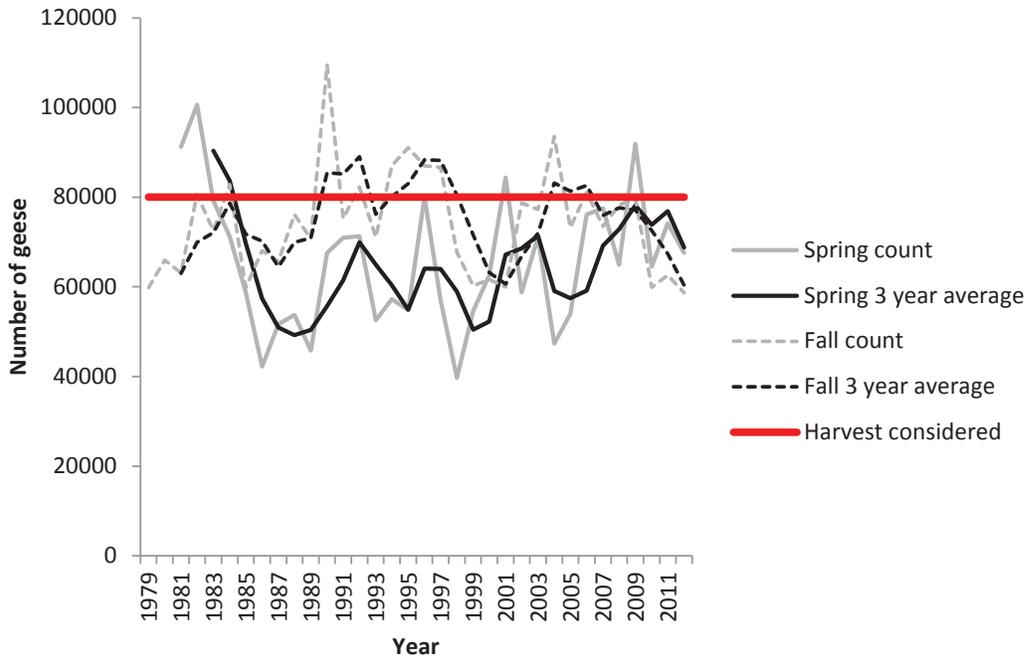


Fig. 4. Spring and fall emperor goose population counts and 3-year running averages from 1979-2012, Izembek National Wildlife Refuge, southwest Alaska.

Emperor goose productivity estimates (Fig. 5) were conducted intermittently between 24 September and 25 October 2012 within Izembek NWR and the vicinity of Cold Bay. A total of 1,025 geese were classified by age (adult or juvenile). The majority of birds were classified in central Izembek Lagoon (71% of geese classified) compared to Cold Bay (29% of geese classified). Juveniles comprised 13.9% of the total Emperor geese classified by age. This proportion is less than the long-term average (1966-2012) of 23.3% juveniles.

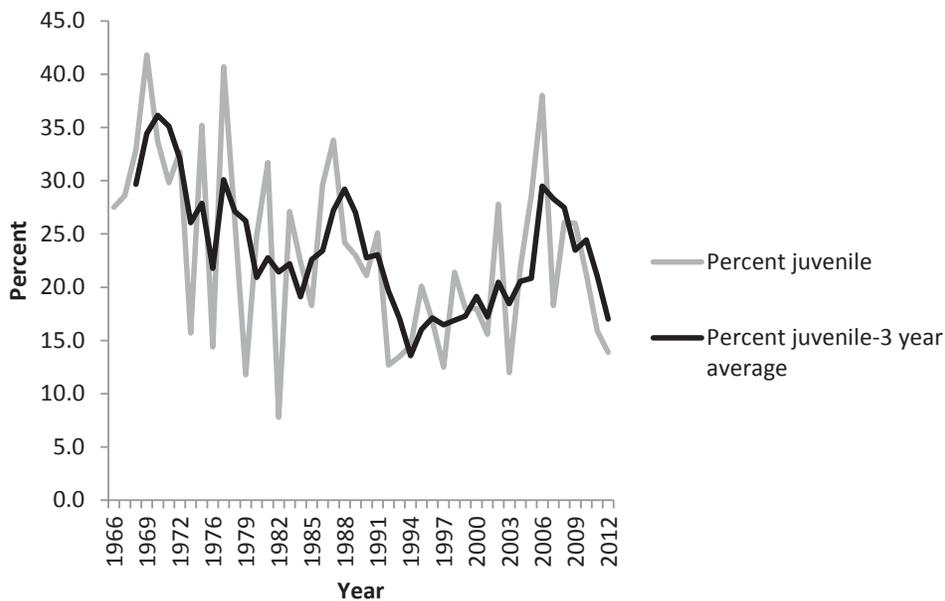


Fig. 5. Emperor geese fall productivity index (percent juvenile Emperor geese) 1966-2012, Izembek National Wildlife Refuge, southwest Alaska.

Avian Influenza and Avian Blood Parasites

Due to human health risk and potential for increased waterfowl mortality, sampling for the highly-pathogenic strain of Avian Influenza (AI) known as H5N1 is conducted in Alaska. To date, H5N1 has not been identified in samples collected in Alaska. However, blood parasites have been identified in Northern Pintails throughout North America and have been correlated with increased mortality in waterfowl. None of the samples (n=995) collected in 2011 tested positive for H5N1. Low pathogenic avian influenza viruses were isolated which will be further analyzed by Alaska USGS scientists to better understand viral dynamics in waterfowl at Izembek NWR.

