

SUBSISTENCE
Publications

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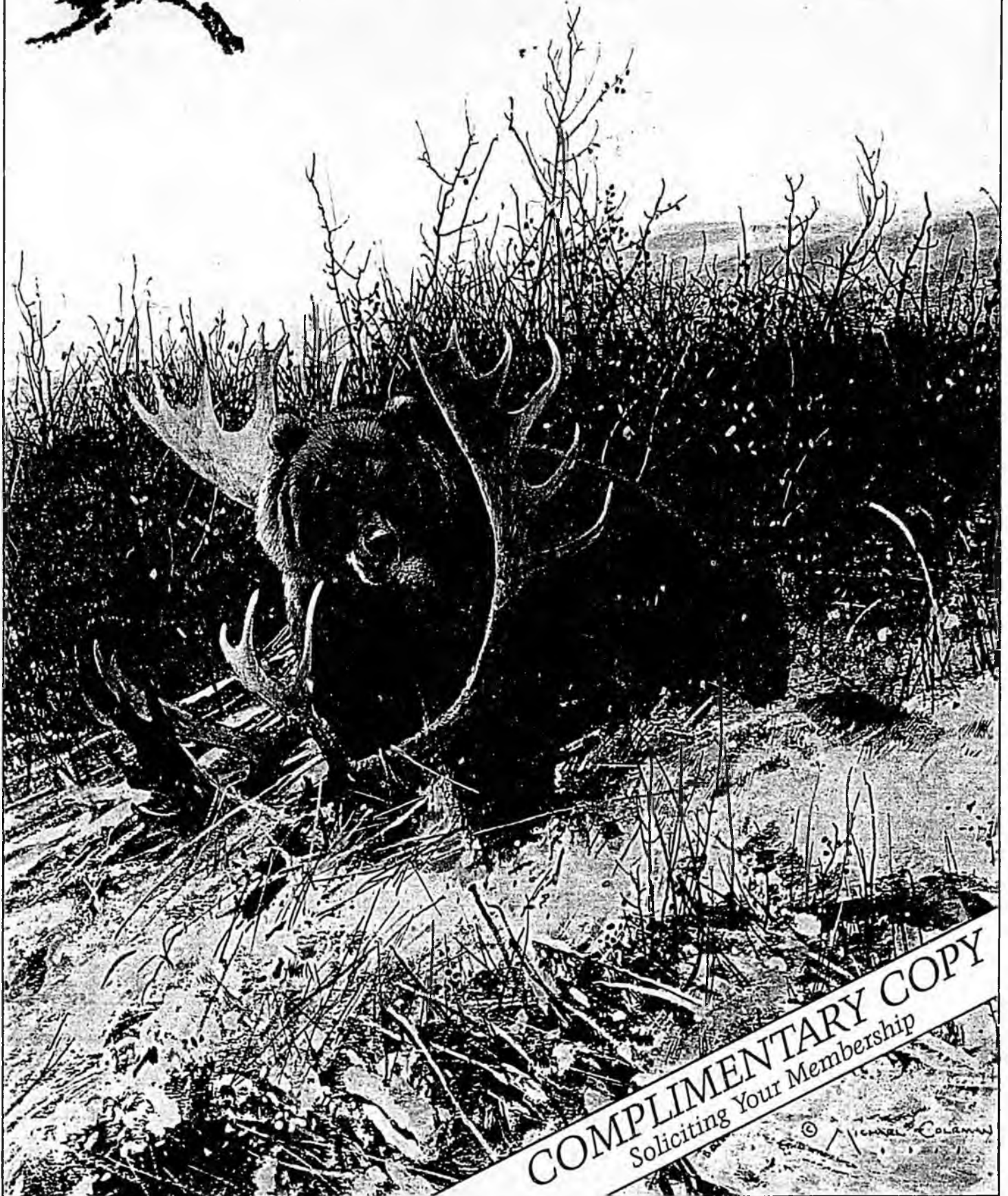
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SPECIAL REPORT
on
STATE FISH and GAME SUBSISTENCE LAW
Review and Analysis

Prepared by
Subsistence Task Force

Alaska Department of Fish and Game
Juneau, Alaska

November 20, 1978

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Based on the Constitutional provision for "preferences among beneficial uses", the Legislature determined that it was in the public interest to establish subsistence use as a priority use of fish and game, and to recognize the needs, customs, and traditions of Alaskan residents.

To assist the Department of Fish and Game and the Boards of Fisheries and Game in implementing a subsistence use priority, the Legislature established a Section of Subsistence Hunting and Fishing, which is obligated to collect information on subsistence uses, and to make recommendations regarding management plans and regulations that relate to subsistence use. The Legislature also authorized the respective Boards to make regulations to implement the priority of subsistence uses.

The Task Force reviewed the law as a first step in trying to determine what options the Department and the Boards had in providing for a subsistence priority, and in regulating other uses to accommodate that priority. Because various parts of the law seemed vague, a series of questions of interpretation were presented to the Department of Law, and, later, to a lawyer from Alaska Legal Services Corporation. The questions and answers constitute part of Appendix I.

From the information obtained, it appears that the Boards of Fisheries and Game will carry the principal burden in defining terms expressed in the law, in determining what constitutes "subsistence use" in practice, in deciding where and for what species a subsistence priority should be established, and in deciding by what regulatory means this priority will be implemented. Much of the rest of this report represents the Task Force's effort to provide background material and regulatory options that may help the Board in making these decisions.

To a large extent, the Board will have to determine how to translate concepts into Board action, but the Task Force felt there were several considerations that needed clarification; these comments conclude Appendix I.

We wish to emphasize some of those concerns. To properly meet its responsibilities, the Department's efforts must be very well coordinated. Task Force discussions have given renewed emphasis to the fact that the management of fish, wildlife, their habitat, and their various uses are not separate, independent considerations, but are closely connected. Therefore, the concept that the Subsistence Section may make proposals to the Boards or determine study priorities without the Commissioner's overview does not seem appropriate or reasonable.

The Subsistence Section has an important role in determining the kinds and extent of subsistence uses as a basis for regulations that will accommodate subsistence needs, while still protecting the resources used. To adequately reflect the needs of subsistence users, data gathered by the Section will have to be sound, and objectively presented. If the Section appears to be in an advocacy

FINAL REPORT
SUBSISTENCE TASK FORCE, ALASKA DEPARTMENT OF FISH AND GAME
NOVEMBER 20, 1978

SYNOPSIS

The Subsistence Task Force was formed by Commissioner Skoog in August 1978 to examine the means of implementing a program that would fulfill the requirements of the new state "subsistence law" (SL 151) which became effective October 10, 1978. Members of the Task Force are: Ron Regnart, Chairman; Fritz Kuhlmann; Bob Pegau; Ken Alt; Jim Raymond; and Dick Bishop. David Hoffman, Aide to the Interim Committee on Subsistence, is an ex officio member. David M. Johnson, Alaska Department of Fish and Game, compiled much of the information on land mammals and birds.

Staffs of Commercial Fisheries, Sport Fish, and Game Divisions in various parts of the State compiled data and perspectives on uses of various fish and wildlife species. As time permitted, field personnel reviewed the Task Force's output. The Task Force appreciates the assistance of the Department staff, especially the secretaries who labored through many lengthy drafts to complete the job.

The Task Force reviewed the following areas of consideration: (1) the subsistence law--provisions and interpretation; (2) list of fish and game species used for subsistence purposes; (3) current importance of various fish and game species for subsistence, recreation, and commercial use in northern Alaska, with specific mention of cases where competition among uses may or does occur; (4) current policies and regulations that accomodate or favor subsistence uses; (5) new policies, regulations, and management strategies for management of subsistence use; (6) eligibility criteria for subsistence users and possible means of implementing subsistence use regulations; (7) staffing, deployment, and operation of the Subsistence Section; and (8) plans for publishing separate subsistence regulations.

The information compiled by the Task Force to date is summarized in several appendices to this synopsis, according to the subject areas listed above. Based on that information and related discussions, the Subsistence Task Force offers the following observations and recommendations.

