



KUSKOKWIM RIVER INTER TRIBAL FISH COMMISSION

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Nick Kameroff, Chairman

Mary Peltola, Executive Director

Telida
Nikolai
Takotna
McGrath
Lime Village
Stony River
Sleetmute
Red Devil
Georgetown
Crooked Creek
Napaimute
Chuathbaluk
Aniak
Upper Kalskag
Lower Kalskag
Tuluksak
Akiak
Akiachak
Kwethluk
Bethel
Oscarville
Napaskiak
Napakiak
Kasigluk
Atmautluak
Nunapitchuk
Tuntutuliak
Eek
Quinhagak
Kongiganak
Kwigillingok
Kipnuk
Chefornak

KRITFC Comments on YKDNWR Draft Delegation of Authority Letter

Old language of the 2002 letter, Para 3, p. 1: "Federal managers are expected to cooperate with State managers and minimize disruption to resource users and exiting agency programs, as agreed to under the Interim MOA for Coordinated Fisheries and Wildlife Management for Subsistence Uses on Federal Public Lands in Alaska.

Revised language of the 2017 Draft, Para. 2, p. 1: "Federal managers are expected to cooperate with managers from the State and other Federal agencies, the Council Chair(s), and applicable Council members to minimize disruption to subsistence resource users and existing agency programs, consistent with the need for emergency special actions.

Comment: While the language in the 2002 delegation letter referencing an interim MOA between the State and FWS for subsistence coordination of fishery management has been removed, the new draft delegation letter still assumes the existence of primary state management jurisdiction. This is wrong and misleading because the interim MOA between the State and FWS is no longer in place. The new delegation letter should explicitly reference the MOU between the Commission and FWS, and incorporate the requirements established in that MOU, just as the prior delegation letter did with regard to the MOA between FWS and the State. The new delegation letter – and, by extension, the Board – needs to recognize the new management model put in place by the Commission and FWS' MOU: a consistent, stable management regime that rests maximum authority in the tribes through the KRITFC. In order for the relationship established by the Commission and FWS's MOU to be effective, the new delegation of authority letter needs to acknowledge and recognize that certain actions taken by FWS under the Board's delegation of authority will be required to be consistent with the terms of that MOU.

Furthermore, the draft letter should also clearly state that the Board expects federal managers to cooperate with the Commission, not just state and federal agencies, RAC chairs and members.

The new delegation letter should also reflect that the goal of the MOU between the Commission and FWS is to incorporate the State into the management partnership in order to unify management. The Board's acknowledgement of this goal would demonstrate the intent of the parties to move towards a unified tribal/state/federal fishery management structure for the Kuskokwim.

Old language of the 2002 letter, Scope of Delegation, Last sentence in para 3, p. 2: "the Refuge Manager will coordinate all local fishery decisions with all affected federal land managers."

Revised language of the 2017 Draft, Scope of Delegation, Last sentence in para 4, p. 2: "You will coordinate all local fishery decisions with all affected Federal land managers."

Comment: In order for the relationship between FWS and the Commission, established in the MOU, to be effective, the Board, through its new delegation of authority to the Refuge Manager, needs to explicitly reference and recognize that the Refuge Manager will coordinate all local fishery decisions with the KRITFC. The new delegation letter should also acknowledge that, as



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established through the MOU, the Refuge Manager's local fishery decisions must incorporate both scientific/traditional knowledge, the recommendations of the RAC sub-committees, and the Commission, as established in the MOU on p. 4, para 1. Referencing the role of the RACs in this process is essential, as it acknowledges the deference their comments are owed, as well as the universal commitment all entities are making to establish a comprehensive management plan that guides any in-season management and delegations.

Old language of the 2002 letter, p. 3, item 7: "Have the perspectives of ADFG managers and RAC representatives been fully considered in the review of the proposed special action?"

Revised language of the 2017 Draft, p. 3, item h), 2017 draft: Have the perspectives of the Chair or alternate of the affected Council(s), the KRITFC, the KRSMWG, OSM, and affected State and Federal managers been fully considered in the review of the proposed special action?

Comment: The inclusion of the perspectives of the Councils, KRITFC, and KRSMWG in the new delegation letter is a positive change. It is presumed that the perspectives of these entities would be obtained by the Manager through timely consultations, as established in the MOU. As such, if the in-Season Manager is required to obtain these perspectives and include them in his or her fishery management plans, strategies, and decisions, the consultation requirement discussed on page 4, para 2 of the MOU should be included in the delegation letter.

Old language of the 2002 letter, p. 4, para 3: The Refuge Manager will immediately notify the FSB through the ARD for Subsistence USFWS, and notify/consult with local ADFG managers, RAC members, and other affected Federal conservation unit managers concerning special actions being considered.

Revised language of the 2017 Draft, p.4: You will immediately notify the Board through the ARD for the OSM, and coordinate with the Chair or alternate of the affected Council(s), the KRITFC, the KRSMWG, local ADFG managers, and other affected Federal conservation unit managers concerning emergency special actions being considered.