In the fall of 2012, Izembek continued working in cooperation with the U.S. Geological Survey to collect AI and blood parasite samples from hunter-harvested waterfowl. A total of 983 samples were collected from waterfowl at Izembek NWR. Fecal swabs (n = 604) were collected from the tundra and beach for emperor geese (n = 301) and glaucous-winged gulls (n = 303). Cloacal swabs were collected from hunter shot birds (n = 379) of 17 species including: American green-winged teal (n=31), American wigeon (n = 13), black scoter (n = 2), bufflehead (n = 11), common eider (n = 3), Eurasian wigeon (n = 8), gadwall (n = 1), greater scaup (n = 13), harlequin duck (n = 14), lesser scaup (n = 2), long-tailed duck (n = 3), mallard (n = 22), northern pintail (n = 245), northern shoveler (n = 2), red-breasted merganser (n = 3), ring-necked duck (n = 1), and white-winged scoter (n = 5).

RESEARCH

Habitat and nutritional ecology of Unimak Island Caribou:

Does habitat play a role in caribou population dynamics and health?

In an effort to understand a recent decline of the caribou population located on Unimak Island, a habitat suitability study was initiated by Izembek NWR, ADF&G, UAA, and UAF in 2011. Satellite-vhf collars were deployed on seven female caribou on Unimak Island in April 2011. Caribou are monitored weekly to determine seasonal habitat use, distribution, and annual survival rates. The plant communities (specifically caribou forage species) and caribou movements are being mapped simultaneously using GIS and remote sensing techniques to determine habitat quality and quantity for caribou on Unimak Island. Additionally, nutritional analyses of caribou forage is being conducted. These factors will be modeled to determine the overall carrying capacity of Unimak Island for use in future caribou management strategies. Initial aerial photography and plant/forage sample collection took place from June to September 2011 and was continued during 2012. Laboratory and spatial analyses are expected to be completed by summer of 2013.

Inventory and monitoring plan for Izembek NWR

Izembek NWR and Pennsylvania State University are collaborating to develop a biodiversity assessment and monitoring program for Izembek Refuge. An evaluation framework has been developed and distributed to a panel of evaluators, and results will be

compiled in spring of 2013. This effort will assist refuge staff in objectively prioritizing future inventory, monitoring, and research efforts on the refuge. A component of this research includes investigating responses of wildlife and habitat to climate change and human disturbances. Initial work focused on evaluating the phenology of bird and invertebrate species associated with the numerous ponds of Izembek NWR. Parameters of interest included presence/absence and timing of bird, aquatic vegetation and aquatic invertebrate species, and measurement of pond characteristics including surface temperature, water depth measurements, pH and conductivity. Initial data collection occurred in summer of 2011 and 2012, and is intended to be continued in 2013.

Stream Characteristics of Salmon Streams on Izembek National Wildlife Refuge

A research project being conducted by Izembek NWR and Notre Dame University will improve the understanding of the ecological importance of salmon-derived nutrients on productivity in freshwater ecosystems on Izembek Refuge. This project will increase our understanding of whether salmon contribute a net enrichment or net disturbance effect on stream ecosystems. Structural and functional parameters being investigated include ammonium (NH₄⁺), nitrate (NO₃⁻), benthic and water column chlorophyll-*a* concentrations, stream gross primary production (GPP), and ecosystem respiration (ER). Data collection occurred during the summer of 2011 and 2012, and is intended to be repeated during 2013.

SEALINGS

Brown Bear

During 2012, six brown bears (three males and three females) were sealed at Izembek National Wildlife Refuge (NWR). Three of the bears were harvested in the Near Village RB525 hunt, two bears were harvested in the State Registration hunt RB370, and one bear was killed in Defense of Life and Property (DLP) in King Cove. Only one of the bears was harvested by a non-resident hunter. In addition, three brown bear skulls were sealed that were found dead of natural causes.

Gray Wolf

Three gray wolves were sealed at Izembek NWR in 2012. One wolf was harvested in False Pass (female), King Cove (male), and near Cold Bay (male).

River Otter

Three male river otters were sealed at Izembek NWR in 2012.

Walrus

In 2012, ten tusks and one walrus skull were sealed at Izembek.

**Alaska Department of Fish and Game Report to the Kodiak-
Aleutian Islands Region Subsistence Advisory Council: Update
through December 31, 2012 on the Buskin River Sockeye Salmon
Fishery and Stock Assessment Project**

**By
Tyler Polum**

February 2012

Alaska Department of Fish and Game

Division of Sport Fish



PROGRESS REPORT

INTRODUCTION

The Buskin River drainage, located on Kodiak Island approximately 2 miles southwest from the city of Kodiak, traditionally supports the single largest subsistence salmon fishery within the Kodiak/Aleutian Islands Region. The fishery occurs in nearshore marine waters adjacent to the river mouth and targets several species of salmon, although sockeye salmon typically comprise about 75% of the total subsistence harvest (Table 2). Between 2007 and 2011 federally qualified subsistence users annually harvested approximately 4,950 Buskin River sockeye salmon, which accounted for 45% of the total sockeye salmon harvest reported for the Kodiak/Aleutians federal subsistence region (Table 1). In addition, about half of all Kodiak area subsistence users reporting activity during this period harvested salmon from the Buskin River fishery (Table 3). Due to lower sockeye salmon escapement into the Buskin River during 2008 and 2009, subsistence fishery markers were extended, essentially closing the subsistence fishery. In 2011, participation and harvests increased significantly with the increase in sockeye returns to the Buskin Drainage. Subsistence fishers harvested 4,674 sockeye in 2011 accounting for nearly 40% of the sockeye harvest in the Kodiak/Aleutians region and half of all permit holders in the region reported fishing Buskin. Subsistence harvest and effort information for 2012 is unavailable at this time.