I. The Subsistence Law

The Legislature expressed its intent to establish a statewide policy on conservation and use of fish and game resources that recognized a preference for subsistence use among beneficial uses.

Potential allocation problems may exist that are masked by the general treatment presented in Appendix III. Similarly, degree of use of a species and the most appropriate priority in a small geographic area may differ from the indicators shown for a large Fisheries District or Game Management Unit. Such variations will come to light as the Boards begin dealing with specific regulation proposals.

The Task Force attempted to provide very brief comments on known actual or potential problems that involve allocation or differences in perspective between subsistence users and others. In some cases, use conflicts could or do occur in many parts of a species' range, so a general type of problem is discussed. In other cases, the examples are place specific. In each case, some general regulatory options for reducing or eliminating the problem are given.

The Task Force felt it would be useful to develop options for the entire regulatory scheme for each of several existing allocation or use problems, and try to assess associated impacts. Although these examples may not provide clear-cut solutions to the problems discussed, they may provide some insight to the difficulties involved.

The proportions of subsistence, recreation, and commercial salmon catches shown in Appendix III graphically show where in the State salmon are most important. Similarly, the subsistence importance of salmon, other fish, birds, marine mammals, and game are shown in a second graph. These graphs demonstrate the overall importance of fish and marine mammals to subsistence users.

IV. Current Policies, Regulations, and Management Strategies that Accommodate Subsistence Uses.

The Task Force recognized that a number of existing policies, regulations, and management strategies accommodate or provide a preference to subsistence-type uses. Because many of these administrative elements may continue to be useful in implementing a subsistence priority under the new state law, they have been reviewed and assembled in Appendix IV.

Policies favoring subsistence uses have been explicitly stated, as in "Subsistence Utilization of Fish and Game" published in Alaska Game Management Policies, and implicitly in various regulations and management plans, particularly with respect to fisheries. A wide range of regulations have been promulgated which favor local users through timing and duration of seasons, liberal or non-existent bag limits, legalization of sale or barter in some cases, constraints on means of access, and even selective enforcement. In discussions with various interested parties, it became clear that many of the mechanisms used to favor subsistence users were unknown. However, it is also clear that in some cases these mechanisms are no longer adequate in practice, or may not meet new legal criteria.

role, its credibility could suffer, which would ultimately be a disservice to the people for whom it was established.

A final consideration is that for the new subsistence provisions to be workable in the long term, their application by the Boards will have to be equitable, and flexible. The background material gathered by the Task Force or existing elsewhere indicates that for many areas and species subsistence uses are not the leading uses, and that the nature and degree of subsistence dependence can vary considerably as time passes. Therefore, flexibility is needed in deciding what priorities are most appropriate for a particular geographic area, species, and time, in order to best accomodate various legitimate resource uses.

II. Lists of Fish and Game Species Used for Subsistence Purposes.

As background for Task Force members, the Commissioner, the Boards of Fisheries and Game, and the interested public, an annotated list of species caught for subsistence purposes (principally food) was prepared. It's important to recognize that shifts in usage have occurred between species or species groups. For example, chum salmon were once taken solely for subsistence purposes on the Yukon River, but now are taken mainly for sale. The decreased subsistence dependence on chum salmon is the combined result of a decrease in sled dogs, which are the primary consumers of this species, and the desire of local residents to participate in a commercial fishery. In other situations, some apparently less desirable food species have fallen into disuse when more desirable species became available because their numbers increased, because technological changes allowed greater use, or because other aspects of lifestyles have changed. Finally, a population of a game animal or fish may decline in numbers and essentially become unavailable.

III. Current Importance of Fish and Game Species to Subsistence Use.

The Task Force felt that for the information of the Commissioner, the Boards, and the public, it was important to assess current uses of fish and game species, to comment upon priorities of use for various species in various areas, and to note existing or potential conflicts in use. Appendix III provides an overview of these considerations as they relate to Game Management Units or Fishery Areas in the State. Although the information is general, it emphasizes that there are three basic situations with respect to fish and game use: (1) areas and/or species where subsistence use is most important, and little or no change in allocation is needed to accomodate a subsistence priority; (2) areas and/or species where subsistence and other uses overlap, and some adjustment or refinement may be necessary to adequately accomodate subsistence needs given a subsistence priority; and (3) areas and/or species where it is probably most appropriate to retain or reestablish a priority for recreational or commercial use rather than for subsistence use.

It was agreed that if eligibility must be determined, there are four basic kinds of criteria that should be employed. These are: (1) customary and traditional use; (2) customary and direct dependence on the resource as the mainstay of one's livelihood; (3) residency; and (4) availability of alternate resources. Appendix VI. provides some of the rationale which led to selection of these criteria, and gives further breakdown of each general criterion.

These criteria may be used in the following ways: (1) to distinguish subsistence users from other users; (2) to give preference to those subsistence users most dependent on fish and game resources; and (3) the use of specific criteria in concert with specific subsistence regulations will result in a de facto regional definition of subsistence. It appears that the first two criteria may be most important in differentiating between subsistence and non-subsistence users, although the Task Force recommends use of a combination of these criteria to determine subsistence eligibility.

The emphasis on customary and traditional use departs from most previous criteria proposed for subsistence users or uses. The Legislature's intent was, in part, to recognize that some people, principally rural residents, have a commitment to a particular lifestyle, either by choice or by accident of birth. The Task Force attempted to identify elements of "customary and traditional use", and developed a list of somewhat more discrete characteristics.

"Customary and direct dependence on the resource as the mainstay of one's livelihood" is in some ways similar to the previous criterion, but involves the tangible characteristic of depending heavily on use of the resource for one's livelihood. Although there was a real temptation to simply use personal income as a criterion, it was avoided because of the questionable merits of trying to assess individual income.

"Residency" recognizes the greater affinity for, and dependence upon, the immediate area usually characteristic of local people.

Finally, "availability of alternate resources" recognizes the possible disparity in means of acquiring necessities among otherwise similarly qualified individuals.

The criteria agreed upon by the Task Force may differ some in emphases from views expressed during hearings held on subsistence or subsistence regulations by the Alaska Public Forum, the Boards of Fisheries and Game, and the Commissioner's meetings on proposed Regional Councils.

Some additional options discussed for implementing a subsistence priority includes subsistence zones and an eligibility point system similar to the limited entry system for commercial fisheries, but with different criteria.

While the Task Force recognizes that various changes in details of policy and in regulations will be necessary, it is important to emphasize that the flexibility of the present regulatory system can accommodate the changing needs of both subsistence and other resource users. In the course of reviewing and discussing subsistence eligibility criteria and regulatory options, it became quite clear that under the very best of circumstances the addition of regulations to distinguish between subsistence uses and other uses will be complicated and burdensome to all concerned. A persistent criticism of the Department and the Boards in the past has been the complexity of our regulations, yet further complications seem likely. There is a strong argument to reduce further complications by using relatively simple existing regulatory means to provide for a subsistence priority whenever possible. For example, an earlier season opening, a later closure, or constraints on access might provide an adequate advantage to subsistence users. A simple way to designate subsistence users might be to establish a subsistence zone, in which all residents are considered subsistence users. Techniques such as these would reduce the administrative burden for all concerned.

V. Some Considerations for New Regulations, Policies, and Strategies Affecting Fish and Game Resource Use.

A set of general considerations relating to management of subsistence fishing has been developed in Appendix V. Because many of these considerations apply equally well to use of mammals and birds, this section relates to subsistence uses in general. The Commissioner and the Boards may find these comments helpful in viewing specific allocation questions in a broader context of resource supply and multiple user demand. The public may also find the material helpful, both in appreciating the concerns of resource managers, and in becoming better acquainted with some of the additional responsibilities they will encounter when subsistence use is institutionalized.

VI. Eligibility Criteria for Subsistence Users.

Perhaps the thorniest subject addressed by the Task Force was eligibility criteria. Part of that difficulty related to the perennial problem of devising a concise definition of subsistence use. Even the definition now established by law is not entirely adequate in that respect.

