

Compliance with ANILCA Section 810

I. Introduction

Public Law 96-487, the Alaska National Interest Lands Conservation Act (ANILCA), Title VIII, Section 810, subtitled Subsistence and Land Use Decisions, outlines the requirements for addressing impacts to subsistence uses of resources in the federal land use decision-making process in Alaska (see **Appendix 1**).

Procedurally, subsection 810(a), depending on circumstances, requires up to four steps. These steps are:

1. An **evaluation**, which consists of three major parts;
2. A **finding** of whether or not a proposed action may have significant restriction on subsistence uses;
3. **Notice and hearing**, if an action may have a significant restriction on subsistence uses; and
4. If there may be a significant restriction on subsistence uses, a **three-part determination** must be made before the action may be authorized.

ANILCA Section 810 also contains the procedural requirement that, under the National Environmental Policy Act (NEPA), if an Environmental Impact Statement (EIS) is to be prepared, the 810 process will be combined with the EIS process so as not to duplicate potentially redundant tasks. BLM-Alaska policy is that compliance with 810 requirements will be incorporated as part of both the Environmental Assessment (EA) and EIS process, and will be a prominent part of the decision documentation. Compliance with Section 810 requirements will be prepared as a separate document only if an EA or EIS is not required.

An ANILCA Section 810 Evaluation is required for all land use actions, even if such action is covered by NEPA Categorical Exclusions (CXs) or Determinations of NEPA Adequacy (DNAs). This document provides the detailed policy for incorporating all Section 810 requirements into BLM-Alaska's NEPA process and other relevant planning and decision processes.

II. Applicability of Section 810 to BLM Actions

A Section 810 Evaluation is required for any action to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands in Alaska under any provision of law authorizing such actions. This applies whether the action is a request from outside the agency or initiated by the agency. Conducting ANILCA 810 evaluations in Alaska on public lands is mandatory for virtually all Federal land use decisions; exceptions to conducting an evaluation would be very rare (see **Appendix 2 Natural Fire and Fire Suppression** and **Appendix 3 Evaluation of Permits for Subsistence Activities**).

Public lands, as defined by ANILCA (Section 102), are all Federal lands in Alaska except:

- Land selections of the State of Alaska which have been tentatively approved or validly selected under the Statehood Act;¹
- Land selections of a Native Corporation made under the Alaska Native Claims Settlement Act which have not been conveyed to the Native Corporation, unless the selection is determined invalid or relinquished; and
- Lands referred to in section 19(b) of ANCSA, (which are village corporation lands that were reserved prior to the passing of ANCSA).

Section 810 also applies to lands in which the BLM manages the subsurface but does not own the surface, given the ANILCA definition of land as “lands, waters, and interests therein.”

Section 810 evaluations are not required for actions:

- That are non-discretionary for BLM, specifically: 1) Conveyances to the State of Alaska under the Alaska Statehood Act and other authorities, 2) Conveyances to Regional and Village Corporations in accordance with the Alaska Native Claims Settlement Act (ANCSA), 3) conveyances to individual Alaskan Natives under the Native Allotment Act and the Alaska Native Veterans Allotment Act, 4) Casual Use and Notice-level 3809 actions (see **Appendix 4 - 3809 Surface Management of Mining**), and 5) Recordable Disclaimers of Interest on navigability decisions;
- That do not withdraw, reserve, lease or otherwise permit use, occupancy or disposition of public lands.

While State selected lands are considered exempt from requiring a Section 810 Evaluation, the priority of the State’s selections should nevertheless be a consideration when making land use decisions. Because of over-selections, low priority lands will likely revert to being BLM administered public lands and therefore subject to Section 810 requirements in the future. The public may be best served by satisfying the Section 810 requirements even though it may not be legally required. There are no categorical exclusions for 810 evaluations. Therefore, Section 810 Evaluations are required for all land use actions on public lands. Section 810 Evaluations must be conducted in conjunction with NEPA categorical exclusion documentation (CXs) and with determinations of NEPA adequacy (DNAs).