Table 1.- Kodiak Area reported federal subsistence harvest of sockeye salmon by location, 2007-2011^a.

Location	2007	2008	2009	2010	2011	5 Yr. Av.
Buskin River	11,151	2,664	1,883	1,476	4,674	4,950
Old Harbor/Sitkalidak	623	546	591	501	391	558
Alitak Bay	799	827	669	767	643	820
Karluk Village	495	768	223	127	276	501
Larsen Bay/Uyak Bay	560	812	894	705	737	711
Uganik Bay	629	966	1,568	1,077	1,123	1,008
Afognak Bay	490	594	2,085	2,146	1,978	1,153
Remainder Afognak Island	782	1,375	1,969	1,502	2,186	1,261
Total	15,529	8,552	9,882	8,301	12,008	10,962

^aSource: ADF&G Division of Commercial Fisheries, Kodiak.

Table 2.- Buskin River drainage reported subsistence salmon harvest by species, 2007-2011^a.

Year	Permits	Reported Subsistence Harvest									
		Chinook		Sockeye		Coho		Pink		Chum	
		No. Fish	% of Total	No. Fish	% of Total	No. Fish	% of Total	No. Fish	% of Total	No. Fish	% of Total
2007	458	22	<1%	11,151	89%	1,193	9%	192	2%	15	0%
2008	246	33	1%	2,664	67%	1,165	29%	75	2%	13	0%
2009	179	0	0%	1,853	66%	874	31%	77	3%	9	0%
2010	164	16	1%	1,476	63%	679	29%	146	6%	38	2%
2011	255	11	<1%	4,674	92%	287	6%	67	1%	15	0%
5 Year Avg.	260	16	<1%	4,364	75%	840	21%	111	3%	18	1%

^aSource: ADF&G Division of Commercial Fisheries, Kodiak.

Table 3.- Federal subsistence harvest locations in the Kodiak Area by number of permits fished, 2007-2011^a.

Location	2007	2008	2009	2010	2011	5 Yr. Av.
Buskin River	458	246	180	164	255	261
Old Harbor/Sitkalidak	30	25	28	25	21	26
Alitak Bay	25	28	23	29	31	27
Karluk Village	11	8	5	6	6	7
Larsen Bay/Uyak Bay	27	27	31	31	31	29
Uganik Bay	40	48	56	45	40	46
Afognak Bay	21	40	95	90	81	65
Remainder Afognak Island	36	48	73	52	49	52
Number issued	648	470	491	442	514	513

^aSource: ADF&G Division of Commercial Fisheries, Kodiak.

In 2000, in order to ensure sustained sockeye salmon production over a long time period, a stock assessment study was initiated by Alaska Department Fish and Game (ADF&G) on the Buskin River. It was funded by the Office of Subsistence Management with the goal to establish a Biological Escapement Goal (BEG) for the sockeye salmon run on the Buskin. The BEG is based on a population model which incorporates brood-year tables constructed from annual escapement and harvest figures with the age composition of annual returns. Samples of male to female ratios, average length and age classes are collected each year over the course of the run from both escapement and the subsistence harvest. Because development of the brood table requires age composition data collected over at least 3 generations, annual data collection for completion of the study is necessary over a 12-15 year period. The current escapement goal range is set at 5,000 - 8,000 sockeye salmon and is used for management of the subsistence, sport and commercial fisheries to ensure a sustained yield from the population. An annual sockeye salmon escapement objective for Catherine and Louise lakes (reported as Lake Louise) has not yet been established.

Sockeye salmon escapements are annually quantified through inseason counts of adult fish migrating into the drainage. A salmon counting weir located on Buskin River for this purpose

has been operated by ADF&G since 1985. In 2002, a second weir was installed on a major tributary stream flowing into the Buskin River from Catherine and Louise lakes.

2012 PROJECT RESULTS

Escapement

The 2012 Buskin River weir count of 8,565 sockeye is almost 6,000 fish less than the recent 10-year average of 14,821 (Figure 1). The Buskin River weir, located at the outflow of Buskin Lake, was operational on 21 May and was pulled for the season 26 September. Timing of the 2012 run was similar to historic run timing with 25% of the run counted by June 10th, 50% by June 17th, and 75% by June 30th (Figure 2). Typically, the Buskin River sockeye run is virtually over by the end of July and 2012 was no exception.

The Lake Louise tributary weir was located approximately one-eighth mile upstream of the Buskin River confluence, below the Chiniak Highway. The weir was installed on 25 May and was pulled for the season on 21 September. The 2012 Lake Louise weir count was 301 sockeye salmon, which is the lowest weir count since the weir began operation (Figure 1).

