

Susitna-Watana Hydroelectric Project Document

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**Susitna-Watana Hydroelectric Project
(FERC No. 14241)**

**Subsistence Resources
Study Plan Section 14 Introduction**

Final Study Plan

Alaska Energy Authority



July 2013

14. SUBSISTENCE RESOURCES

14.1 Introduction

The purposes of the Subsistence Resources Study are to document traditional and contemporary subsistence harvest and use and to collect baseline data to facilitate the assessment of potential impacts of Project construction and operation on subsistence harvest and use. This study will provide information that will serve as the basis for compliance with the Federal Energy Regulatory Commission's (FERC's) National Environmental Policy Act (NEPA) obligations, along with other required approvals and analyses including those of the Bureau of Land Management (BLM) under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA), and also will address State of Alaska needs regarding subsistence resources management.

For purposes of this study plan, traditional use will be defined as the values and practices related to subsistence that are passed down through generations of subsistence users and that inform and guide contemporary subsistence practices. Contemporary use will be defined as recent harvest and use patterns that characterize the resources and areas that are being utilized by communities.

14.2 Nexus Between Project Construction/Existence/Operations and Effects on Resources to be Studied

Construction and operation of the Project could have potential direct or indirect effects on subsistence harvest and use by changing access to subsistence resources and/or affecting resource abundance or availability. If a portion of a community's subsistence use areas are within the Project area, then a direct effect on subsistence use could occur through removal of the use area due to the Project facilities or by impeding access to use areas. Increased human activity in the upper Susitna River basin may indirectly affect subsistence uses, for instance, by impacting wildlife behaviors or creating additional competition for subsistence resources.

Successful subsistence harvests depend on both continued availability of subsistence resources in adequate numbers and health, and on continued access to those resources. Subsistence resource availability is affected by such factors as resource mortality or health changes, displacement from traditional harvest locations, and contamination (including actual and/or perceived contamination of resources and habitat or habituation of resources to development activities). Access to subsistence resources may be affected by such factors as construction of new roads and other infrastructure and establishment of a new reservoir. Changes in access can result in increased access to subsistence resources by harvesters. Increased access to an area may also result in more competition for resources from outsiders and/or from community or nearby community residents who did not previously use the area or who use the area differently as a result of changes induced by Project development. A decrease in access may decrease competition in the potentially affected area and introduce additional competition in new areas because harvesters can no longer access previously used hunting, fishing, or gathering areas (displaced users). A decrease in resource availability may potentially result in increased competition among harvesters as they try to meet their harvest needs from a depleted or displaced resource stock. It is important that these activities and resources are understood along

with potential Project impact sources, to adequately assess potential impacts to subsistence uses and, if needed, identify potential protection, mitigation, and enhancement measures.

14.3 Resource Management Goals and Objectives

The results of this Subsistence Resources Study and other related studies will inform FERC's NEPA analysis for the FERC licensing process and other agency approvals, as well as BLM's obligations under Title VIII of ANILCA and State of Alaska needs regarding subsistence resources management.

Alaska and the federal government regulate subsistence hunting and fishing in the state under a dual management system. The federal government recognizes subsistence priorities for rural residents on federal public lands, while Alaska considers all residents to have an equal right to participate in subsistence hunting and fishing when resource abundance and harvestable surpluses are sufficient to meet the demand for all subsistence and other uses. Much of the land occupied by the proposed Project is owned or managed by the Alaska Department of Natural Resources (ADNR), BLM, and private land owners, including Alaska Native Corporations established under the Alaska Native Claims Settlement Act (ANSCA).

ANILCA recognizes that "the situation in Alaska is unique" regarding food supplies and subsistence practices. Title VIII of ANILCA establishes subsistence protections on federal lands, including land selected by, but not yet conveyed to, the State or Alaska and Native Corporations, for Alaska's rural Alaska Native and other residents. Under section 803 of ANILCA, the term "subsistence uses" is defined as "the customary and traditional uses by rural Alaska residents of wild renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade" (16 USC 3113). Where a "customary or traditional use" is identified for a given resource, the Secretary of the Interior must ensure that "rural residents engaged in subsistence uses shall have reasonable access to subsistence resources on public lands" (16 USC 3113).

Section 810 of ANILCA specifies that before making any decision to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands, a federal land management agency must first evaluate the effects of such a decision on subsistence use and needs (16 USC 3120). If, upon completion of such review, the agency finds that the proposed action may "significantly restrict" subsistence, additional requirements with respect to the proposed withdrawal, reservation, lease, permit or other use of public lands are triggered (16 USC 3120).

