



Federal Subsistence Board

1011 East Tudor Road, MS 121
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FISH and WILDLIFE SERVICE
BUREAU of LAND MANAGEMENT
NATIONAL PARK SERVICE
BUREAU of INDIAN AFFAIRS

FOREST SERVICE

AUGUST 07 2024

OSM A24088

Donald Hernandez, Chair
Southeast Alaska Subsistence
Regional Advisory Council
c/o Office of Subsistence Management
1011 East Tudor Road, MS 121
Anchorage, Alaska 99503-6199

Dear Chair Hernandez:

This letter responds to the Southeast Alaska Subsistence Regional Advisory Council's (Council) fiscal year 2023 Annual Report. The Secretaries of the Interior and Agriculture have delegated to the Federal Subsistence Board (Board) the responsibility to respond to these reports. The Board appreciates your effort in developing the Annual Report. Annual Reports allow the Board to become aware of the issues outside of the regulatory process that affect subsistence users in your region. We value this opportunity to review the issues concerning your region.

1. Meaningful Priority and the Interpretation of Sections in ANILCA

The Council informed the Board of its intent to explore provisions in ANILCA that pertain to providing a meaningful priority to the federally qualified rural resident. The Council believes ANILCA §801 and §815(3) could authorize restrictions on the taking of fish and wildlife for non-subsistence uses in order to ensure continued subsistence use. The Council drafted a position statement letter on this subject that has been provided to the Board.

Request to the Board:

*The Council requests that the Board review and consider the Council's position regarding meaningful priority and the importance of protecting the opportunity for the continuation of subsistence uses and to consider the Council's position statement when the Board is deliberating proposals to change fish and wildlife regulations. In its past actions, the Board has justified many of its decisions based on only a portion of ANILCA §815 – "conservation concern," namely "Nothing in this title shall be construed as—(3) authorizing a restriction on the taking of fish and wildlife for nonsubsistence uses on the public lands (other than national parks and park monuments) **unless necessary for the conservation of healthy populations of fish and wildlife,***

for the reasons set forth in section 816, to continue subsistence uses of such populations, or pursuant to other applicable law”

*The Council requests the Board to also weigh any proposed restrictions against another portion of the same sentence “**to continue subsistence uses of such populations.**” This is an authority that is available to the Board that could be utilized to a greater extent in its decisions to provide and protect the rights of subsistence users. The Council also asks the Board to remember the declaration by Congress in ANILCA §801 (1): “**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.**”*

Response:

The Board would first like to express our gratitude to the Council for being so invested in the Federal Subsistence Management Program (Program) and for looking to the intent of Title VIII for guidance in the development of your actions and recommendations. Your regional expertise is invaluable to the Board and the Program.

Over 90 percent of the time, the Board’s decisions are consistent wholly or at least in part with the Regional Advisory Councils’ recommendations. When a Board decision differs from the relevant Council’s recommendation, per § 805(c) of ANILCA Title VIII, the Board is required to explain its action to the Councils. In this circumstance, it is often because the Board is required by law to balance the other purposes of ANILCA—mainly conservation and the provision of non-subsistence uses unless substantial evidence shows it is necessary to restrict them—when providing a meaningful priority for subsistence uses.

The Board acknowledges the Council’s efforts to make recommendations that provide a meaningful subsistence priority for federally qualified subsistence users in your region. Indeed, the Board recently followed the Council’s recommendations for targeted closures to the harvest of deer by non-federally qualified users in several areas of Unit 4. Based on the evidence in the record, the Board concurred with your Council that restrictions on non-federally qualified users were necessary for the continuation of subsistence uses per §815(3) of ANILCA.

In preparing this report reply, the Board was given the opportunity to review again the Council’s position statement on your interpretation of “meaningful priority” and the “continuation of subsistence uses.” This document is useful in understanding the Council’s approach to its duties and responsibilities. Again, we are extremely grateful for your thoughtful evaluation of Title VIII and the functions of the Federal Subsistence Management Program.

2. Bycatch Issues Remain a Concern

The Council previously expressed its concern that the Department of Commerce is not being responsive in addressing bycatch concerns shared by many of the Subsistence Regional Advisory Councils and that there is a lack of rural subsistence user representation on the North Pacific Fishery Management Council (NPFMC).