Timing of the 2012 run was similar to other years in that the majority of the escapement coincided with high water events. There were several such events this year, not until early August. Approximately 98% of the total weir count was recorded after 4 August during periods of rain and elevated water levels. Nearly 70% of the total escapement was recorded from 11 September to 20 September during a prolonged flooding event. Sockeye movement into the Lake Louise tributary continues to be directly related to rain fall and the level of water in the stream (Figure 3).

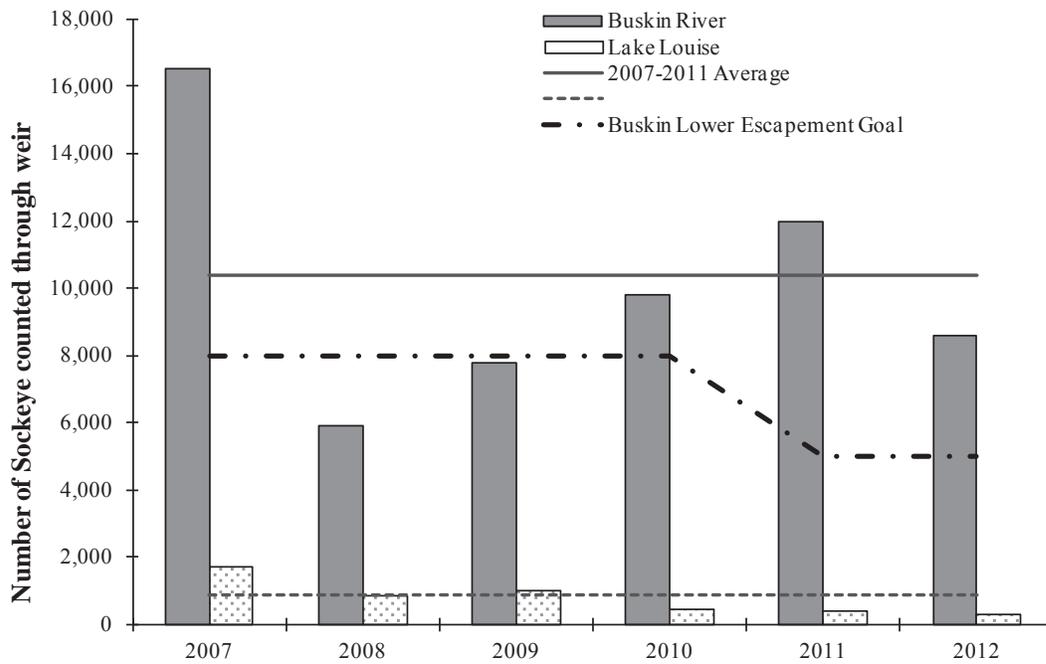


Figure 1.- Buskin River and Lake Louise sockeye salmon escapement, 2007-2012.

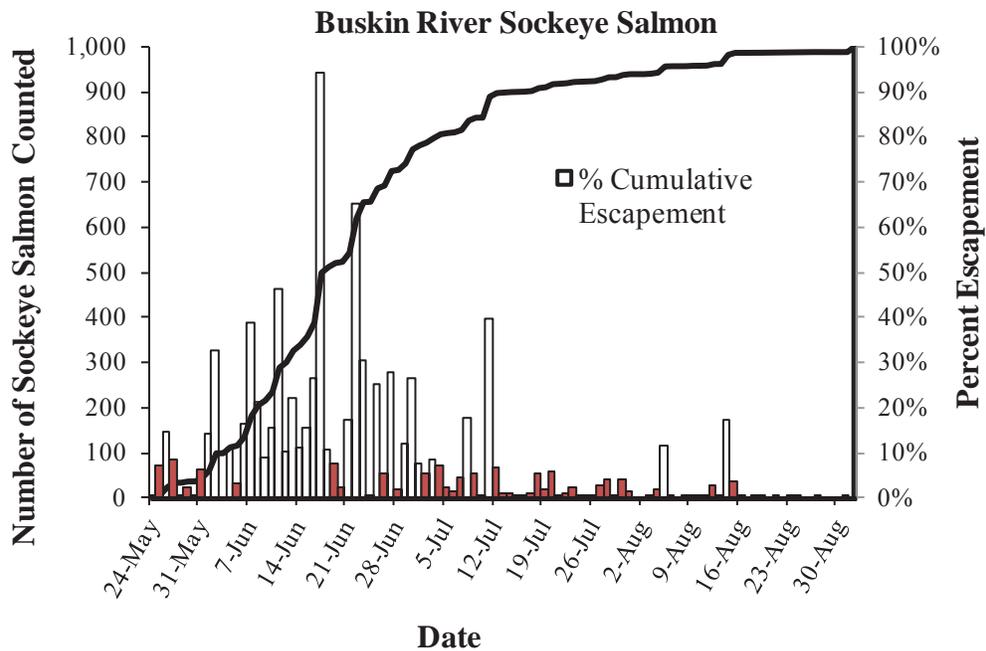


Figure 2.- 2012 daily sockeye salmon weir counts into Buskin Lake.