However, it was agreed that the intent of the law emphasized customary and traditional aspects of use to a greater extent than previous policies had, although dependence on personal or family use of resources was clearly important. Some members maintained that the basis of customary and traditional uses is, in fact, dependence on resource use.

VII. Staffing, Deployment, and Operation of the Subsistence Section.

An October 9 memo, previously submitted by the Task Force to the Commissioner on this subject constitutes Appendix VII. Major recommendations include: (1) provide clerical positions and expansion of physical facilities for field offices where subsistence positions are being stationed; (2) provide Subsistence Section positions for additional regional and field offices; (3) develop a "matrix" supervisory and planning system to ensure management division input to Subsistence Section activities; and (4) conduct a thorough analysis (by line and subline item) of budgetary needs for the Subsistence Section. A detailed analysis of FY 80 budgetary needs associated with the Bethel Subsistence Section staff is included for guideline use.

VIII. Plans for Publishing Separate Subsistence Regulations.

A separate subsistence hunting and fishing regulation booklet should be considered, in addition to an informational "handout" which will explain regulations in layman's terms. Appendix VII consists of the following: (1) suggested outline for new subsistence fishing regulation format (using Yukon Area as example); and (2) example of the informational "handout" for the Upper Yukon fishery.

APPENDIX I

THI. SUBSISTENCE LAW - PROVISIONS AND INTERPRETATIONS

QUESTION 1.
(p. 1; line 23)

Does "hunting and fishing" include trapping? Or is trapping perceived to be a commercial use and purposely omitted? The same concern exists in other portions of the bill where hunting and fishing is mentioned (Sections 10, 11, etc).

ADL: Whether "hunting and fishing" includes trapping, depends on the determination of the Board of Game. The Board of Game, under Section 3 of the legislation (AS 16.05.094(4), is to determine which methods and uses constitute subsistence uses. Pure commercial trapping, under any circumstances, probably would not constitute a "subsistence use", given the definition of "subsistence uses" added by Section 15 of the Bill [(AS 16.05.940(26))]. On the other hand, some methods and means permitted under trapping regulations, but not under hunting regulations, could be deemed by the department and the Board to be a subsistence activity, depending on end product use.

ALS: No discussion of trapping during drafting of HB 960 was recalled. The use of trapped animals for food, the use of their skins for personal or family use and the making of handicrafts for sale, all are subsistence uses. The sale of unprocessed skins for income is not intended for subsistence.

QUESTION 2. Implies that subsistence section staff can independently interact with the Board's of Fisheries and Game. Shouldn't this be changed so that proposed regulation changes from the subsistence section are made in the form of recommendations to the Department?
(p. 2; line 13-15)

ADL: Recommendations from the subsistence section staff should be handled in the same manner as recommendations from other divisions of the department. That is, all should go through the commissioner. However, the recommendations of the subsistence staff should be clearly identified for the benefit of the Boards in order to carry out the mandate of this legislation.

ALS: Section 6 allows the subsistence section to make recommendations directly to the Board without modification by the Commissioner.

QUESTIONS CONCERNING THE INTERPRETATION OF HE 960

On September 26, 1978 the Subsistence Task Force submitted fifteen questions concerning the interpretation of House Bill 960 to Jeff Haynes of the Alaska Department of Law (ADL). Haynes's responses to these questions were received on October 9. On October 24 Don Clocksin of Alaska Legal Services (ALS), which represents many native groups, met with the Task Force to give his responses to the same questions. Haynes was unable to attend this meeting.

In the following pages each of the fifteen questions is followed by the responses from the two lawyers. Haynes's responses (ADL) appear first in normal type and Clocksin's responses (ALS)--which were written by the Task Force from notes taken during the meeting--follow in italics. To the left of each question appear the page and line number of the bill to which the question refers.

A copy of the bill appears after the questions and responses. Vertical bars and numbers in the left margins of the bill identify the portions of the bill to which the fifteen questions refer.

Following the bill is a list of the major points of the law whose interpretations are open to question. The Task Force feels that differences in interpretation of these points may be the source of future conflicts, and recommends that clarification be made where possible.

QUESTION 4.
(P. 3; line 1)

Does "these consumptive uses" refer only to subsistence or commercial and sport uses as well?

ADL: The phrase "[t]hese consumptive uses" seemingly refers to all three classes of uses; the intent, however, to insure that in extreme situations, those users who will experience the greatest hardship or who are most dependent will receive the priority allocation and that application of these criteria will lead to that result.

ALS: *"These consumptive uses" refers to subsistence use.*

QUESTION 3.
(P. 2;
line 25-28)

Does this wording imply that wherever seasons, bag limits or any other regulations are in effect for any consumptive use, subsistence use will have priority? This also seems to infer that subsistence fishing and hunting can only be regulated under conditions of resource depletion or extreme competition among competitive user groups.

ADL: New Sections 251(b) and 255(b), although the draftsmanship is less than precise, appear to say that subsistence uses shall be permitted unless there are good management reasons for restricting them relating to conservation of the resource. Of course, regulations of authorization will be necessary to insure that only genuine subsistence uses, as determined by the Boards, are permitted.

Just what constitutes a "priority" again depends on the situation and the determination of the Boards. Where are substantive limitations (i.e. other than administrative) a definite priority recognizing subsistence above other uses should be demonstrable in the regulatory system adopted. However, there are obviously many ways of establishing a priorities arrangement while accommodating other uses to some extent as well. Just what the phrase "[i]f further restriction is necessary" (appearing on page 2, lines 28-29, and page 3, lines 16-17) is intended to mean is not altogether clear from the legislation. Apparently, the Legislature is authorizing a threefold approach to distinguishing subsistence users where extreme conflicts between user groups are present and there is no other way to accommodate all of them, either wholly or partially.

ALS: The answers to both these questions are yes. As ALS sees it, there are four stages of increasing limitations of Fish and Game management.

Stage 1. No limitations on anyone.

Stage 2. Some regulations necessary to protect a species but subsistence may not be restricted at all.

Stage 3. There is sufficiently large take that restrictions on subsistence are required. All commercial and sport uses must be terminated before this happens.

Stage 4. Species is sufficiently endangered that all beneficial uses are prohibited.

QUESTION 6.
(P. 3; line 20-23)

Same questions as above in 3-7.

ADL:

See answer in paragraph 5 above.

ALS:

No comment.

QUESTION 7.
(P. 4; line 3-5)

What is the general interpretation of this subsection?
Can a single advisory committee fulfill the requirements
of a "recommendation" for any geographical area
within a Game Management Unit?

ADL:

The recommendation would have to be from the
majority of the advisory committees having jurisdiction over
the Game Management Unit or Subunit as designated by the
jurisdictional regulations of the Boards.

ALS:

The intent of the law was that a single advisory committee
can operate independently of the others. However, the meaning of "subunit"
should be clarified.

PUBLICATION 5.
(P. 3; line 3-7)

- a. Are these criteria constitutional?
- b. Doesn't "alternative resources" require further definition as there is a question of whether this refers to Fish and Game as well as other resources including income and property.
- c. Does "customary and direct dependence" include commercial fishing and associated income?
- d. What constitutes "local residency"?

DL: (a) There is some doubt as to the constitutionality of the criterion of local residency. Whether it would be valid, if used in a regulatory scheme, would depend on the ability of the Boards to demonstrate that those persons constituting the class of "local residents" were sufficiently distinguishable from other users of fish and game resources to justify treating them separately. In some cases, this might well be possible; in some localities of the state, however, it would be almost impossible.

(b) As this is a statute which governs the activities of the Boards of Fisheries and Game, they are entitled to interpret the meaning of the phrase "alternative resources".

(c) The phrase "customary and direct dependence", in legislation on the subject of subsistence use, would include dependence for subsistence purposes only.

(d) "Local residency" would include whatever locality was designated by the Board for purposes of the regulation. Obviously, it would have to be in the immediate vicinity of the resource in question and populated by users of the resource.