III. Components of an 810 Evaluation for BLM Environmental Impact Statements

ANILCA 810 Evaluations for EISs begin with an overview of the proposed action and alternatives, and a description of the sections within the EIS where reference information or data is located that is directly relevant to the 810 evaluation (usually *Chapter 3 Description of the Affected Environment* and *Chapter 4 Environmental Consequences*; see *BLM Handbook H-1790-1 National Environmental Policy Act handbook, 2008*). Following the overview of the proposed action and alternatives is a summary of the 810 process, as quoted from the legislation itself,

¹ The sole exception to State selected lands not meeting the definition of public lands are any State selections in a Conservation System Unit (CSU, e.g., Steese-White Mountains, and Wild and Scenic River Corridors). Such CSU lands are to be administered under applicable laws until actually conveyed (ANILCA Section 906(o)(2); §50CFR 100.4(2)).

which includes a description of the relevant legal definitions, mandated policy, and any other legislation that may be relevant to subsistence and land use decisions. When complete, an 810 Evaluation is commonly inserted as an appendix to the FEIS.

Additional Applicable Requirements

Executive Order 13175 *Consultation and Coordination with Indian Tribal Governments* (November 6, 2000) establishes principles and standards for government-to-government consultation with tribal governments on “policies that have tribal implications.” Land use decisions with the potential to significantly restrict subsistence uses of rural Alaskans are commonly matters that also may have a tribal implication. Consultation with tribal governments on subsistence, along with other issues, is an integral part of the public involvement process for an EIS. While Section 810 does not establish separate or additional requirements concerning consultation with tribal governments, the Section 810 review benefits from outreach to the tribal governments through the EIS. Additional guidance is found in the Department of the Interior-Alaska Policy on Government-to-Government Relations with Alaska Native Tribes, in BLM Manual 8120—Tribal Consultation Under Cultural Resources, and in BLM Handbook 8120-1—General Procedural Guidance for Native American Consultation.

Executive Order 12898 *Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations* establishes principles and standards for Federal agencies “identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects...on minority populations and low income populations.” Section 4.4 focuses attention on subsistence consumption of fish and wildlife. An Environmental Justice analysis with regard to subsistence consumption, as well as other issues, is usually included as part of an EIS. No separate or additional examination of environmental justice considerations is required by Section 810. However, a statement that these concerns have been addressed in the EIS has been considered a necessary addition to the Section 810 evaluation by the regional solicitor of Alaska since 2003.

Example of Environmental Justice Statement to be included in Section 810 Evaluations:

In addition to ANILCA, Environmental Justice, as defined in Executive Order 12898, also calls for an analysis of the effects of federal actions on minority populations with regard to subsistence. Specifically, Environmental Justice is:

The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people, including racial, ethnic, or socioeconomic group should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.

Section 4.4 of Executive Order 12898, regarding the Subsistence Consumption of Fish and Wildlife, requires federal agencies to collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence, and to communicate to the public any risks associated with the consumption

patterns. To this end, the subsistence analyses of all alternatives, located in Chapter 4 (Environmental Consequences) of the Amended IAP/EIS, have been reviewed and found to comply with Environmental Justice.

Additional guidance is found in the CEQ document, Environmental Justice – Guidance under the National Environmental Policy Act, December 1997.

Steps in the ANILCA 810 process for an EIS

As noted above, an ANILCA Section 810 Evaluation is a four-step process (**Figure 1**) However, in cases consisting of minor actions limited in geographic scope or impact, only the first two steps may be required to fulfill the mandate. Of the environmental documents prepared by the BLM, EISs are those that have the greatest potential for requiring a full, four-step Section 810 Evaluation. The steps in this process are also referred to as the two-tiered approach to conducting an ANILCA 810 Evaluation, where steps 1 and 2 are considered the first tier, and steps 3 and 4 comprise the second tier.