The Board informed the Council, by way of its 2022 Annual Report Reply, that a designated Tribal seat has been added to the NPFMC Advisory Panel, and it is hoped that this will improve representation for the subsistence users' concerns with NPFMC-managed fisheries. However, the Council feels it is important to continue advocating for subsistence users on this issue as they are being underserved. The commercial interests drive the management of fisheries, which in turn impact subsistence resources. The Council desires to continue its engagement and further requests that the following specific concerns be elevated to the Department of Commerce:

- *The Council remains concerned about the King Salmon bycatch by Gulf of Alaska trawl fisheries. The annual bycatch in the Gulf of Alaska trawl fisheries appears to exceed the annual King Salmon sport fishing catch in Southeast Alaska. The State of Alaska does not allow subsistence fishing for King Salmon in Southeast Alaska, and there is a very limited Federal fishery for King Salmon on the Stikine River (which has been closed pre-season by special action for the past several years). It seems unfair that subsistence users are prohibited from harvesting this vital resource, but other fisheries have abundant opportunity to harvest the same resource.*
- *The Council also understands that there is no limit on herring bycatch. Given the devastating decline of herring in Southeast Alaska, it is unconscionable that this bycatch impact on an important traditional subsistence resource, as well as food for major forage fish, continues to be ignored. Interception must be addressed to ensure that subsistence users can have access and opportunity to harvest herring.*

Request to the Board:

Please forward a copy of the Council's letter to Department of Commerce, pursuant to the Board's correspondence policy. Please also include the Council's previous letter dated February 24, 2023, in support of the efforts of peer Subsistence Regional Advisory Councils to address the bycatch issue, along with some detailed bycatch concerns for Southeast Alaska harvesters.

Please instruct Office of Subsistence Management (OSM) staff to keep this Council informed of any actions taken by NPFMC to address the bycatch issue, specifically in Southeast Alaska. The Council does not know if NPFMC has responded to any of the other Subsistence Regional Advisory Councils' letters regarding the concerns associated with bycatch.

Response:

The Board appreciates your continued dedication to advocating for the needs of subsistence users in your region. The concerns the Council has raised regarding bycatch in the Gulf of Alaska trawl fisheries are indeed pressing.

Currently, Mellisa Maktuayaq Johnson represents the Arctic-Yukon-Kuskokwim Tribal Consortium on the NPFMC Advisory Panel. There are two other Advisory Panel members that are Alaska Native representatives, Tiffany Andrew affiliated with the Alakanuk Tribal Council and Eva Burk affiliated with the Nenana Native Council. The Board suggests writing directly to these representatives to advocate for subsistence users.

On March 6, 2024, the Board received a letter from your Council regarding your concerns about the negative effects of trawl bycatch on the subsistence resources. On July 29, 2024, we forwarded this letter and your previous letter, dated February 24, 2023, expressing support of the other Councils request for regulatory relief and subsistence representation on NPFMC, to the Secretaries of the Interior and Agriculture (Topic 2 Encl. 1) and will forward them to the NOAA National Marine Fisheries Service Alaska Region and the Department of Commerce highlighting these critical issues and update the Council on responses when we receive them. Additionally, we will encourage Federal Subsistence Management Program staff to keep your Council updated on actions taken by NPFMC that are brought to the Program's attention regarding the bycatch issue, particularly in Southeast Alaska. The Board feels it is important for you to stay updated on the progress and responses from NPFMC to ensure that the concerns of subsistence users are adequately addressed.

When the Board met with the Secretary of the Interior in October 2023, it shared the Councils concerns regarding catastrophic declines in salmon and requested the Secretary to advocate for ecosystem scale collaborative salmon management in Arctic-Yukon-Kuskokwim and Southeast regions to ensure continuation of subsistence uses including working their Administration counterparts, engaging in scientific collaboration with the Department of Commerce, and encouraging joint Tribal consultations between the Board and NPFMC. These requests were further reiterated in the meeting follow up memo from the Board to the Secretary of Interior and the Secretary of Agriculture (Topic 2 Encl. 2).

As OSM finalizes its move to the Office of Policy, Management, and Budget within the Office of the Secretary of the Interior, the Board will seek opportunities to establish more direct communication with the Secretary's Office. The Board is already taking steps to meet with the Secretary on a few critical subsistence issues, one of which continues to be bycatch, and the need to liaise with the Department of Commerce on this important issue.

The Board is committed to helping Regional Advisory Councils advocate for the needs of subsistence users. We value your input and will continue to support the Council to address these pressing issues.

3. Invasive European Green Crab

At its fall meeting, the Council received information on the invasive European green crab and its increasing population throughout Southeast Alaska. It was reported that this species has moved up from the coast of California, Oregon, Washington, and Canada, and is now in our region. European green crab are currently having an impact on the Indian community of Metlakatla and

that community is being proactive and aggressive in addressing the issue, but this species poses a serious risk to the marine environment for all Southeast Alaska. It is anticipated that the migration will continue north and impact the waters around Ketchikan and Prince of Wales next. Climate change will exacerbate the issue as the European Green Crab are adapting to Southeast Alaska waters.