ALS: 5. a) Yes, these criteria are constitutional. It is possible to distinguish between local and nonlocal residents as long as there are no distinctions between state and nonstate residents.

b) "Alternative resources" includes cash income, etc., not just fish and game resources.

c) "Customary and direct dependence" does not include commercial fishing.

d) This is up to the Department to decide. The intent is that those who live in isolated areas should get a preference to resources in their areas. One possibility is that rather than having permits for individuals, the permits would be granted to villages.

QUESTION 11. What is meant by "traditional" barter and how does
(P. 6; line 7.) this modify the definition of barter stated on page 7?

ADL: "Traditional barter" means "barter" as defined
in the new Section 940(27) where it is determined to be "tra-
ditional" by the Boards with respect to the resource in
question.

ALS: The word "traditional" is superfluous and should be
eliminated for clarity.

QUESTION 12. "Other means" defined by the Board could refer to
(P. 6; line 17-21) either additional types of gear or other than subsistence
uses.

 "Other means" indicates simply that it is up
to the Board of Fisheries to determine what uses in the
context of gear types constitutes subsistence fishing.

 "Other means" refers to other types of gear.

QUESTION 8.
(P. 5;
Line 18-21)

What is an affected fish or game species. Any are
fish included under 16.05.257 which is entitled "Sub-
sistence hunting regulations"?

ADL: Those which are the subject of the petition
and which would be a target species for hunters if the
petition were granted.

ALS: The intent of the law here was that the Board of Game
should consider all species that are affected by Game Management policies.
"Affected fish and game" species do not have to be the subject of a
petition.

QUESTION 9. "Division" should be "Section".
(P. 5; Line 22)

ADL: No response necessary.

ALS: No comment.

QUESTION 10. What special authority, if any, does this give the
(P. 5; subsistence section for directing or prioritizing
Line 22-23) the kinds of game studies to be conducted by the
Department?

ADL: All activities of the department are directed
by the Commissioner, as it is ultimately up to him to determine
how his employees perform. However, the Commissioner should
be in a position to demonstrate to the Legislature that this
mandate has been complied with. Therefore, he should instruct
the subsistence section to include in the file on any petition
their recommendations regarding additional information that
is necessary.

ALS: This gives authority to the Subsistence Section to
conduct studies that it thinks are necessary for the Board to rule on a
petition. As far as assigning priority to game studies by the Department,
the law is less clear about this. To summarize this response and the
one to question #2, there are two things that the Subsistence Section
may do independently of the Commissioner: make recommendations directly
to the Boards of Fish and Game and conduct studies for the Boards when
it feels they are necessary. In all other respects, the Subsistence
Section would fall under the Commissioner.

- QUESTION 14 a. There was concern among Task Force members whether
(P. 6-7) or not the provisions for bartering applied only
(Line 28-29) to within families (as defined), if the bartering
(& 1-7) provisions would apply only between subsistence
users, or if these provisions would apply to barter
with subsistors and non-subsistors be they family or
not?
b. Does family include relatives living in an urban
area and/or making a substantial cash income? If
so, there seems to be an opportunity for considerable
abuse of a subsistence preference.

ADL: (a) First, although the language of the statute is not clear, it would be unreasonable to limit bartering to only among members of the immediate family; the intent of this authorization was probably to allow bartering as it presently exists in pure subsistence communities, which would not be limited to mere family exchanges. As to how far bartering may go beyond that, the answer lies at least partly with the system ultimately decided on for categorizing and identifying subsistence users. I would recommend that the authorization be as broad as possible until the point is reached at which abuses are likely to occur. Ideally, bartering would be only amongst identifiable subsistence users.

(b) Perhaps this could be addressed by interpreting the word "customary" to mean barter only in the immediate locality where the resource is taken.

ALS: ADL's response to this question is mostly satisfactory. However, subsistence users can barter with nonsubsistence people. For example, fish could be traded for fuel oil; however, the bartered fish may not be subsequently sold.

QUESTION 13. What is the interpretation of this entire subsection, (P. 6; Line 23-29) specifically:

- a. How are fish and game (this is an act relating to Fish and Game management) used for "fuel" and "transportation"?
- b. What is meant by "customary and traditional" uses?
- c. What is meant by "customary trade"? A dictionary definition of "trade" includes commercial enterprises and exchange of commodities for money. Is this the intent?
- d. Could "wild" exclude the use of hatchery-produced fish?

ADL: New Section 16.05.094(4) indicates that the Boards are to make specific determinations in each instance of what constitutes a subsistence use. Their determination cannot be something that is contrary to the expressed terms of Section 940(26). However, to the extent there is latitude in this definition of "subsistence uses", the matter lies within the Boards' discretion. The only limitation is that their interpretation must rest upon a rational basis which appears in the record. As to hatchery-produced fish, the phrase used in the provisions of Title 16 relating to hatcheries is "natural" rather than "wild". Although I doubt that any one even considered this question at the time the legislation was being drafted, it would be inadvisable to categorically exclude hatchery fish from subsistence usage merely on the basis of the term "wild". After all, the term "wild" could just as easily mean any fish which were not under the immediate control of someone, which would include fisheries from hatcheries. Perhaps a better distinction to be made with respect to hatchery-produced fish, by way of example, is whether the hatchery stock is intended to augment or replace a natural stock traditionally used by subsistence users, in which case it could be available for subsistence use.

ALS: a) Seal oil for burning and skins for dog sleds are examples.

b) It is up to the Boards of Fish and Game to define "customary and traditional".

c) "Trade" is superfluous and should be omitted. It means nothing different from "barter".

d) No, the intent was probably that "wild" would include fish produced by hatcheries with public funds. However, it is less clear whether fish produced by private hatcheries would be excluded.

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 960 am S

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to fish and game management."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. INTENT. The legislature finds that there is a need to
9 develop a statewide policy on the utilization, development and conservation
10 of fish and game resources, and to recognize that those resources are not
11 inexhaustible and that preferences must be established among beneficial users
12 of the resources. The legislature further determines that it is in the
13 public interest to clearly establish subsistence use as a priority use of
14 Alaska's fish and game resources and to recognize the needs, customs and
15 traditions of Alaskan residents. The legislature further finds that bene-
16 ficial use of those resources by all state residents should be carefully
17 monitored and regulated, with as much input as possible from the affected
18 users, so that the viability of fish and game resources is not threatened and
19 so that resources are conserved in a manner consistent with the sustained-
20 yield principle.

21 * Sec. 2. AS 16.05.090 is amended by adding a new subsection to read:

22 (c) There is established in the Department of Fish and Game a
23 section of subsistence hunting and fishing.

24 * Sec. 3. AS 16.05 is amended by adding new sections to read:

25 Sec. 16.05.094. DUTIES OF SECTION OF SUBSISTENCE HUNTING AND
26 FISHING. The section of subsistence hunting and fishing shall

27 (1) compile existing data and conduct studies to gather
28 information, including data from subsistence users, on all aspects of
29 the role of subsistence hunting and fishing in the lives of the resi-

QUESTION What is the interpretation of "limited" and "non-
15. commercial" in regards to exchange of fish and game
2. 7; for other food or non-edible items. Isn't there
Line 3-7 potential for abuse here?

ADL: The phrases you refer to are additional
examples of language used by the Legislature which will
require implementing regulations by the Boards to make them
specific and enforceable. The decision as to where to draw
the line lies with the Boards.

ALS: The meaning of "limited and noncommercial" is up to the
Boards of Fish and Game to determine.

1 ④ tions on and priorities for these consumptive uses on the basis of the
2 following criteria:

3 (1) customary and direct dependence upon the resource as the
4 mainstay of one's livelihood;

5 ⑤ (2) local residency; and

6 (3) availability of alternative resources.