Step 1: Evaluate

This initial step of the 810 process, as specified within the legislation, consists of three very specific factors that must be addressed. These three factors must be analyzed and separately described for each alternative, including the cumulative effects analysis. It may also be the case that the Final EIS will contain alternatives different from those in the Draft EIS. In this situation, if a new alternative is considerably different from the actions that were already analyzed, then the new alternative must also be analyzed using the four steps.

Factor 1. Evaluate the effect of each of the EIS’s proposed action(s) and alternatives on subsistence uses and needs.

An Section 810 Evaluation shall include sufficient information so the Authorized Officer can make the decisions and determinations required by Section 810. The data should be appropriate to the level and kind of action being considered (see **Appendix 5 Guidance Concerning the Adequacy and Use of Data for Making 810 Evaluations**). EISs and EAs assess the direct, indirect and cumulative impacts of the proposed action and alternatives. Usually, EISs in Alaska include detailed sections of information on subsistence resources in the affected area, traditional and current levels of subsistence use, and an analysis of the impacts of the proposed action and alternatives on subsistence use. This information is found in Chapter 3 *Affected Environment* and Chapter 4 *Environmental Consequences* of the EIS, and comprises the primary data used to satisfy Step 1 of the 810 Evaluation.

The evaluation shall provide clear reasoning which a third party can follow, and then reach a similar conclusion. Further, the evaluation must, at a minimum, address the following by stating whether or not, for each alternative, there is likely to be:

- A reduction in the **abundance** of harvestable resources used for subsistence purposes. This, for example, may include fish, wildlife, edible flora, house logs, fuel wood, drinking water, etc. Forces that might cause a reduction include adverse impacts on

habitat, direct impacts on the resource, increased harvest and increased competition from non-subsistence harvesters.

- A reduction in the **availability** of resources caused by an alteration in their distribution, migration, or location.
- A limitation on the **access** of subsistence users to harvestable resources. Such an evaluation includes only physical and legal barriers.

Proposed actions or alternatives on lands that are closed to subsistence hunting (e.g., the Anchorage Management Area) nonetheless require an ANILCA 810 Evaluation. However, the evaluation will not need to have the same level of detail. For example, an action proposed for BLMs Campbell Tract in Anchorage would not require an analysis of subsistence uses and needs, but rather a statement regarding the lack of subsistence use and need because the area is closed to subsistence use.

Factor 2. Evaluate the availability of other lands for the purposes sought to be achieved.

ANILCA Section 810 requires, in part, that when an action is proposed on Federal land that the Federal agency:

shall evaluate...the availability of other lands for the purposes sought to be achieved...which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes.

Under this factor, it must first be determined that the proposed action and/or alternatives are to occur on lands needed for subsistence purposes. “Needed for subsistence purposes” implies that the land is either directly used for subsistence activities (berry picking, hunting, etc.) or that it is used for a portion of the life cycle of a resource which may be harvested by subsistence users at another location. Then the question becomes which other lands should be considered?

When making an evaluation on the “availability of other lands” two aspects must be considered:

- Are there other lands available in terms of timing, ownership and designation?
- Are there other lands available to meet the purpose and need of the proposed action?

Availability in terms of timing, ownership, and designation means lands that conform to the same general parameters as the proposed public lands. For example, a land area available 20 years from now because of legal entanglements has no value for a project needed or desired today. The lands must be available within the time frame of the proposed action or alternatives. If the purpose to be achieved requires a particular ownership, then only lands in that ownership need to be considered. Conversely, if ownership makes little or no difference, then any lands may be considered. However, land, no matter the ownership, is not to be considered if it is outside of Alaska. Finally, lands that have been designated for land uses that preclude the proposed action or alternatives are not to be considered as available. For example, certain uses are prohibited in designated wilderness; therefore, these lands may not be available for consideration in all instances.

Availability for the purposes sought to be achieved refers to lands that are appropriate for the proposed action or alternatives. If the purpose to be achieved by the proposed action requires specific environmental parameters, then only lands having the same attributes need to be considered. For example: A port site in Southeast Alaska will not serve Kotzebue; the Arctic tundra need not be evaluated for logging; and an unknown or unexplored area will not substitute for an area with known mineral deposits. In other words, lands selected for evaluation must have a reasonable geographic and resource relationship to the purpose to be achieved by the proposed action.