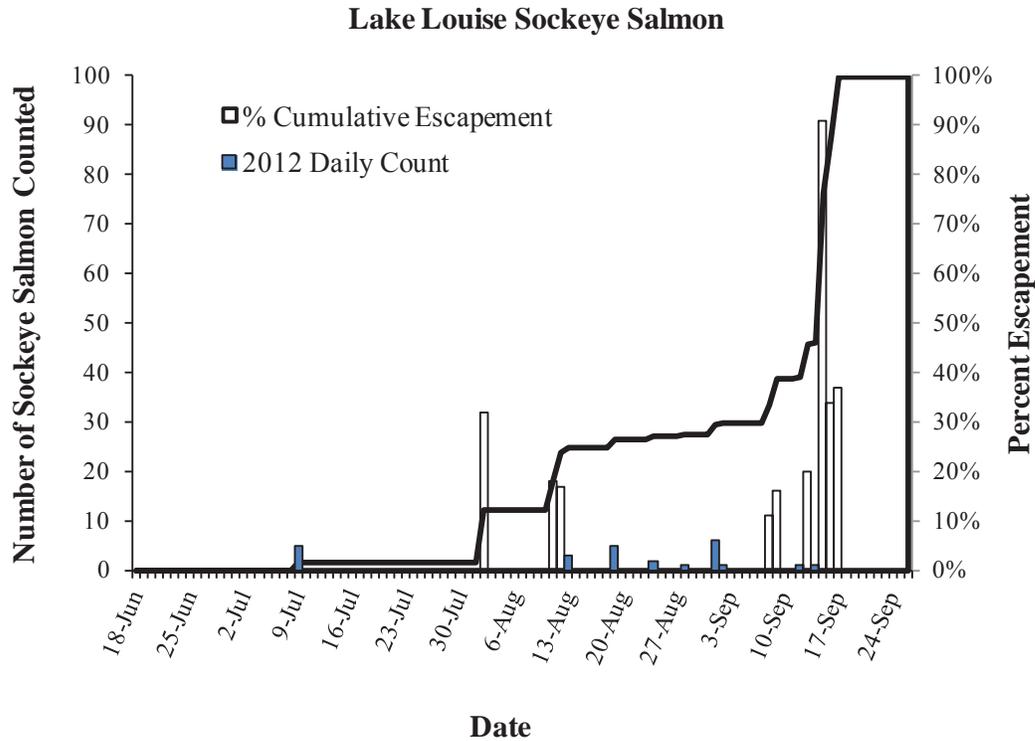


Figure 3.- 2012 daily sockeye salmon weir counts into Lake Louise.

An emergency order was issued in 2012 liberalizing the harvest of Buskin River sockeye salmon in the sport fishery when expected returns were projected to exceed the upper escapement goal of 8,000 fish. The sockeye salmon sport fishery was liberalized by emergency order on 26 June increasing the bag and possession limit for sockeye salmon 20 inches or greater in length to five per day. No emergency orders were issued in the subsistence or commercial fisheries in 2012.

Stock Assessment

At Buskin Lake weir, 370 sockeye salmon captured from the escapement were sampled for age, sex and length between 1 June and 31 July. Between 27 May and 26 June, a total of 153 sockeye salmon were sampled from the subsistence harvest. At Lake Louise weir, 135 sockeye salmon were sampled between 12 July and 18 September.

Age composition of sockeye sampled from the Buskin River escapement in 2012 was predominantly age 2.3 fish at 60% of the sample, while age 2.2 fish were the next most frequent at 19%. Age 1.3 fish made up about 5% in 2012. At Lake Louise there was an almost even number of age 1.1, 1.2, 1.3 and 2.2 fish, but due to late run timing the number of age-able scales was very low (re-absorption of scales made aging of most fish sampled impossible). From the subsistence harvest sample, the most frequent age classes were age 2.3 at 77%, age 2.2 at about 10% and age 1.3 at about 9%.

Typically sex and age samples from the escapement and subsistence harvest indicate that during most years the Buskin Lake run component is primarily comprised of age 1.3 and 2.3 fish. Sample age and length data collected from the Louise Lake escapement typically are different

than those from Buskin Lake, containing a substantially larger proportion of age 1.3 fish. Age and length of the sockeye salmon subsistence harvest typically differs markedly from that of escapements, consisting almost exclusively of larger 1.3 and 2.3 fish (most likely a result of size selectivity by gillnets used in the fishery).

Mean length of females in the Buskin Lake escapement was 527 mm (SE = 2.8), while mean length of males was 560 mm (SE = 4.60) (Figure 4). Mean length of females in the sampled subsistence harvest was 555 mm (SE = 2.8), and 601 mm (SE = 4.8) for males. Mean length of Lake Louise females was 490 mm (SE = 3.8) and male mean length 496 mm (SE = 10.4).

As a result of predominantly younger age classes in the population, the Lake Louise run is typically comprised of fish smaller in size than those returning to Buskin Lake. Average length of sockeye salmon taken in the subsistence harvest typically differs markedly from that of escapements, resulting from a predominance of larger fish selected by gillnets used in the fishery.