7 * Sec. 5. AS 16.05.255 is amended by adding new subsections to read:

8 (b) The Board of Game shall adopt regulations in accordance with
9 the Administrative Procedure Act (AS 44.62) permitting the taking of
10 game for subsistence uses unless the board determines, in accordance
11 with the Administrative Procedure Act, that adoption of such regulations
12 will jeopardize or interfere with the maintenance of game resources on a
13 sustained-yield basis. Whenever it is necessary to restrict the taking
14 of game to assure the maintenance of game resources on a sustained-yield
15 basis, or to assure the continuation of subsistence uses of such re-
16 sources, subsistence use shall be the priority use. If further restric-
17 tion is necessary, the board shall establish restrictions and limita-
18 tions on and priorities for these consumptive uses on the basis of the
19 following criteria:

20 (1) customary and direct dependence upon the resource as the
21 mainstay of one's livelihood;

22 ⑥ (2) local residency; and

23 (3) availability of alternative resources.

24 * Sec. 6. AS 16.05.257(a) is amended to read:

25 (a) The Board of Game, at its regularly scheduled annual meeting
26 and other meetings held under authority of sec. 300(a) of this chapter,
27 shall consider and may adopt regulations providing for subsistence
28 hunting in a game management unit or subunit or a portion of a unit or
29 subunit upon

1 dents of the state;

2 (2) quantify the amount, nutritional value, and extent of
3 dependence on food acquired through subsistence hunting and fishing;

4 (3) make information gathered available to the public, appro-
5 priate agencies, and other organized bodies;

6 (4) assist the department, the Board of Fisheries, and the
7 Board of Game in determining what uses of fish and game, as well as
8 which users and what methods, should be termed subsistence uses, users,
9 and methods;

10 (5) evaluate the impact of state and federal laws and regu-
11 lations on subsistence hunting and fishing and, when corrective action
12 is indicated, make recommendations to the department;

13 (6) make recommendations to the Board of Game and the Board
14 ② of Fisheries regarding adoption, amendment and repeal of regulations
15 affecting subsistence hunting and fishing;

16 (7) participate with other divisions in the preparation of
17 statewide and regional management plans so that those plans reorganize
18 and incorporate the needs of subsistence users of fish and game.

19 * Sec. 4. AS 16.05.251 is amended by adding a new subsection to read:

20 (b) The Board of Fisheries shall adopt regulations in accordance
21 with the Administrative Procedure Act (AS 44.62) permitting the taking
22 of fish for subsistence uses unless the board determines, in accordance
23 with the Administrative Procedure Act, that adoption of such regulations
24 will jeopardize or interfere with the maintenance of fish stocks on a
25 sustained-yield basis. Whenever it is necessary to restrict the taking
26 of fish to assure the maintenance of fish stocks on a sustained-yield
27 ③ basis, or to assure the continuation of subsistence uses of such re-
28 sources, subsistence use shall be the priority use. If further restric-
29 tion is necessary, the board shall establish restrictions and limita-

1 necessary for subsistence use. A petition or recommendation made under
2 (a)(2), (3) or (4) of this section must be filed with the department at
3 least 75 days before the meeting of the board at which the petition or
4 recommendation is to be considered.

5 * Sec. 9. AS 16.05.257(e) is repealed and re-enacted to read:

6 (e) The department shall investigate, by collecting existing data,
7 and, when necessary, conducting new studies, every petition or recom-
8 mendation made under (a)(2), (3) or (4) of this section to the extent
9 practicable within the time available and provide the following informa-
10 tion:

11 (1) the concentration of the species to be affected and carry-
12 ing capacity of the area to be affected;

13 (2) the current hunting practices in the area, including
14 numbers of animals taken and by what methods and means, whether the take
15 is subsistence or recreational;

16 (3) the dependence of persons in the area for subsistence use
17 of a species;

18 (4) the population trends of the affected fish and game in the
19 area;

20 ⑧ (5) whether the affected fish and game population is able to
21 support a nonsubsistence harvest; and

22 ⑨ (6) other information considered necessary by the division of
23 ⑩ subsistence hunting and fishing.

24 * Sec. 10. AS 16.05.257(h)(1) is amended to read:

25 (1) "subsistence hunting" means the taking of game animals by
26 a state resident for subsistence uses by means defined by the Board of
27 Game [FOOD OR CLOTHING FOR PERSONAL OR IMMEDIATE FAMILY USE];

28 * Sec. 11. AS 16.05.257(h)(2) is repealed and re-enacted to read:

29 (2) "subsistence hunting area" means an area in which only

1 (1) recommendation of the department, based on biological
2 evidence;

3 (2) the recommendation [MAJORITY VOTE] of the active local
4 ⑦ advisory committees for that game management unit or subunit or a por-
5 tion of a unit or subunit;

6 (3) the written petition of not less than 100 interested
7 residents of that game management unit or subunit; or

8 (4) the written petition of not less than 25 interested
9 residents of an area which is requested for establishment as a subsis-
10 tence area within a game management unit or subunit.

11 * Sec. 7. AS 16.05.257(c) is repealed and re-enacted to read:

12 (c) No regulations may be adopted by the Board of Game under (a),
13 (b) or (f) of this section unless, in addition to the requirements of AS
14 44.62.180 - 44.62.290, the department

15 (1) holds public hearings, after reasonable notice, at least
16 30 days before the meeting at which the regulation is to be adopted,
17 with at least one of the hearings being held in close proximity to the
18 area potentially affected;

19 (2) presents at the hearings the information provided for in
20 (e) of this section;

21 (3) makes the information provided for in (e) of this section
22 available to the appropriate advisory committees and to petitioners if
23 consideration of adoption of regulations was prompted by petitions under
24 (a)(3) or (4) of this section; comments shall be received by the board
25 until 10 days before any adoption of regulations.

26 * Sec. 8. AS 16.05.257(d) is amended to read:

27 (d) A petition submitted under (a)(3) - (4) of this section shall
28 contain a complete description of the area requested as a subsistence
29 area and a specification of the species within the area considered

1 "family" means all persons related by blood, marriage, or adoption, and
2 any person living within the household on a permanent basis;

3 (27) "barter" means the exchange or trade of fish or game,
4 (14) or their parts, taken for subsistence uses

5 (A) for other fish or game or their parts; or

6 (B) for other food or for nonedible items other than
7 (15) money if the exchange is of a limited and noncommercial nature.

1 subsistence hunting of the affected species is permitted and which is
2 managed for maximum food potential.

3 * Sec 12. AS 16.05.257 is amended by adding a new subsection to read:

4 (1) The Board of Game may make no decision denying, creating or
5 changing a subsistence hunting area unless based on specific written
6 findings of fact regarding all the information provided in accordance
7 with (e) of this section.

8 * Sec. 13. AS 16.05.930 is amended by adding a new subsection to read:

9 (11) (e) This chapter does not prevent the traditional barter of fish
10 and game taken by subsistence hunting or fishing, except that the com-
11 missioner may prohibit the barter of subsistence-taken fish and game by
12 regulation, emergency or otherwise, if a determination on the record is
13 made that the barter is resulting in a waste of the resource, damage to
14 fish stocks or game populations, or circumvention of fish or game manage-
15 ment programs.

16 * Sec. 14. AS 16.05.940(17) is amended to read:

17 (17) "subsistence fishing" means the taking, fishing for, or
18 possession of fish, shellfish, or other fisheries resources for subsistence
19 uses [PERSONAL USE AND NOT FOR SALE OR BARTER,] with gill net,
20 seine, fish wheel, long line, or other means defined by the Board of
21 Fisheries;

22 * Sec. 15. AS 16.05.940 is amended by adding new paragraphs to read:

23 (26) "subsistence uses" means the customary and traditional
24 uses in Alaska of wild, renewable resources for direct personal or
25 family consumption as food, shelter, fuel, clothing, tools, or trans-
26 (13) portation, for the making and selling of handicraft articles out of
27 nonedible by-products of fish and wildlife resources taken for personal
28 or family consumption, and for the customary trade, barter or sharing
29 (14) for personal or family consumption; for the purposes of this paragraph,

8. (Re: question 14) a clarification be made concerning who may be the recipient of bartered fish and game resources.
9. The meanings of "customary", "traditional", "family", "barter", "handicraft", and "limited and non-commercial", and the distinction between commercial and subsistence uses and between sport and subsistence uses be clarified. Varying interpretations of these words will undoubtedly cause problems in the future. For example, can someone with a hunting or fishing background acquired outside of Alaska move to Alaska and be entitled to continue hunting or fishing as a "customary and traditional" pursuit?