Like the above discussion, proposed actions or alternatives on lands plainly not used for subsistence purposes would not need consideration of other lands. Nonetheless, a clearly worded statement reporting this fact would be required in an 810 Evaluation. For example, actions potentially located at the BLM Campbell Tract facilities in Anchorage would not require that other lands be evaluated, because the area is not used for subsistence purposes. In this case, a statement that the proposed action is located on lands that are not used for subsistence purposes is appropriate.

Factor 3. Evaluate other alternatives that would reduce or eliminate the proposed action(s) from lands needed for subsistence purposes.

Section 810 of ANILCA requires, in part, that when an action is proposed on Federal land that the Federal agency:

shall evaluate...other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes.

Alternatives to be evaluated under Factor 3 are other ways to accommodate the proposed action or other actions, and not other sites for the proposed action(s). The other actions selected for evaluation should be reasonable, physically and technically possible, economically feasible, and capable of reducing or eliminating the proposed action(s) from lands needed for subsistence purposes.

When an 810 Evaluation is being prepared, the EIS alternatives are generally adequate to also fulfill the “evaluate other alternatives” requirement in ANILCA Section 810(a). However, an 810 Evaluation is not constrained to only consider EIS alternatives. Alternatives could be a mixture of alternative sites and alternative parameters, and the analyst may consider portions of the EIS alternatives to address factor 2 above, as well as this factor (factor 3).

Sources of Information for the Evaluation

Generally, Chapter 3 *Affected Environment* in an EIS will include descriptions of subsistence resources and subsistence uses, and Chapter 4 *Environmental Consequences* will examine the impacts of the various alternatives on subsistence resources and use patterns. The 810 Evaluation is an exercise in distilling and summarizing the information provided in the main body of the EIS. However, the analyst should verify that full use has been made of information provided in scoping comments or other testimony, as well as documentary sources, such as the ADF&G Subsistence Division technical papers, anthropological literature, or unpublished subsistence use

information gathered by regional or local native organizations (see **Appendix 5 Guidance Concerning the Adequacy and Use of Data for Making 810 Evaluations**).

Step 2. Finding

The Section 810 Evaluation shall conclude with a distinct Finding that the proposed action and alternatives may or will not significantly restrict subsistence uses for identified subsistence communities or groups. (Note: Do not use wording like “probably” or “likely” will not significantly restrict).

A finding of *may significantly restrict* requires that the process be stopped for the action and the action prohibited; **or** that the agency proceed to the notice and hearings step described below. A finding of no significant restriction completes the Section 810 process.

A proposed action and/or alternatives would be considered to significantly restrict subsistence uses if, after consideration of any stipulations or protection measures (i.e., Oil and Gas Leasing Stipulations, Required Operating Procedures, etc.) included as a part of each alternative, it can be expected to result in a substantial reduction in the opportunity to continue subsistence uses of renewable resources. Substantial reductions in the opportunity to continue subsistence uses generally are caused by: large reductions in the abundance, or a major redistribution of resources; extensive interference with access; or major increases in the use of those resources by non-subsistence users (see **Appendix 6 Significance**). A proposed action and/or alternatives may be found to not create a significant restriction, but it may be appropriate for the analyst to identify and attempt to mitigate localized, individual restrictions created by an action.

The Findings shall be stated as either:

This evaluation concludes that the action will not result in a significant restriction in subsistence uses; or

This evaluation concludes that the action may result in a significant restriction to subsistence uses for the communities of _____ due to (specify causes).

The first Finding, above, is frequently referred to as a Negative Finding, in that no significant restrictions are expected to occur. Likewise, the second Finding is commonly referred to as a positive finding, in that significant restriction may be expected to occur.

