

Policy on Government to Government Relations with the Alaska Native Tribes. Three tribal governments submitted comments. Two of the Tribal governments concurred with the proposed regulatory language; the comments from the third tribal government were not specific to customary trade.

During the review of the draft Task Force recommendation by the Regional Councils, seven of the ten Councils made specific regional recommendations. Included as part of the Task Force draft language was a \$1,000 cap per household member per year for the exchange of salmon for cash between rural residents and others. The Regional Council comments generally agreed with a monetary cap but also suggested regional needs and differences. Some Regional Councils thought the \$1,000 cap too high; others thought it too low. Several Council members expressed concern about allowing sales of subsistence-taken salmon in areas experiencing subsistence shortages and limited fishing opportunities. In recent years, areas such as the Yukon and Kuskokwim Rivers have had poor salmon returns requiring managers to reduce subsistence fishing schedules and, in some instances, close subsistence fishing. Some Regional Councils also were concerned that the draft language restricted barter between rural residents and others.

After the Council, tribal government, and public review, the Task Force met one more time to consider comments received during that review. In general there was concurrence with the Task Force recommendations for unlimited customary trade between rural residents and a prohibition against customary trade between rural residents and fisheries businesses. (Two exceptions to this concurrence were the Bristol Bay Regional Council recommendations for a \$1,000 limit on customary trade between rural residents in the Bristol Bay and Chignik Areas.) Based on concerns expressed at this Task Force meeting about the enforceability of a monetary cap on the exchange between rural residents and others, the Task Force added a permitting requirement to this section.

At its December 2001 meeting, the Board considered six options for a proposed rule regarding customary trade. After hearing the report of the Task Force, the six options, and comments from Regional Council Chairs, ADF&G, Alaska Department of Environmental Conservation, and other members of the public, the Board decided to initiate a formal rulemaking

process with a proposed rule, as follows:

Publish the proposed rule for public comment with the draft regulatory language, as recommended by the Customary Trade Task Force, except maintain the status quo for transactions between rural residents and others. Through the development and review of draft regulatory language for customary trade by the Task Force and the Regional Advisory Councils, there was general support and consensus for unlimited transactions between rural residents and the prohibition of transactions with fisheries businesses. Many of the concerns raised have been directed at the transactions between a rural resident and others. The proposed rule would maintain the status quo for transactions between a rural resident and others, prohibit transactions with State-licensed fisheries businesses, and allow further discussions and analyses to occur before proposing further restrictions on the transactions between a rural resident and others in a proposed rule.

To continue the rulemaking process, the Board published a proposed rule on February 27, 2002 (67 FR 8919). The Board invited comments on the proposed rule, the six options considered by the Board at their December 2001 meeting, and the regional recommendations provided by the Regional Councils. The Board also expanded public awareness of the proposed rule and the opportunity to comment through targeted mailouts to interested parties, news releases, additional Tribal consultation, and by posting on the Office of Subsistence Management Web site at <http://alaska.fws.gov/asm/home.html>. The Board expected to deliberate and take final action on this rule in May 2002.

In response to public requests, the Board members, at their May 2002 meeting, deferred action on the proposed rule for customary trade until January 2003. They took this action for several reasons:

- There were many public requests for a delay;
- The June Board meeting occurred during the peak of the rural subsistence fishing season so many subsistence users were unable to provide comments; and
- Any decision the Board made in June would not have been in effect until the 2003 fishing season.
- Also, this additional time provided further opportunity for discussion and input from the public.

In the meantime, the Board analyzed public comments and issued a summary of the comments in August 2002. This document was distributed to the public, tribal governments, 10 Federal Regional Advisory Councils, and other State and Federal agencies.

As a result of the initial comment period, the extended comment period, and the opportunity to testify at the January 14, 2003, public meeting, the Board received 102 written comments, recommendations from the Regional Councils, and public testimony from 10 others.

Comments were received from Federal and State agencies, Tribal organizations, sportsmen's associations, commercial fisheries business owners and organizations, and individuals. The comments generally fall into three categories:

- There should be no cash sale of subsistence-caught fish.
- There should be no regulations made by Federal or State governments that would limit customary trade.
- The final rule should be deferred.

These categories are not mutually exclusive. Some commentors who clearly oppose the proposed rule offer modifications that might lessen the effects of the proposed regulations. Others who clearly oppose the proposed rule urge the Board to defer action. Many do not state any position on the proposed rule, but recommend deferral of any action to allow for further research on use patterns, to confer with elders, and to consult with Tribal governments.

The suggested modifications to the proposed rule are as follows and may represent more than one commentor.

Paragraph (11): With few exceptions, those who commented on paragraph (11) believe that there should be no restrictions on trade between rural residents. The following modifications were recommended:

- Modify to included the words “* * * exchange for cash between rural residents.* * *”
- No cash transactions should be allowed.
- Modify to require at least 50 percent of subsistence-caught fish must be retained for personal and family consumption.

We have revised the rule to include the words “for cash” to reflect the formal definition of customary trade. We did not modify the rule to require a certain amount of harvest be retained by the harvester. Because the exchange and use will be by rural residents, we felt this restriction was unnecessary and would require rather cumbersome record keeping.

Paragraph (12): Of the proposed regulations, paragraph (12) elicited the most comment. The comments tended to be regional with a few that would apply statewide. The following