CONFLICTS OVER THE INTERPRETATION OF HOUSE BILL 960

The Subsistence Task Force feels that there are several important points of disagreement in the preceding legal interpretations of House Bill 960. The following list presents the Task Force's recommendations for removing or reducing these conflicts. In some cases, amendments to the existing law may be required.

The Subsistence Task Force recommends that:

1. (Re: question 2) recommendations by the Subsistence Section to the Boards of Fish and Game be channeled through the Commissioner's office as are recommendations to the Boards by the other divisions; and (Re: question 10) that a clarification be made on whether the Subsistence Section may conduct studies independently of the desires of the Commissioner.
2. (Re: question 3) there should be a flexibility in assigning priorities to different user groups. Priority use is acceptable, but exclusive use, regardless of species or area, is not.
3. (Re: question 3) the expansion of an existing subsistence use be regulated if the above flexibility in assigning priorities is not possible.
4. (Re: question 4) the phrase "these consumptive uses" be clarified.
5. (Re: question 7) the meaning of Section 6, part (a)(2) be clarified. Specifically, can a single advisory committee recommend to the Board of Game the creation of a subsistence hunting area for a portion of a game management unit, or is the recommendation of a majority of the advisory committees for that unit required?
6. (Re: question 13) the word "trade" be deleted for clarification.
7. (Re: question 13) clarification be made on the status of (1) fish produced by private hatcheries and (2) fish produced by public hatcheries for lake stocking or other sport purposes. Will assignment of priorities for these fishery resources be governed in the same way as are the priorities for the truly wild fishery resources?

APPENDIX II

LIST OF FISH AND GAME SPECIES USED FOR SUBSISTENCE

C. Small Terrestrial Mammals

1. Snowshoe hare - used for food and hides.
2. Arctic hare - used for food and hides.
3. Porcupine
4. Ground squirrel - used for food and hides in some parts of arctic Alaska, although presently there is no open hunting season.
5. Marmot - used as food in some areas.
6. Red squirrel - used as food in some areas.

D. Marine Mammals

1. Walrus - ivory important commercially, some use for food.
2. Ringed seal - important for food and hides.
3. Bearded seal - important for food and hides.
4. Spotted seal - important for food and hides.
5. Belukha whale - important for food.
6. Sea lion - mainly commercial, meat and hides.
7. Sea otter - mainly commercial and hides.
8. Bowhead whales - important for food and commercial sale of handicraft items.

II. Birds

1. Willow ptarmigan
2. Rock ptarmigan
3. Spruce grouse
4. Ruffed grouse
5. Blue grouse
6. Waterfowl, including ducks, geese, and cranes
7. Marine birds
8. Eggs

The following is a list of Alaskan mammals, birds and fish species that are used for subsistence purposes. Use of these species may vary considerably as a function of time and area. An attempt is made to rank fish species by their relative importance to subsistence fishing.

I. Mammals

A. Large Terrestrial Mammals

1. Moose
2. Caribou
3. Dall Sheep
4. Black-tailed deer
5. Mountain goat
6. Muskoxen
7. Black bear
8. Brown-grizzly bear
9. Polar bear

B. Furbearers

1. Red fox
2. Arctic fox
3. Coyote
4. Wolf
5. Marten
6. Mink - used for food in some areas.
7. Weasel
8. Wolverine
9. Beaver - used for food in some areas.
10. Muskrat - used for food in some areas.
11. Land otter - used occasionally for food in Yukon-Kuskokwim delta.
12. Lynx - used for food in some areas.

III. Finfish and Shellfish

The following fishery resources are subjectively ranked according to their relative importance to subsistence fishing throughout the State. It is recognized that this ranking will differ according to region or drainage.

1. Chum salmon	17. Dolly Varden trout
2. Humpback whitefish	18. Burbot
3. Broad whitefish	19. Blackfish
4. King salmon	20. Lamprey (all species)
5. Pike	21. Shrimp (all species)
6. Pink salmon	22. Least cisco
7. Sheefish	23. Bering cisco
8. Coho salmon	24. Rainbow trout
9. Arctic char	25. Sucker
10. Sockeye salmon	26. Round whitefish
11. Arctic cisco	27. Capelin
12. Pacific herring	28. Pacific halibut, starry flounder and other flatfish
13. Smelt	29. Irish lord, bullheads and other marine sculpins
14. Saffron cod (tomcod)	30. Stickleback
15. King crab, dungeness crab	
16. Clams and other molluscs	

Only minor subsistence use is made of the following species which are not ranked according to relative importance:

Lake trout	Blue cod, polar cod
Cutthroat trout	Pacific tomcod
Steelhead	Rockfish
Sculpin (freshwater)	Wolffish
Pygmy whitefish	Pacific sand lance

INTRODUCTION

The species distribution and human use patterns of fish and wildlife are as varied as the land itself. Appendix III provides an overview of present use patterns and use priorities established throughout the State. This overview has been done on a Game Management Unit or Management Area basis with few exceptions. Consequently, circumstances pertaining to a local situation or problem may not have been adequately discussed. Similarly, due to the short time frame allotted for completion of this section and the abundance of material, certain areas or species may have been omitted; however, it is anticipated that additional Department staff and public input will fill any informational gaps in this overview.

The first section in Appendix III is a brief overview of state-wide resource utilization. This section reviews the use patterns by subsistence, commercial and recreational groups and presents a short description of various considerations which might affect use or management of the resources. In the tables in Appendix III an attempt is made to summarize the current use status of various species and suggest possible priorities of use. Supplementary attachments have been provided, with most tables, describing problems and options for managing the various species. In addition, several specific problems have been discussed in-depth and presented for review.

Review of Resource Utilization

The importance of subsistence fish and game species varies tremendously within the State. For example, estimates by the State-Federal Land Use Planning Committee indicate about 60% of the Alaskan native subsistence harvest is composed of fish; however, a majority (74%) of this harvest is made within the A-Y-K area, while only 2% is made with the Southeastern area (Figures 1 and 2). Although subsistence harvests of non-salmon species are not as well documented, the relative importance of subsistence activities may be expected to follow the same general pattern indicated by the subsistence fishery data. Management policies and regulations have evolved in response to these activities.

Mammals and Birds

Regional differences in the overall importance of wildlife for subsistence uses exist. In Southeastern Alaska (Game Management Units 1-5) where most people are committed to a cash economy, game such as deer, moose, bear, and various birds often are important supplements to people's food supply, but rarely assume the importance of caribou in northern Alaska. Under the broadest interpretation of subsistence, game use in Southeastern could be considered subsistence, particularly in poor commercial fishing years, but the prevailing pattern of use seems to be recreation/meat hunting. Commercial (guided) hunting occurs, but is less common than in many other parts of Alaska.

Southcentral Alaska (Game Management Units 6-17) contains the greatest concentration of the State's population in Anchorage, much of the State's road system, which contributes economic interchange and to

great mobility in pursuit of fish and game, and the most stable economic situation. Game use is strongly oriented to recreation, recreation/meat gathering, and commercial (guiding) endeavors. Although the "subsistence lifestyle" is well represented, especially in the west, and many people rely on wild game to supplement their food supply, the cash economy rather than direct resource use is the dominant economic theme in much of the Region.

Interior Alaska (Game Management Units 12, 19, 20, 21, 24 and 25), in contrast with Southcentral, has a less stable cash economy, much lower and more dispersed population, and fewer roads. Aside from the Fairbanks area and the roadside communities, the Interior is considered the "bush". In the bush, the tendency is to rely more heavily on local resources, although cash income is everywhere important today. Bush dwellers tend to identify more readily in their own minds, and in other people's view, with the "subsistence lifestyle". It is in the Interior, and in the Arctic, that allocation difficulties are most likely to occur when the distinction between subsistence and other uses is attempted.