In some cases, individual alternatives will fall below the may significantly restrict threshold, and only the cumulative case exceeds the threshold. It should be noted that the cumulative effects analysis is not, in and of itself, a proposed action. Instead, the purpose of the cumulative effects analysis is to determine the effects of the proposed action and alternatives together with other past, present, and reasonably foreseeable future actions. In this way, a finding of *may significantly restrict subsistence uses* in the cumulative case is, in effect, a positive finding, even though the finding is only noted under the cumulative case. A positive finding in the cumulative case triggers the Notice, Hearing, and Determination requirements of ANILCA Section 810(a).

Step 3. Notice and Hearings

If the above evaluation of a proposed action or alternatives results in a positive finding of significant restriction of subsistence uses and the authorized officer wishes to proceed with that action, the officer shall:

- Give notice to the Commissioner of the Alaska Department of Fish and Game;
- Give notice, through the Office of Subsistence Management, to the appropriate Regional Advisory Council(s); and
- Give notice and hold a public hearing in the vicinity of the area involved (see **Appendix 7 Notice and Public Hearings**).

NEPA requires a Federal Register Notice of Availability when a DEIS is available for public comment. If there is a positive Finding for any alternative or resulting from the cumulative case, then this Notice of Availability must include the Section 810 Findings, and should include a schedule of the ANILCA 810 Hearing, if possible. Best practices for fulfilling the notice and hearing requirement include additional notice of the finding through direct correspondence, including a specific ANILCA 810 Hearing announcement in the community (or communities) identified as impacted, with adequate time (typically 15 days 43CFR1610.2) for residents to review the preliminary 810 Evaluation and findings before the hearing.

Following the public hearing, it is possible that the Finding may be revised to “will not significantly restrict subsistence uses” based on changes to alternatives, new information, or new mitigation measures resulting from the hearing(s). In such a case, this situation will be documented in the final 810 Evaluation and the action may proceed as appropriate. If, however, following incorporation of information from the public hearing(s) the finding of a significant restriction remains, the Authorized Officer may prohibit the action, or proceed to Step 4, final determinations.

Step 4. Final Determinations

An 810(a)(3) Determination section is to be prepared only when there is a finding of “may significantly restrict subsistence uses” for the selected alternative/action. If the cumulative case reveals a positive finding, then, in effect, the alternative under consideration will have a positive finding, since the cumulative case is considered in conjunction with each alternative. The determination shall separately address each of the three required items under 810(a)(3), clearly stating why the proposed action is necessary and how the action complies with each requirement. The section will conclude with a single declaratory statement (see example below).

The three items that require a determination are:

- Such a significant restriction of subsistence uses is necessary, and is consistent with sound management principles for the utilization of the public lands;

- The proposed activity will involve the minimum amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition; and
- Reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.

In making these determinations, sufficient justification needs to be provided. For example, the proposed action may be necessary and consistent as a result of statutory, regulatory or policy direction (i.e., granting of a Right-Of-Way for transportation or utility systems under ANILCA Title II; a requirement under Federal Land Policy Management Act; an exploration program is mandated by the Naval Petroleum Reserve Production Act, etc.). In making the “*minimal amount of public lands*” determination, much of the justification will be found in the “*availability of other lands*” evaluation for the Selected Alternative. The measures to be taken by the BLM to mitigate the identified impacts to subsistence use that accompany the selected alternative are reasonable steps that minimize impacts to subsistence use, and should be described in detail.

An example of a concluding declaration in the Section 810 Evaluation is:

The BLM has determined that, after consideration of all alternatives, subsistence evaluations, and public hearing(s), such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of this land, and that the selected alternative will involve the minimal amount of public lands necessary to accomplish the (selected alternative). Finally, reasonable steps have and will be taken to minimize the adverse impacts upon subsistence uses and resources arising from this action.

After compliance with the above 810 process the Authorized Officer may proceed with the action. This concludes compliance with ANILCA 810.

