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## **Conflict brewing over recent Subsistence Board decisions**

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*Published: 2015.02.05 09:02 AM*

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If science-based fisheries management is Gov. Bill

Walker's goal, then he has more than just the Alaska Board of Fisheries to worry about.

There's a conflict brewing between subsistence and conservation-minded, scientific fisheries management at the Federal Subsistence Board. During its January meeting, the board passed a unanimous motion to close the federal waters of Sitka Sound around Maknahti Island to commercial purse seine herring harvests, in addition to voting in favor of gillnet subsistence fisheries for the Kenai and Kasilof rivers.

Subsistence is meant to be the first and foremost consideration of fisheries management, according to both state and federal bylaws. But fisheries must also be managed by the best available science.

Conservation, and the science that backs it, is the constitutional mandate of the Alaska Board of Fisheries and Alaska Department of Fish and Game Commissioner Sam Cotten. Walker has made it his stated mission to rid Alaska fisheries of politics and focus on science-first management.

The Sitka Tribe of Alaska submitted the Maknahti Island proposal, which was endorsed by the Southeast Regional Advisory Council. State and federal advisors both recommended against the measure in the absence of evidence that it is necessary to preserve herring stocks.

The board also made a controversial vote Jan. 21 to add a subsistence gillnet for the Ninilchik Traditional Council along public segments of the Kenai and Kasilof rivers in pursuit of sockeye

salmon. State and federal biologists recommended against the measure on conservation concerns for the chinook salmon and trout that will inevitably be caught in the non-selective gear type.

The Kenai measure only narrowly passed with a 4-3 vote: the Bureau of Land Management, U.S. Fish and Wildlife Service, and Forest Service opposed the motion on conservation grounds.

State Rep. Les Gara, D-Anchorage, wrote a public request for reconsideration, citing the same conservation concerns for chinook salmon biologists did during the board's January meeting.

The Federal Subsistence Board operates as part of the U.S. Department of the Interior to control subsistence on federal lands in Alaska. Members are the regional directors of the U.S. Fish and Wildlife Service, National Park Service, Bureau of Land Management, Bureau of Indian Affairs and the U.S. Forest Service. There are three public members appointed by the secretaries of the Interior and Agriculture: two represent rural subsistence users and one is the Federal Subsistence Board chairman. Tim Towarak currently sits as the board chair.

A subdivision of U.S. Fish and Wildlife called the Office of Subsistence Management is a support organization for the board to provide analysis and execute board decisions.

The waters to be closed around Maknahti Island are a small area and only sparsely fished by commercial herring vessels, but the objections aren't about the economic loss, but the legality of the ruling.

The board derives its authority from the Alaska National Lands Interest Conservation Act, passed by Congress in 1980. Under Section 815 of the Alaska National Lands Interest Conservation Act, or ANILCA, the Federal Subsistence Board has the right to restrict fisheries in public waters to federally qualified subsistence users, but only if there is sufficient evidence of conservation necessity.

The Alaska Department of Fish and Game, or ADFG, holds that the board acted outside its authority with its Maknahti Island herring closure, because available science suggests no conservation concern for herring in Sitka Sound.

This is the last of several proposals to shut the area to all federal non-subsistence users. The Sitka Tribe of Alaska submitted two previous proposals for non-subsistence closures in the federal waters around Maknahti Island in 2007 and 2013. Each time they were rejected for lack of conservation necessity.

At the January meeting, the Office of Subsistence Management opposed the closure on the same grounds as before.

"Adoption of this proposal would result in further area closures to non-federally qualified subsistence users, which do not appear to be needed for either conservation purposes or to protect federally qualified subsistence users," wrote the office in comment to the federal board.

ADFG provided much of the literature cited by the OSM, and itself spoke against the proposal both at the meeting and in formal written comment.

"The fishery is being managed with conservation in mind, and our position is that there is not a conservation need to close the Maknahti waters," said ADFG area management biologist Dave Gordon.

Conservation management for herring in Sitka Sound is based on a minimum biomass requirement. The mandatory minimum annual biomass for herring returning to Sitka Sound is 25,000 tons. If the estimated biomass drops below that number, the federal board can restrict fisheries in public waters to federally qualified subsistence.

Herring stock estimates, provided mainly by ADFG biologists, aren't even close to approaching the minimum, and haven't for 20 years. The estimate for pre-fishery 2014 herring return was 81,665 tons. Annual estimated biomass of herring returning to Sitka Sound has not dropped to 25,000 tons since the mid 1990s, and reached a peak of 119,049 tons in 2009.

The state isn't beyond area closures when necessary, even if stocks have no conservation concern. The 2012 Sitka Sound herring harvest was closed by the Alaska Board of Fisheries to "reduce perceived conflict between the commercial fishery and the subsistence fishery."

Gordon says the closures won't likely affect the commercial herring fleet, as the federal waters around Maknahti Island are not key for that fishery. But that could change, he said, and that's not the point anyway. The commercial fleet is nervous about allowing an area closure against available science and in apparent violation of ANILCA Section 815.

Representatives from ADFG say the department is evaluating their options regarding whether or not to file a request for consideration or take other measures, which could include a lawsuit.

Requests for reconsideration are rare, said Theo Matuskowitz, the policy expert for the Federal Subsistence Board. In most cases, board measures are low-profile and attract little attention, or have the broad support of the public who recognize subsistence priority and aren't affected

by rulings.

But board decisions aren't always well received. In 2013, the village of Saxman in Southeast Alaska filed a lawsuit against the board, the Department of Interior, and the Department of Agriculture over a 2007 board ruling that stripped the village of federal subsistence rights.

A key part of qualifying for federal subsistence rights means having a "rural" designation. In 2007, the Federal Subsistence Board ruled that Saxman and its largely-Tlingit tribe inhabitants would incorporate into the Ketchikan urban area two miles north and lose rural status, and therefore not qualify for federal subsistence fishing.

The board has not overturned the decision, but instead opened a public conversation about the establishment process for rural designation. The board has opened several meetings in different Alaska regions seeking for public comment on proposed regulatory changes that would give the board greater flexibility in declaring specific communities rural or non-rural.

The Kenai and Kasilof rivers gillnets already riled public sentiment and a request for reconsideration by Gara.

On Jan. 30, the Alaska House of Representatives Finance Committee heard a departmental overview from Cotten, flanked by deputy commissioners Charlie Swanton and Kevin Brooks.

After an overview presentation, two subjects commanded the conversation: slashed funding for the ADFG's Chinook Salmon Research Initiative, and the Federal Subsistence Board's decision to allow a gillnet on the Kenai.

Cotten and his delegation, for their part, took a "wait and see" attitude. Rep. Mark Neuman asked the ADFG what they think will happen to the fishery and what could be done about the Kenai situation. Swanton had no knowledge beyond Gara's reconsideration request.

"Rep. Gara has received much information over the last 16 or 18 hours," Swanton said. "That will play out over the course of the next several months. I couldn't predict the outcome. Certainly department staff have made their concerns known."

Gara said in a telephone interview that he's received no news regarding his request, nor is he involved with any movements opposing the Maknahti Island closure.

"Requests for reconsideration are open to anyone, and we're really just trying to get the word out," Gara said.