The Arctic-Coastal Region (Game Management Units 18, 22, 23, and 26), like the Interior, is relatively unpopulated, isolated, and economically unstable, although the cash economy is rapidly gaining importance in the larger communities, and to a lesser extent in the smaller communities as well. This area, too, is the "bush" and has a similar identification to the subsistence image, and a greater orientation to subsistence-type uses of game.

Finfish and Shellfish

The majority of subsistence fishery harvests are made within the A-Y-K area (141° W. long. south to Cape Newenham). Although there has been a documented long term decline in dependence, subsistence fishing is the priority use of the resource in this area. The majority of the residents use the fishery resources for commercial, subsistence and recreational uses and there is little competition from users residing outside the area. There are some subsistence fishing restrictions in intensive use commercial areas to prevent subsistence fish from entering commercial channels and to prevent overharvest by the combined fisheries; however, subsistence fishermen are generally able to make optimum harvests. This is further facilitated by relatively large fishery populations and conservative management of the commercial fisheries.

Subsistence fisheries occur within the Cook Inlet and Prince William Sound areas, but the largest fisheries occur in Bristol Bay and the Copper River drainage of Prince William Sound. Bristol Bay is characterized as a rural area with user groups generally composed of the same individuals or family units; however, Cook Inlet is a highly urbanized area with little subsistence activity, while the Prince William Sound area possesses fisheries, such as the Copper River fishery, where urban and rural groups come in contact and conflict.

Subsistence and recreational harvests are small in the Westward region (waters west of Cape Menshikoff and from Imuya Bay to Cape Douglas) in comparison to the commercial fisheries. Consequently, subsistence

regulations in this area are not designed to restrict subsistence harvests, but to prevent subsistence caught fish from entering commercial channels. Similarly, sport fishing regulation restrictions are intended to prevent overharvest of the resource in areas of increased access, primarily along the road system. Subsistence fishermen in this region are generally able to make necessary harvests from several different fish species.

The subsistence harvest is extremely small in the Southeastern Alaska and Yakutat areas (Cape Suckling south to Dixon Entrance). Only about 13,000 subsistence fish were reported taken in 1977 compared to a commercial harvest numbering several million fish. Although the use of various salmon species for subsistence is prohibited, the small subsistence requirements of local residents is met by utilization of other species by permit or retention of portions of commercial or recreational harvests.

Summary

It is important to realize that patterns of subsistence use change, not only in response to changes in resource abundance, but in response to changing community population patterns, economic circumstances, lifestyles and other considerations. Thus, some species or uses decline in importance, while others increase. Current management and regulatory strategies have evolved along with these changes in Alaskan life and resource abundance. In addition to these regulations and management policies providing preference to subsistence users on State land, land settlements made under the Alaska Native Land Claims Settlement Act will result in the private control of access to millions of acres of land. Since 70% of the subsistence harvests are made on State land, this controlled access to private land aspect should further aid in the continuation of subsistence activities (Figure 2).

Legend to be used for the following tables:

Present use

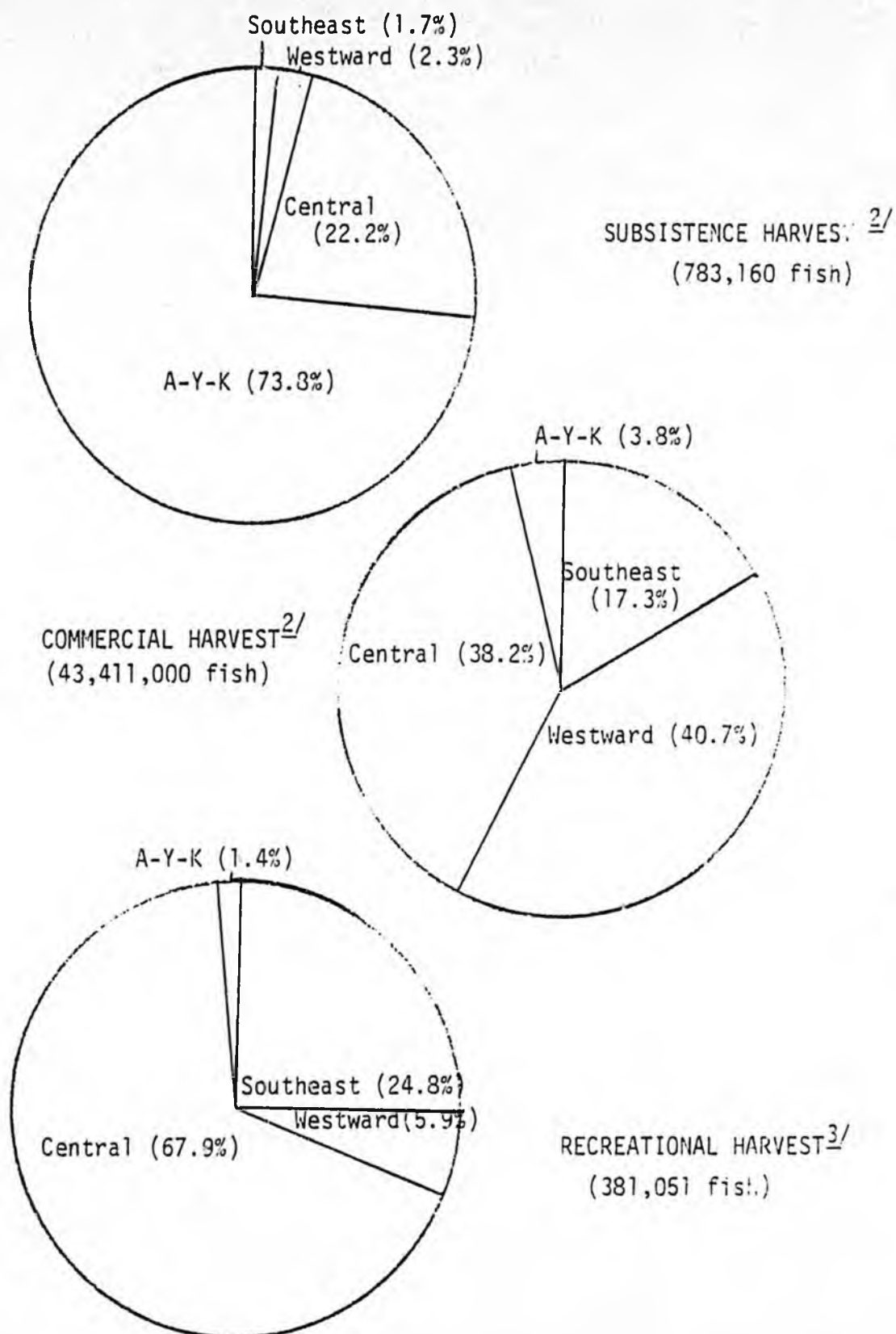
3 = high use; 2 = medium use; 1 = low use; 0 = no use