The Metlakatla Indian Tribe has taken the lead in addressing the European green crab issue and the Southeast Alaska Tribal Ocean Research Group (SEATOR)¹ is also recognizing this to be an emerging issue that deserves and requires further research. Ketchikan Indian Community just received a scientific collector's permit to trap and collect European green crabs, and there may be additional opportunities for monitoring and education outreach.

Request to the Board:

This is an emerging issue within our Region that the Council wanted to bring to the Board's attention. The impacts that the European green crab may have on subsistence resources and the foods that those resources eat may become substantial. The Council may advocate for specific action to address this issue in the future, such as supporting the investment of Federal and State resources as well as partnerships with indigenous Tribes to monitor and manage this new invasive species.

Response:

The Alaska Department of Fish and Game (ADF&G) announced on June 14, 2024, that Invasive European Green Crab have been confirmed in Alaska². The Board understands that spread of this invasive species would pose a threat to subsistence resources in your region, in particular shellfish and salmon. We appreciate and applaud the early monitoring efforts that have been conducted by the Metlakatla Indian Community in partnership with the National Oceanic and Atmospheric Administration (NOAA). The Board would like to provide the Council with the link to the 2023-2028 monitoring and response plan, which was developed by a steering committee with representatives from ADF&G, Metlakatla Indian Community, University of Alaska, NOAA, Pacific States Marine Fisheries Commission, and the U.S. Fish and Wildlife Service (DeBruyckere et al. 2023³ see the footnote). This plan outlines the management roles for each involved agency and specifies actions to address new and existing populations of European green crab in Alaska.

¹ SEATOR is a group comprised of most all Southeast Alaska tribes through their environmental programs to address environmental concerns.

² ADF&G Press Release:

https://www.adfg.alaska.gov/sf/EONR/index.cfm?ADFG=region.NR&NRID=3696&utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=

³ DeBruyckere, L., L. Elwell, T. Davis, B. Wishnek, A. Martin, J. Maurer, L. Shaw, D. Winter, and S. Phillips. 2023. Early Detection and Rapid Response Plan for Invasive European Green Crab (*Carcinus maenas*) in Alaska 2023–2028, 64pp. https://www.adfg.alaska.gov/static-sf/invasive_species/pdfs/EGC_EDRR_Plan_Alaska_2023%20-2028_FINAL.pdf Accessed June 10, 2024

The Board would also like to highlight that the U.S. Forest Service (USFS) and Southeast Alaska Tribal Ocean Research (SEATOR) have recently established a 5-year Interagency Agreement to increase baseline data collection for European green crab in the intertidal waters in the Ketchikan and Prince of Wales Island areas. This partnership will involve outreach efforts and trapping efforts to monitor for presence of European green crab in the area. Through this partnership, USFS and SEATOR will work with Ketchikan Indian Community, Organized Village of Kasaan, Hydaburg Cooperative Association, Craig Tribal Association, and Klawock Cooperative Association to conduct trapping efforts. Permits have been acquired from the Alaska Department of Fish and Game (ADF&G) to trap for European green crabs at 45 different locations. In June 2024, USFS and SEATOR plan to conduct site visits with Craig Tribal Association, Klawock Association, Hydaburg Cooperative Association, and to conduct public presentations in Craig and Kasaan. The Board would also like to note that subsistence users in your communities can report any sightings of European green crab to ADF&G either by submitting information to the online Invasive Species reporting tool at its website, <https://www.adfg.alaska.gov/index.cfm?adfg=invasivespeciesreporter.main>, or by calling (877)-INVASIV. The US Fish and Wildlife Service provides additional information on how to report sightings of European green crab in your area is available online at its website, <https://www.fws.gov/story/2022-10/crabby-about-invasive-green-crabs>. The Board appreciates the Council's commitment to monitoring emerging environmental and subsistence issues in your region, and we recognize that further action may be needed to address this issue in the future.

4. Tongass National Forest Plan Revision

The Council has been advised that the Tongass National Forest Plan (Plan) will be undergoing revisions, pursuant to the National Forest Management Act of 1976, which requires the United States Forest Service to develop, revise, and amend forest plans for units of the National Forest System. The Plan is a land and resource management plan that provides the framework for managing a National Forest and is developed using a public process where the public has the opportunity to shape the final document.

The Council anticipates spending a significant amount of time addressing subsistence-related topics in the Plan. Previously, during its involvement with the public process for the Alaska Roadless Rule⁴, the Council reviewed the current Plan and noted that the topic of subsistence uses of resources typically received little consideration throughout the Plan. This experience equipped the Council with an understanding and skill in reviewing such plans with a focus on the National Forest land management effects on foods relied upon by federally qualified rural residents. The Council anticipates that it will want to highlight important issues that should be addressed during the current Plan revision period. One of the issues already identified by the Council is the need to consider the importance of wildlife corridors in landscape management. These corridors are and will be essential for healthy populations of subsistence resources.