In 1990, the U.S. Department of the Interior and the U.S. Department of Agriculture established a Federal Subsistence Board to administer the Federal Subsistence Management Program (55 FR 27114). The Federal Subsistence Board, under Title VIII of ANILCA and regulations at 36 CFR 242.1 and 50 CFR 100.1, recognizes and regulates subsistence practices for rural residents on federal lands. Federal regulations recognize subsistence activities based on a person's residence in Alaska, defined as either rural or nonrural. Only individuals who permanently reside outside federally designated nonrural areas are considered rural residents and qualify for subsistence harvesting on federal lands under federal subsistence regulations. Nonrural residents may harvest fish and game on most federal lands (unless these are closed to non-federally qualified subsistence uses), but these harvests occur under state regulations. Federal subsistence

regulations do not apply to certain federal lands, regardless of residents' rural designations. These include lands withdrawn for military use that are closed to general public access (50 CFR Part 100.3). Nonrural areas in Alaska include the areas around Prudhoe Bay, Fairbanks North Star Borough, Wasilla/Palmer, Anchorage, Kenai, Homer, Valdez, Seward, Juneau, and Ketchikan. Nonrural areas in relation to the proposed Project are shown on Figure 14.5-1.

The Alaska Board of Fisheries and the Alaska Board of Game have adopted regulations enforced by the State for subsistence fishing and hunting on all State of Alaska lands (except nonsubsistence areas) and waters, and lands conveyed to ANCSA entities. State subsistence uses are regulated under Alaska Statutes (AS) 16 and Title 5 of the Alaska Administrative Code (AAC) (05 AAC 01, 02, 85, 92, and 99). Under Alaska law, when there is sufficient harvestable surplus to provide for all subsistence and other uses, all Alaskan residents qualify as eligible subsistence users.

Under Alaska law, subsistence refers to the practice of taking wild fish or game for subsistence uses (AS 16.05.258). Defined under state law as the “noncommercial customary and traditional uses” of fish and wildlife, subsistence uses under state law include:

consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumptions, and for the customary trade, barter, or sharing for personal or family consumption.

(AS 16.05.940 33).

The State distinguishes subsistence harvests from personal use, general hunting, sport, or commercial harvests based on where the harvest occurs and the resource being harvested, not where the harvester resides (as is the case under federal law). More specifically, state law provides for subsistence hunting and fishing regulations in areas outside the boundaries of “nonsubsistence areas,” as defined in state regulations (5 AAC 99.015). According to these regulations, a nonsubsistence area is “an area or community where dependence upon subsistence is not a principal characteristic of the economy, culture, and way of life of the area of community” (5 AAC 99.016).

Activities permitted in these nonsubsistence areas include general hunting and personal use, sport, guided sport, and commercial fishing. There is no subsistence priority in these areas; therefore, no subsistence hunting or fishing regulations manage the harvest of resources. Nonsubsistence areas in Alaska include the areas around Anchorage, Matanuska-Susitna (Mat-Su) Valley, Kenai, Fairbanks, Juneau, Ketchikan, and Valdez (Wolfe 2000). The Anchorage–Mat-Su–Kenai nonsubsistence area is located closest to the Project area (Figure 14.5-2).

14.4 Summary of Consultation with Agencies, Alaska Native Entities and Other Licensing Participants Regarding Revised Study Plan Development

Consultation efforts since filing of the Proposed Study Plan (PSP) include discussions with Alaska Native entities and other licensing participants at the Project Technical Workgroup Meetings and other meetings with the Alaska Department of Fish and Game (ADF&G) held since July 2012. The Subsistence Resources Study plan was presented to the Southcentral Alaska

Subsistence Regional Advisory Council (RAC) and the Wrangell St. Elias National Park and Preserve Subsistence Resource Commission (SRC) on October 15 and October 30, respectively.

Summary tables of comments and responses from formal comment letters filed with FERC through November 14, 2012 were provided in the Revised Study Plan (RSP) Appendix 1 filed December 14, 2012. Copies of the formal FERC-filed comment letters were included in RSP Appendix 2. In addition, a single comprehensive summary table of comments and responses from consultation, dated from PSP filing (July 16, 2012) through the release of interim draft Revised Study Plans (RSPs), were provided in RSP Appendix 3. Copies of meeting summaries from release of the PSP through the interim draft RSP were included in RSP Appendix 4, organized chronologically.

Consultation subsequent to the filing of the RSP is described within each Final Study Plan (FSP).