Comment: The KRITFC recognizes that this portion of the delegation letter addresses how the Refuge is required to handle management situations occurring under emergency special actions. And, the KRITFC is pleased that the new letter requires the Refuge Manager to notify the KRITFC about special actions being considered, as consistent with the MOU. However, the delegation letter only requires notification where there are emergency special actions being considered, and doesn't appear to require notification for non-emergency special actions (temporary special actions). The delegation letter should also acknowledge the goal for the refuge and the KRITFC to manage the fishery without the need year after year for special action requests, emergency orders, and subsequent management decisions that aren't necessary because the refuge and the KRITFC have been granted the necessary authority to manage the river to ensure conservation and subsistence needs. Furthermore, the delegation needs to acknowledge that the refuge, in partnership with the KRITFC, will be actively engaged in fishery management of the river at all levels of abundance and subsistence harvest levels.

Old language of the 2002 letter, Page 4, para 4: The Refuge Manager will issue timely decisions. Users, affected State and Federal managers, law enforcement personnel, and RAC representatives should be



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notified before the effective date/time of decisions. If an action is to supersede a State action not yet in effect, the decision will be communicated to affected users, State and Federal Managers, and RAC representatives at least 6 hours before the State action would be effective. If a decision is to take no action, the requestor will be notified immediately.

Revised language of the 2017 Draft, Page 4, 4th full para: You will issue decisions in a timely manner. Before the effective date of any decision, reasonable efforts will be made to notify Council representatives, the KRITFC, the KRSMWG, the public, OSM, affected State and Federal managers, and law enforcement personnel. If an action is to supersede a State action not yet in effect, the decision will be communicated to Council representatives, the KRITFC, the KRSMWG, the public, OSM, and State and Federal managers at least 24 hours before the State action would be effective. If a decision to take no action is made, you will notify the proponents of the request immediately.

Comment: As a threshold matter, this section of the letter seems to place the KRSMWG on par with the KRITFC, which is not how the relationship is contemplated and set up in the MOU. The role of the KRSMWG and its relationship to the federal management process must be clarified throughout the delegation letter.

The new draft delegation letter still assumes primary state management, e.g., "If an action is to supersede..." to the disadvantage of achieving the mission and mandates of ANILCA. The MOU between the KRITFC and FWS establishes a new management model where the state is not the primary manager, and where the perspectives and actions of FWS and the KRITFC, as informed by the RACs, are of essential importance. While there are cases where it is appropriate for Federal management plans and actions to mirror those of the State of Alaska, at the same time, those plans and actions can severely limit the ability of the Federal subsistence program to exercise its independent judgment to achieve the mission and mandates of ANILCA. The draft letter should be revised to delegate Federal in-Season managers to the latitude necessary to meet subsistence program mandates – many of which are incorporated into the MOU between FWS and the KRITFC.

The Draft delegation letter incorporates the KRITFC and KRSMWG and requires the timely notification of both entities before the effective date/time of decisions, as required by the MOU. However, the delegation letter should also require consultation and collaboration between the in-season manager and the Commission *before* the issuance of the Manager's decision on a special action, as contemplated by the MOU (page 4, para 2 and 5). There is no reference to in-season management decisions reached by consensus, as contemplated by the MOU on page 4, paragraph 5. There's also no reference to resolving issues concerning in-season management decisions using the dispute resolution mechanisms established by the MOU, if there is no consensus. While these conflict resolution procedures are specific to the MOU between FWS and the KRITFC, they are applicable to the entire subsistence management program, and, if formally incorporated into that program through the Board's delegation of authority, would go a long way towards improving that program.

Old language of the 2002 letter, p. 4, para 7, Reporting: The Refuge Manager must provide to the FSB a report describing the pre-season coordination efforts, local fisheries management decisions, and post-season evaluation activities for the previous fishing season by November 15.



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Revised language of the 2017 Draft, p. 4, para 7, Reporting: If pre-season meetings result in the need for Federal management of the fishery, you will submit a written report to the Board by **DATE** of each year documenting the outcome of this determination process, as well as outlining the in-season collaborative decision-making process adopted by the group to include input from the KRITFC, the KRSMWG, the OSM, and ADFG, proposed strategies for in-season management, and agreed upon guidelines for issuing emergency special actions via delegated authority.

You must provide to the Board, through the ARD for the OSM, a report describing the pre-season coordination efforts, local fisheries management decisions, and post-season evaluation activities for the previous fishing season by November 15. A summary of emergency special action requests and your resultant actions must be provided to the coordinator of the appropriate Council(s) at the end of the calendar year for presentation during regularly scheduled Council meetings.

Comment: Where the new delegation letter suggests that the Refuge Manager should submit reports to the FSB, the Board should consider requiring that all reports issued to it be a joint report from the Refuge Manager and the KRITFC. At the very least, the Board should consider establishing requirements for the Refuge Manager to integrate specific subsistence facts and perspectives into his or her report to the Board, as those facts and perspectives are reported and provided by the KRITFC.