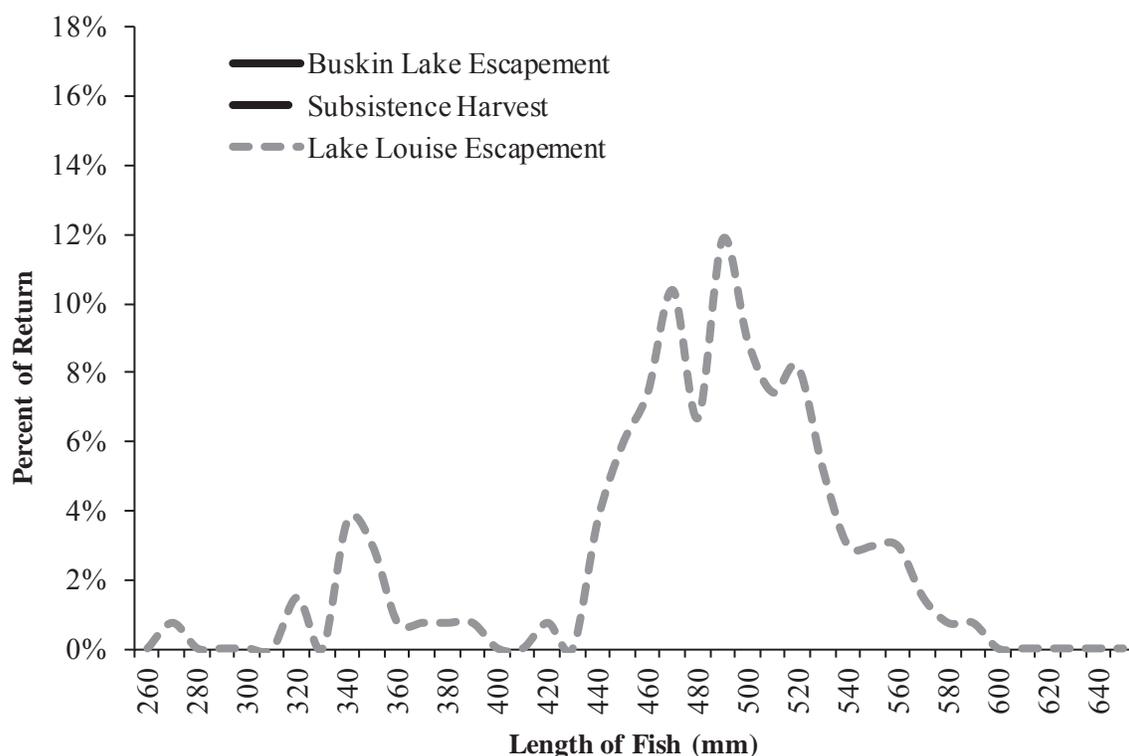


Figure 4.- Length frequency distribution of sockeye salmon from the Buskin Lake and Lake Louise escapements and the Buskin River drainage subsistence harvest, 2012.

Reconstruction of the Buskin Lake portion of the sockeye salmon run by its various harvest components indicate that historically the total return has remained relatively stable at around 19,000 fish, however between 2000 and 2004, the estimated total increased substantially to an average 33,500. The recent five-year average is close the historical average at about 15,600 fish (Figure 5). During the last five years subsistence harvests have averaged 24% of the total run and, by number of fish harvested, constituted the most important user group dependent on the

Buskin River sockeye salmon resource. Subsistence and sport fish harvests for 2012 are not currently available, however, and commercial harvest of sockeye salmon in 2012 was only one fish.

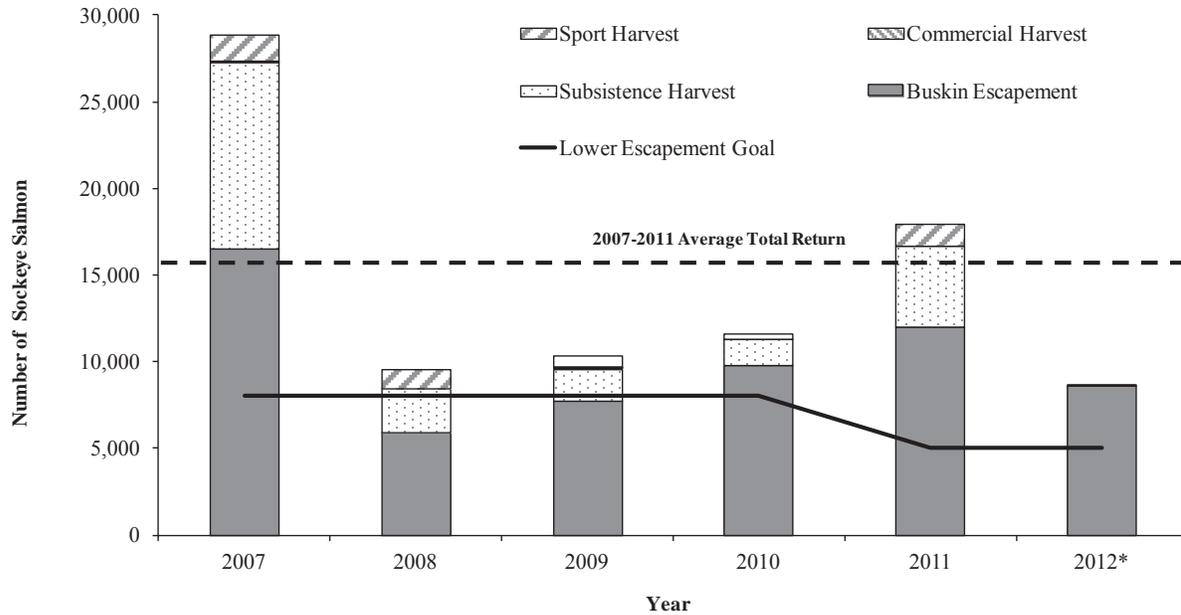


Figure 5.- Composition of total sockeye salmon return to the Buskin River, 2007-2012.

