

The Regional Council members represent varied geographical areas, cultures, interests, and resource users within each region.

The Regional Councils had a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, presented their Council's recommendations at the Board meeting in January 2003.

Recognizing Customary Trade Practices

Title VIII of ANILCA specifically identifies customary trade as a recognized part of subsistence uses. The term "customary trade" is defined in these regulations as the " * * * exchange for cash of fish and wildlife resources regulated in this part, not otherwise prohibited by Federal law or regulation, to support personal or family needs, and does not include trade which constitutes a significant commercial enterprise." The distinction between the terms "customary trade" and "barter" (which is also provided for in Title VIII) is that "customary trade" is the exchange of subsistence resources for cash, while "barter" is defined as the exchange of subsistence resources for something other than cash. While the exchange of subsistence resources as customary trade may involve fish, shellfish, or wildlife resources, this final rule only covers the customary trade of fish resources.

Prior to the expansion of the Federal program to include management on other waters on October 1, 1999, Federal Subsistence Board regulations applied only to subsistence fisheries in non-navigable waters. Those regulations contained the same definition for customary trade cited above, but also included the following regulatory language (in § __.26(c)(1)): "No person may buy or sell fish, their parts, or their eggs which have been taken for subsistence uses, unless, prior to the sale, the prospective buyer or seller obtains a determination from the Federal Subsistence Board that the sale constitutes customary trade". During the development of the regulations for the expanded fisheries program, it was recognized that the customary trade of fisheries resources was ongoing in many parts of Alaska, but was not provided for in the existing Federal regulation nor in existing State regulations (except for the sale of herring roe on kelp in southeast Alaska). Therefore the general prohibition in § __.26(c)(1) was replaced effective October 1, 1999, with the following language which generally permitted customary trade:

§ __.26(c)(11) The limited exchange for cash of subsistence-harvested fish, their parts, or their eggs, legally taken under Federal subsistence management regulations to support personal and family needs is permitted as customary trade, so long as it does not constitute a significant commercial enterprise. The Board may recognize regional differences and define customary trade differently for separate regions of the State.

(12) Individuals, businesses, or organizations may not purchase subsistence-taken fish, their parts, or their eggs for use in, or resale to, a significant commercial enterprise.

(13) Individuals, businesses, or organizations may not receive through barter subsistence-taken fish, their parts or their eggs for use in, or resale to, a significant commercial enterprise.

While detailed statistics are not available to show where customary trade transactions of fishery resources take place, we believe that the large majority of such transactions take place within rural villages or nonrural communities. Generally, the Federal subsistence regulations apply only within or adjacent to conservation system units and other Federal lands as described in § __.3 of the regulations. We believe, however, that Federal regulations governing customary trade of subsistence-taken resources extend to any customary trade of legally taken subsistence fish regardless of where the actual cash transaction takes place.

We realized that those Federal regulations regarding customary trade needed to be refined. Much of the current discord and uncertainty associated with customary trade relates to the term "significant commercial enterprise," which is not defined in the regulations. Additionally, there was a concern that, by allowing customary trade without further regulatory clarification, a loophole is created for valuable subsistence resources to become a commodity on the commercial market for monetary gain by those who wish to take advantage of the system. Without a more specific definition of "significant commercial enterprise" or other regulatory modification, law enforcement personnel regarded the regulation unenforceable. Another concern expressed by the Regional Councils was a potential need for a regional approach to customary trade regulations to take into account differences among the Regions.

Recognizing these concerns, the Board initiated an agreement with the Alaska Department of Fish and Game to assemble information on contemporary customary trade. In December 2000, the

State submitted a report entitled "Sharing, Distribution, and Exchange of Wildlife Resources, An Annotated Bibliography of Recent Sources" documenting a wide range of continuing practices.

In late 2000, the Board established a Customary Trade Task Force composed of representatives of the 10 Regional Councils, fishery biologists, enforcement personnel, anthropologists, and others. This Task Force was charged with developing draft regulatory language defining the intent of customary trade as identified in ANILCA Title VIII. They met several times during 2001, requested, received, and considered public comments, and eventually developed preliminary draft regulatory language. The Task Force identified three different types of customary trade, with specific recommendations for each type. In the first, trade between rural residents was seen as involving relatively small amounts of fish and cash, and generally occurring within or between neighboring villages. Since this form of trade is relatively self-limiting, the Task Force recommended that unlimited cash exchange be permitted. For the second type, trade between rural residents and others (the term "others" is defined as "commercial entities other than fishery businesses or individuals other than rural residents"), the Task Force recommended that customary trade also be permitted but that a monetary cap be applied to the customary trade of salmon. The Task Force chose a cap of \$1,000 per household member per year for salmon as a starting point for discussion and potential modification by each Council. For the third type, customary trade or barter to fisheries businesses, the Task Force recommended that this activity not be permitted. This draft was circulated for review by all 10 Regional Councils, the 229 Federally recognized tribes, and for general public review. The Task Force met one more time to consider all comments received and eventually developed draft language that was presented to the Board on December 12, 2001, as Option 1 of six options for Board consideration. The preliminary draft language that was provided to the Regional Councils, 229 Federally recognized Tribal governments, and the general public was modified during the final meeting of the Task Force and then further modified by the Board at its December 2001 meeting.

Federal staff met with representatives of several villages, Tribal associations, and Regional Corporations. The consultation was conducted pursuant to the Department of the Interior, Alaska