Combining ANILCA 810 and the EIS Process

When an action requires the preparation of an EIS, the preliminary Section 810 Evaluation shall be included in the Draft Environmental Impact Statement (DEIS), commonly as an appendix. However, given that the final determinations outlined in Step 4, above, are made after the required hearing(s) are held and only if the final selected alternative retains a positive finding, this means that the Section 810 Evaluation in the DEIS will not include the three items requiring a final determination outlined in Step 4. Instead, it is appropriate to include a statement to the effect that the final determinations required pursuant to Section 810(a)(3) will be included in the final 810 Evaluation submitted with the EIS.

Example of a DEIS 810(a)(3) Statement to be included in a preliminary 810 Evaluation with the Draft EIS:

Subsistence Determinations Under ANILCA § 810(a)(3)(A), (B), and (C)

ANILCA § 810(a) provides that no “withdrawal, reservation, lease, permit, or other use, occupancy or disposition of the public lands which would significantly restrict subsistence uses shall be effected” until the federal agency gives the required notice and

holds a hearing in accordance with ANILCA §810(a)(1) and (2), and makes the three determinations required by ANILCA § 810(a)(3)(A), (B), and (C). The three determinations that must be made are: 1) that such a significant restriction of subsistence use is necessary, consistent with sound management principles for the utilization of the public lands; 2) that the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other such disposition; and 3) that reasonable steps will be taken to minimize adverse impacts to subsistence uses and resources resulting from such actions [16 U.S.C. § 3120(a)(3)(A), (B), and (C)].

The BLM has found in this ANILCA 810 Evaluation that (Alternative(s) __, or the cumulative case) considered in this EIS may significantly restrict subsistence uses. Therefore, the BLM will undertake the notice and hearing procedures required by the ANILCA § 810 (a)(1) and (2) in conjunction with release of the Draft EIS in order to solicit public comment from the potentially affected communities and subsistence users.

Should the proposed action have a positive finding, the determination that the requirements of ANILCA § 810(a)(3)(A), (B), and (C) have been met will be analyzed in the Final ANILCA § 810 Evaluation, and will be presented in the FEIS, and will include testimony and input from the communities in which subsistence hearings will be held.

Notice and hearing are required if the proposed action or any alternatives being considered may significantly restrict subsistence uses. The notice and hearing requirements pursuant to Section 810 shall be combined with the EIS process, in that, if public meetings are scheduled for the DEIS, ANILCA Section 810 hearings should be held concurrent to the DEIS public meeting(s), so as to limit the impact to communities. If the DEIS public meeting(s) and ANILCA Section 810 hearing(s) are held concurrently, then the announcements for the meeting must also state that an ANILCA Section 810 hearing, with an opportunity for public testimony, will be held in conjunction with the meeting.

The FEIS will contain the Final ANILCA Section 810 Evaluation outlined in steps 1-4 above (see **Appendix 8 Example of a Section 810 Evaluation for a FEIS**). The analyst should ensure that testimony on impacts to subsistence, acquired from the hearings held in affected communities, is included in the analysis of alternatives as presented in Chapter 4 of the Final EIS. Additionally, the Section 810 Evaluation may require revision to include testimony and/or mitigation measures that were created in response to the testimony.

The Record of Decision (ROD) shall contain a section entitled ANILCA 810 Summary, which shall briefly summarize the evaluation, findings, notice given, hearings held, and final determinations for the selected alternative, including determinations resulting from analysis of cumulative effects of the selected alternative.

If the final selected alternative in the FEIS contains considerably different management actions from those contained in the range of alternatives that appeared in the DEIS, NEPA requires analysis of this new alternative. The Steps 1-4 of the ANILCA 810 process will also have to be completed for any new alternative requiring NEPA analysis. If this new alternative is found to have a positive finding pursuant to ANILCA Section 810, then the notice-and- hearing step,

above, will have to take place, and the final determinations will have to be made for this alternative.