Request to the Board:

⁴ The Council was heavily engaged in this effort, participating in a subsistence public meeting, an Office of Management and Budget hearing, and also crafting a 26-page comprehensive public comment letter.

Please support the Council's request to have an additional out-of-cycle Council meeting in the future if the public comment period for the Plan falls outside of currently scheduled Council meetings. Specifically, please ask the Office of Subsistence Management to support, with staff and funding, a special meeting for the purpose of drafting formal public comments if this cannot be achieved during the regular meeting cycle. The Plan is being revised to protect resources, support sustainable economies, maintain healthy ecosystems, and meet community needs. The Plan may have significant impacts on the subsistence users' ability to utilize Southeast Federal public lands for subsistence uses. Therefore, it is vital that the Council be given assistance and the opportunity to help under-served communities express their opinions regarding proposed revisions to the Plan.

Response:

On April 26, 2024, the U.S. Forest Service published Federal Register notice (Document Citation 89 FR 32393; Document Number 2024-08957) that announces initiation of the assessment phase of the Land Management Plan revision for the Tongass National Forest (<https://www.federalregister.gov/documents/2024/04/26/2024-08957/tongass-national-forest-alaska-assessment-phase-of-revision-of-the-land-management-plan-for-the>). According to this notice, the public will be invited to engage and participate in the assessment phase of the revision process beginning in the spring 2024 through winter of 2025. Engagement opportunities are posted on the Tongass National Forest Plan Revision website <https://www.fs.usda.gov/detail/tongass/landmanagement/planning/?cid=fseprd1105492>. A draft assessment, which will reflect input received, is anticipated to be available for review and comment, in January 2025 (full FR announcement is enclosed, Topic 3 Encl.).

Per the U.S. Forest Service, a representative from the Tongass Plan Revision team is available to attend your meeting to provide an introductory presentation on Forest Plan Revision, and Board suggest that you reach out to Erin Mathews, Revision Plan Coordinator at erin.mathews@usda.gov to schedule a presentation at your fall 2024 meeting. During the fall meeting the Council can discuss on record and develop its recommendation on the Tongass Plan Revision, which can be submitted during the assessment phase.

Once the draft assessment is ready for review and comment in January 2025, the Council most likely will be able to provide additional comments on record during their winter 2025 meeting. At this point the Federal Subsistence Management Program doesn't have sufficient funding to support an additional out of cycle Council meeting for your Council. Moreover, such a meeting needs to be announced in the Federal Register a year in advance, and due to the uncertainty of the suggested meeting dates it would be impossible to generate such an announcement in time to be published. Therefore, the Board suggest that the Council communicates via a letter to the USFS the dates of their winter 2025 meeting and requests that the comment period for the draft assessment is open during or after this meeting.

Other Topics of Concern to the Council

Furthermore, the Board wants to thank the Council for sharing information in your FY-2023 Annual Report on other issues significant to the Council: (5) support for indigenous co-management agreement between the Central Council of Tlingit and Haida Indian Tribes of Alaska and the U.S. Fish and Wildlife Service for the management of Northern sea otter population; (6) concern for aquaculture farming impacts on subsistence resources in Southeast Alaska; (7) continuing concern regarding unguided or self-guided sports fishermen impacts on subsistence fisheries in the time of poor salmon returns; (8) continuing interest in examining and providing their interpretation of various sections of ANILCA Title VIII, such as Section 801(1) and highlighting concerns regarding climate change; and (9) current status of fish and wildlife resources in Southeast. We recognize that you are uniquely positioned to offer first alerts to changing conditions and important trends that impact subsistence in your region. The Board appreciates and values the traditional knowledge, observations, and expertise you share and will direct staff to track this issue in the future. With this information, the Board is better prepared to make informed decisions.

In closing, I want to thank you and your Council for your continued involvement and diligence in matters regarding the Federal Subsistence Management Program. I speak for the entire Board in expressing our appreciation for your efforts and am confident that the Federally qualified subsistence users of the Southeast Alaska Region are well represented through your work.

Sincerely,



Anthony Christianson
Chair

Enclosure Topic 2 Encl. 1 – A24077 FSB Letter to Secretaries re Bycatch and Salmon Management with Enclosures
Topic 2 Encl. 2 – Memo FSB to SOI re Program Needs with Enclosures
Topic 4 Encl – FR Vol. 89, No. 82, FS Tongass National Forest Assessment Phase of Revision of the Land Management Plan

cc: Southeast Alaska Subsistence Regional Advisory Council
Federal Subsistence Board
Office of Subsistence Management
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Interagency Staff Committee
Benjamin Mulligan, Deputy Commissioner, Alaska Department of Fish and Game
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Administrative Record