GENETIC TESTING

In 2008, ADF&G’s genetics laboratory conducted analyses of Buskin and Lake Louise sockeye salmon escapement samples collected in 2005. Genetic differences in the populations were distinct enough to conclude that the two runs could be identified through genetic testing alone. Between 27 May and 26 June, 2012, a total of 200 sockeye salmon were sampled from Buskin subsistence harvest in order to genetically apportion Buskin and Lake Louise harvest components for more precise run reconstruction. Analysis of the 2009-2012 subsistence samples is scheduled for the winter of 2013, at the end of the current four year funding cycle.

SUBSISTENCE USER INTERVIEWS

In response to a priority information need recently identified by the Kodiak/Aleutians Region Subsistence Advisory Council (RAC), annually since 2007, verbal interviews taken on the fishing grounds with Buskin River subsistence users have been conducted to determine residency of subsistence users and patterns of historic fishing effort. Interviews were conducted in 2012, where technicians opportunistically contacted subsistence users on the fishing grounds in front of the Buskin River, and at the harbors in the City of Kodiak, while sampling the harvest for age, sex and length. The 2012 survey sample was collected over the duration of the subsistence fishery, providing residency and effort data not currently available from subsistence permit returns. A total of 18 subsistence users were interviewed beginning 27 May (Table 3).

Table 3.- Results from verbal interviews conducted with Buskin River subsistence users between 1 June and 25 June, 2012.

User Statistics:			
Total Users Interviewed:	18		
Interview dates:	June 1 - June 25		
User Demographics			
	Kodiak	Alaskan	Unknown
Residency	18	0	0
	Buskin	Pasagshak	Unknown
Location of Traditional	18	2	0
		Yes	No
Have Occasionally Fished Other Areas Besides Traditional Location(s)*		16	2

*Other areas occasionally fished: Pasagshak (7), Litnik (5), Port Lions (2)

CAPACITY BUILDING

Since 2001 ADF&G and the Kodiak National Wildlife Refuge have maintained a cooperative agreement to use the Buskin River weir as a platform for the Kodiak Summer Salmon Camp Program, which provides school-aged children a medium for activities and science-based learning. In 2012, Salmon Camp participants came to the Buskin Lake weir on four separate occasions during which the participants were shown the weir operation and given interactive demonstrations on identifying, counting and sampling sockeye salmon.

Since 2003, the Buskin River project has also been a vehicle for fisheries-based education and development of career interest for young subsistence users through establishment of a high school intern program. During this internship, students gain knowledge of the principles involved in fisheries management and research while obtaining field experience in fisheries data collection methods and techniques. The intern program annually employs two top qualified students who work on the Buskin project under supervision of ADF&G staff between June 1 and July 31. The high school intern program has been an outstanding success, to the extent that seven former interns are currently employed with ADF&G as seasonal Fish and Wildlife Technicians or Fisheries Biologists, and 14 of 18 former interns have returned to work for the Department at some point.

CONCLUSION

Annual implementation of the Buskin River sockeye salmon weir project, made possible with funding from the Federal Subsistence Management Program, has been essential for in-season escapement monitoring that is necessary to sustain the health of the Buskin River sockeye salmon stock while providing maximum harvest opportunity for subsistence users. Continuation

of this project has allowed for additional analysis of run productivity to aid in the ongoing sockeye salmon stock assessment study which resulted in establishment of a refined BEG (biological escapement goal), during the January, 2011 Board of Fish meeting. The refinement of the escapement goal is a direct result of this project. With exception of the 2008 and 2009 returns, Buskin River sockeye abundance has remained relatively stable and has allowed for continued, sustained harvest by subsistence users and anglers alike.

Fall 2013 Regional Advisory Council Meeting Calendar

August–October 2013 current as of 02/22/13

Meeting dates and locations are subject to change.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Aug. 18	Aug. 19 WINDOW OPENS	Aug. 20 NS—Barrow	Aug. 21 NWA—Kiana	Aug. 22	Aug. 23	Aug. 24
Aug. 25	Aug. 26	Aug. 27	Aug. 28	Aug. 29	Aug. 30	Aug. 31
Sept. 1	Sept. 2 HOLIDAY	Sept. 3	Sept. 4	Sept. 5	Sept. 6	Sept. 7
Sept. 8	Sept. 9	Sept. 10	Sept. 11	Sept. 12	Sept. 13	Sept. 14
Sept. 15	Sept. 16	Sept. 17	Sept. 18	Sept. 19	Sept. 20	Sept. 21
Sept. 22	Sept. 23	Sept. 24 SE—Petersburg KA—King Cove/ Cold Bay	Sept. 25 YKD—St. Mary's	Sept. 26	Sept. 27	Sept. 28
Sept. 29	Sept. 30 END OF FY2013	Oct. 1	Oct. 2 SC—Copper River	Oct. 3	Oct. 4	Oct. 5
Oct. 6	Oct. 7	Oct. 8 WI—Fairbanks SP—Nome	Oct. 9	Oct. 10	Oct. 11 WINDOW CLOSES	Oct. 12
Oct. 13	Oct. 14	Oct. 15	Oct. 16 EI—Fairbanks	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 BB—Dillingham	Oct. 30	Oct. 31	Nov. 1	Nov. 2

Winter 2014 Regional Advisory Council Meeting Calendar

February–March 2014 current as of 02/27/13

Meeting dates and locations are subject to change.