IV. Components of an 810 Evaluation for an EA

An Environmental Assessment (EA) is a concise environmental document that is prepared under NEPA to determine the significance of effects from a proposed action and that serves as a basis for reasoned decision. If it is found that the proposed action will not result in a significant impact, then the EA results in a Finding of No Significant Impact, or FONSI. The data and information presented in the main body of an EA is usually less detailed than that of an EIS. Subsistence information may be found within the EA in the discussion of the affected environment and environmental impacts. Impacts to resources important for subsistence use (i.e., wildlife, fisheries, and habitat) may also be discussed in an EA. At a minimum, subsistence issues will be addressed in the Section 810 Evaluation accompanying the EA.

The Section 810 Evaluation accompanying an EA shall include sufficient information so that the authorized officer may decide if the action may or will not restrict subsistence uses as required by ANILCA Section 810. The data should be appropriate to the level and kind of action being considered, and may include such things as information on subsistence resources, current levels of subsistence use, and current hunting and fishing regulations in the affected area. If the EA includes multiple alternatives, each must be separately analyzed for impacts to subsistence uses. When an EA is prepared, the Section 810 Evaluation shall be included as part of that document, commonly as an appendix, and the Section 810 Findings section shall be a clearly identified.

Additional Applicable Requirements

Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*, (November 6, 2000), establishes principles and standards for government-to-government consultation with tribal governments on “policies that have tribal implications.” Land use decisions with the potential to significantly restrict subsistence uses of rural Alaskans are commonly matters that also may have a tribal implication. Consultation with tribal governments on subsistence, along with other issues, should be considered in designing the appropriate level of public involvement for an EA. ANILCA does not establish separate or additional requirements concerning consultation with tribal governments. Remember, while a Section 810 review could benefit from outreach to the tribal governments through the EA, Federal subsistence is a rural Alaskan program, not a native program. Additional guidance is found in the Department of the Interior-Alaska Policy on Government-to-Government Relations with Alaska Native Tribes, and in Section 8120-1 of the BLM Handbook – General Procedural Guidance for Native American Consultation.

Steps in the ANILCA 810 Evaluation for an EA

A Section 810 Evaluation for an EA usually requires the completion of only the first two steps of the 4-step process. Since EAs commonly conclude with a Finding of No Significant Impact (FONSI), it is possible that the subsistence impact analysis may also find no significant restriction. If that is indeed the result, the 810 Evaluation would conclude with a finding of *will*

not significantly restrict subsistence uses, and the notice and hearing and final determination requirements are not necessary (see **Appendix 9 Example of an 810 Evaluation for an EA**).

Step 1: Evaluate

When doing the Section 810 Evaluation for an EA, the evaluation must address three factors.

Factor 1. Evaluate the effect of the proposed action(s) and alternatives on subsistence uses and needs.

Consider the effects to subsistence uses and needs for a proposed action and alternatives in an EA. Because subsistence can be closely related to fisheries, wildlife, vegetation and access, consider these categories when determining whether subsistence impacts are potentially significant.

Factor 2. Evaluate the availability of other lands for the purposes sought to be achieved.

In an EA, the proposed activity and alternatives are usually limited in scope. Therefore, the analysis of other lands in the Section 810 Evaluation may be very brief, because other lands for the purposes sought to be achieved are not appropriate or available. In fulfilling this requirement, a simple statement regarding the unavailability of other lands may be all that is needed.

For example:

Lands available for the purposes proposed by the applicant are limited to BLM lands that are _____ (i.e., accessible from the base camp; or adjoining the WSR; or located in the guide's permitted use area by the State of Alaska). Therefore, no other lands are available for this intended purpose.

Factor 3. Evaluate other alternatives that would reduce or eliminate the proposed action(s) from lands needed for subsistence purposes.

Commonly, EAs consist of at least two alternatives: the proposed action, and a no-action alternative. As a result, an analysis of this topic may be very brief.

For example:

Two alternatives were evaluated in this EA—the proposed action, and the no-action alternative. The no action alternative would require BLM to reject the permit application; however, there is no substantial evidence that would indicate a significant restriction to subsistence as a result of the proposed action.

Sources of Information for the Evaluation

Generally, EAs are focused and concise documents that might not contain a lot of detailed information relative to subsistence. It may be necessary for the 810 analyst to research additional information specific to subsistence uses and potential impacts to these uses, in order to

adequately evaluate the proposed action. This information should be included in the Section 810 Evaluation (see **Appendix 5 Guidance Concerning the Adequacy and Use of Data for Making 810 Evaluations**).

Step 2. Finding

The evaluation shall conclude with a distinct finding that the proposed action and alternative(s) may or will not significantly restrict subsistence uses. (Note: Do not use wording like “probably” or “likely” will not significantly restrict).

Procedure if Significant Restrictions are Identified

If an EA concludes with a Finding of No Significant Impact (FONSI) for the selected alternative, there could potentially be a finding of no significant restriction on subsistence uses. If the analyst perceives that a finding of significant restriction on subsistence use may occur for the proposed action, the analyst shall notify the Authorized Officer, who is usually the field office manager. The Authorized Officer may then choose to modify the alternatives that resulted in a positive finding in such a way that they do not result in a significant restriction to subsistence use and a negative finding can be made. If a significant finding remains for any alternatives, there are two options: to deny the action, or to proceed with the Notice and Hearing requirement of ANILCA and approve the action once the final determinations have been made. If the decision to deny the action is made, then no further action under Section 810 is required.

If the decision is made by the Authorized Officer to select an alternative that has a positive finding, then a memorandum explaining the situation shall be prepared and submitted to the State Director (SD) for concurrence with the preliminary ANILCA Section 810 positive finding, and for authorization to proceed to the Notice and Hearings stage. Subsequently, actions as directed by the SD could include: 1) denial of the proposed action (i.e., an overturning of the decision by the AO); 2) concurrence with the finding, and direction to elevate the EA to an EIS as a result of the significant restriction; or 3) concurrence with the finding, and direction to proceed without elevating the EA to an EIS and to proceed with the Notice and Hearings stage. This decision will usually be made with input from the Solicitor’s Office. If authorization is given by the SD to proceed without elevating the EA to an EIS, the notice, hearings, and determination requirements must be fulfilled for the proposed action and alternatives (see Step 3 Notice and Hearings and Step 4 Final Determinations in **Section III Components of an 810 Evaluation for EISs, above**).

Contrary to the procedure that must be followed when an WEIS is being prepared, a finding of a significant restriction on subsistence uses in an EA for any alternative other than the selected alternative, including the cumulative case, is not sufficient to activate the notice, hearing and determination process required by ANILCA § 810(a)(3)(A), (B), and (C). However, if during the EA process multiple alternatives were proposed, and a different alternative that would significantly restrict subsistence uses is selected over the proposed action, the procedure outlined above must be followed for that alternative.

The Decision Record (DR) shall contain a section entitled 810 Summary that shall briefly summarize the evaluations, findings, and other actions taken under 810 for the selected alternative.

V. Components of an 810 Evaluation for NEPA CXs or DNAs

An ANILCA 810 Evaluation is required for all land use actions, even if such action is covered by NEPA Categorical Exclusions (CXs) or Determinations of NEPA Adequacy (DNAs).

A NEPA CX is a category of actions that the DOI or BLM has determined do not significantly affect the quality of the human environment, and, therefore, do not require an EA or EIS under NEPA. DNAs are completed for actions which have already undergone a thorough environmental analysis, and for which an EA or EIS already exists.

According to BLM policy, there is no formal format or content requirements for CXs or DNAs although suggested formats are provided in H-1790-1, BLM NEPA Handbook. Formal documentation of these types of NEPA processes lacks discussion regarding impacts to resources. However, in the case of DNAs, this information may be located in the previously-created environmental document(s) that the DNA tiers from. Similarly, the ANILCA 810 Evaluation for the DNA should be modeled after the 810 Evaluation previously prepared and included in the already-existing environmental document(s).

Written Section 810 Evaluations for CXs and DNAs should be completed when the use of a CX or DNA is documented and must follow the process described under Steps 1 and 2, above, for EAs, and should include both an Evaluation and Findings section.

Figure 1. Section 810 process for EISs and EAs.