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

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

Kodiak/Aleutians Subsistence Regional Advisory Council

Charter

- 1. Committee's Official Designation.** The Council's official designation is the Kodiak/Aleutians Subsistence Regional Advisory (Council).
- 2. Authority.** The Council is reestablished by virtue of the authority set out in the Alaska National Interest Lands Conservation Act (16 U.S.C. 3115 (1988)) Title VIII, and under the authority of the Secretary of the Interior, in furtherance of 16 U.S.C. 410hh-2. The Council is established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., Appendix 2.
- 3. Objectives and Scope of Activities.** The objective of the Council is to provide a forum for the residents of the region with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal lands and waters in the region.
- 4. Description of Duties.** The Council possesses the authority to perform the following duties:
 - a. Recommend the initiation of, review, and evaluate proposals for regulations, policies, management plans, and other matters relating to subsistence uses of fish and wildlife on public lands within the region.
 - b. Provide a forum for the expression of opinions and recommendations by persons interested in any matter related to the subsistence uses of fish and wildlife on public lands within the region.
 - c. Encourage local and regional participation in the decision making process affecting the taking of fish and wildlife on the public lands within the region for subsistence uses.
 - d. Prepare an annual report to the Secretary containing the following:
 - (1) An identification of current and anticipated subsistence uses of fish and wildlife populations within the region.
 - (2) An evaluation of current and anticipated subsistence needs for fish and wildlife populations within the region.
 - (3) A recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs.

- (4) Recommendations concerning policies, standards, guidelines and regulations to implement the strategy.
 - e. Make recommendations on determinations of customary and traditional use of subsistence resources.
 - f. Make recommendations on determinations of rural status.
 - g. Provide recommendations on the establishment and membership of Federal local advisory committees.
5. **Agency or Official to Whom the Council Reports.** The Council reports to the Federal Subsistence Board Chair, who is appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture.
6. **Support.** The U.S. Fish and Wildlife Service will provide administrative support for the activities of the Council through the Office of Subsistence Management.
7. **Estimated Annual Operating Costs and Staff Years.** The annual operating costs associated with supporting the Council's functions are estimated to be \$140,000, including all direct and indirect expenses and .75 staff years.
8. **Designated Federal Officer.** The DFO is the Subsistence Council Coordinator for the region or such other Federal employee as may be designated by the Assistant Regional Director – Subsistence, Region 7, U.S. Fish and Wildlife Service. The DFO is a full-time Federal employee appointed in accordance with Agency procedures. The DFO will:
 - Approve or call all of the advisory committee's and subcommittees' meetings,
 - Prepare and approve all meeting agendas,
 - Attend all committee and subcommittee meetings,
 - Adjourn any meeting when the DFO determines adjournment to be in the public interest, and
 - Chair meetings when directed to do so by the official to whom the advisory committee reports.
9. **Estimated Number and Frequency of Meetings.** The Council will meet 1-2 times per year, and at such times as designated by the Federal Subsistence Board Chair or the DFO.
10. **Duration.** Continuing.
11. **Termination.** The Council will terminate 2 years from the date the Charter is filed, unless, prior to that date, it is renewed in accordance with the provisions of Section 14 of the FACA. The Council will not meet or take any action without a valid current charter.

- 12. Membership and Designation.** The Council's membership is composed of representative members as follows:

Ten 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 seven of the members (70 percent) represent subsistence interests within the region and three of the members (30 percent) represent commercial and sport interests within the region. The portion of membership representing commercial and sport interests must include, where possible, at least one representative from the sport community and one representative from the commercial community.

The Secretary of the Interior will appoint members based on the recommendations from the Federal Subsistence Board and with the concurrence of the Secretary of Agriculture.

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

Council members will elect a Chair, a Vice-Chair, and a Secretary for a 1-year term.

Members of the Council will serve without compensation. However, while away from their homes or regular places of business, Council and subcommittee members engaged in Council, or subcommittee business, approved by the DFO, may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service under Section 5703 of Title 5 of the United States Code.

- 13. Ethics Responsibilities of Members.** No Council or subcommittee member may participate in any specific party matter in which the member has a direct financial interest in a lease, license, permit, contract, claim, agreement, or related litigation with the Department.
- 14. Subcommittees.** Subject to the DFO's approval, subcommittees may be formed for the purposes of compiling information or conducting research. However, such subcommittees must act only under the direction of the DFO and must report their recommendations to the full Council for consideration. Subcommittees must not provide advice or work products directly to the Agency. The Council Chair, with the approval of the DFO, will appoint subcommittee members. Subcommittees will meet as necessary to accomplish their assignments, subject to the approval of the DFO and the availability of resources.

15. **Recordkeeping.** Records of the Council, and formally and informally established subcommittees or other subgroups of the Council, must be handled in accordance with General Records Schedule 26, Item 2, or other approved Agency records disposition schedule. These records shall be available for public inspection and copying, subject to the Freedom of Information Act, 5 U.S.C. 552.

//Signed//

Secretary of the Interior

DEC - 2 2011

Date Signed

DEC 03 2011

Date Filed