Preferred use if allocation necessary

** recommended use

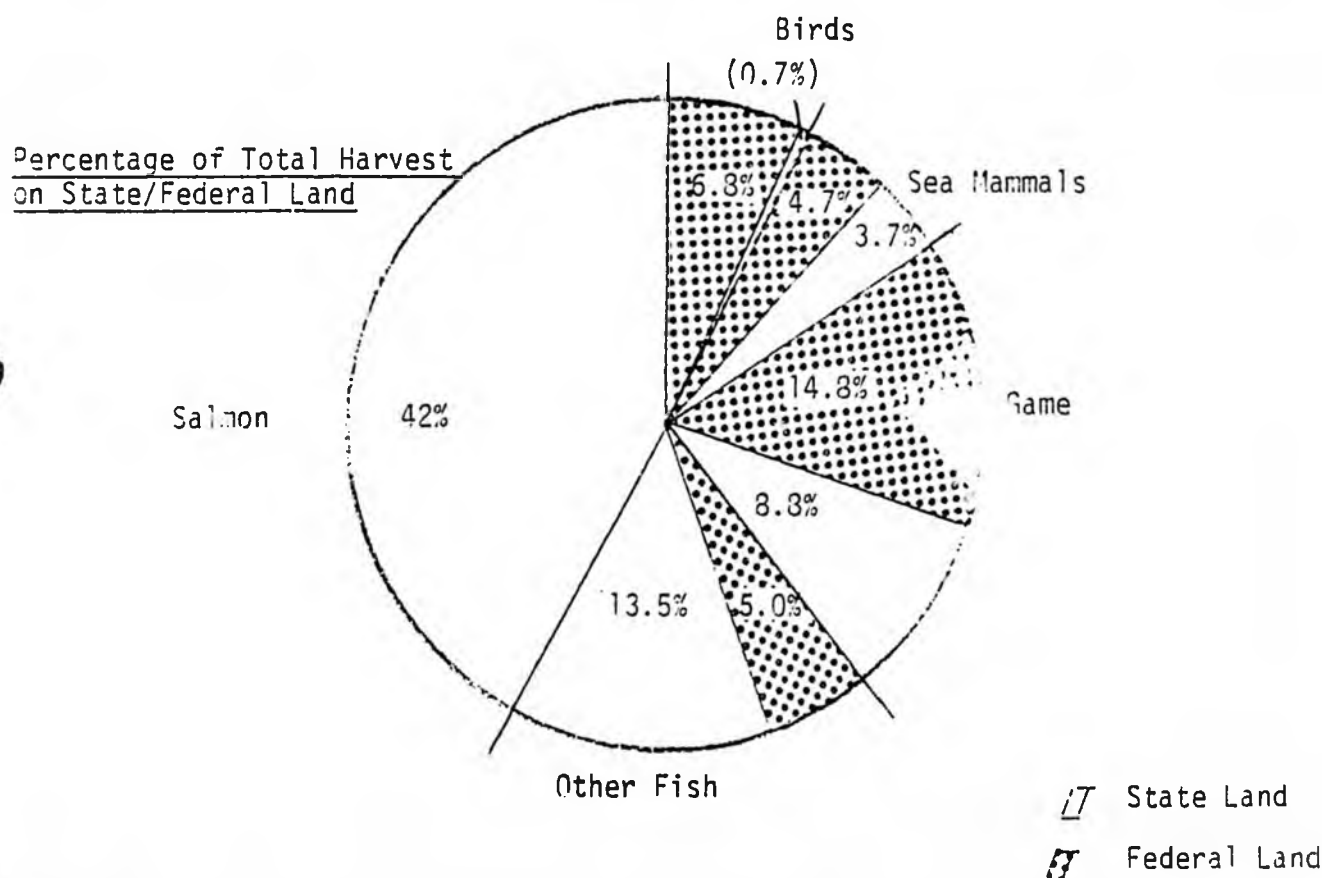
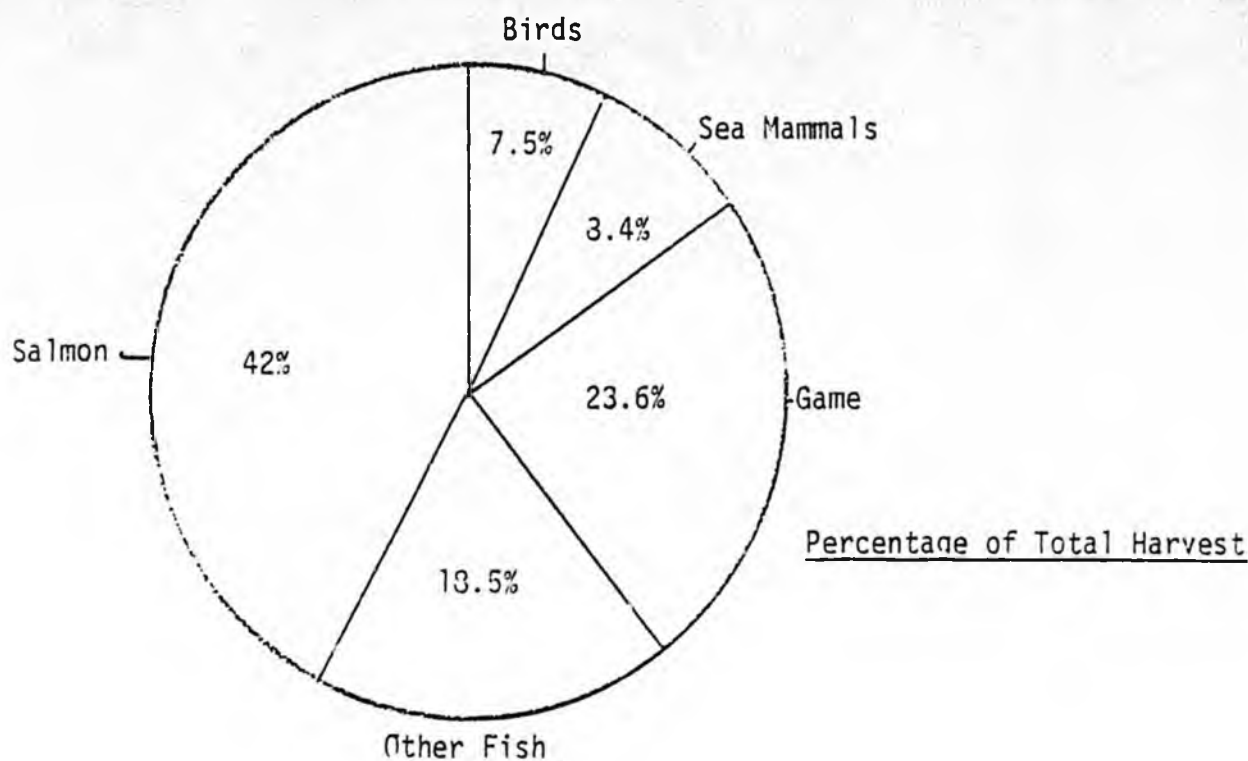
* compatible secondary use

Figure 1. Alaska salmon harvest by management area. 1/



- 1/ Arctic-Yukon-Kuskokwim - All drainages north of Bristol Bay and the Alaska Range.
Central - Bristol Bay, Cook Inlet and Prince William Sound.
Western - Kodiak, Alaska Peninsula and the Aleutian Islands.
Southeast - All drainages south of Prince William Sound.
- 2/ 1976 commercial - subsistence catches.
- 3/ 1977 recreational catch.

Figure 2. Alaska subsistence harvest of salmon, other fish, game, sea mammals and birds.^{1/}



^{1/} Data from Federal/State Land Use Planning Commission for Alaska document, Walter Parker, August 15, 1972.

ORGANIZATION OF SPECIES TABLES

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SPECIES: Black Bear

<u>GMU</u>	<u>SUBSISTENCE</u>	<u>COMMERCIAL</u>	<u>RECREATIONAL</u>	<u>COMMENTS</u>
18	2**	0	2*	
19A	1**	1	2*	
19B	1**	1	2*	
19C	1**	3	3*	
19D	2**	2	2*	
20A	0**	0	1*	
20B	0**	0	3*	
20C	1**	0	2*	
20D	1**	0	1*	
20E	0**	0	1*	
21	2**	1	2*	
22	1**	0	1*	
23	2**	0	1*	
24	2**	0	1*	
25	1**	0	1*	

BLACK BEAR PROBLEMS

I. Local vs. non-local use of black bears.

- A. Scope: Local and non-local users compete for available bears. A major concern of subsistence users is waste of meat.
- B. Regulatory Options: Where reductions in bear populations available to subsistence hunters are caused by non-local hunters the following may reduce conflicts:
 - 1. Require at least the flesh of black bears be salvaged.
 - 2. Allow only surface transportation.
 - 3. Short season for all hunters, except earlier, later or longer seasons for residents of conflict areas.
 - 4. Allocate a quota to local use.
 - 5. Allocate a quota to non-local use.
- C. Problem Areas:
 - 1. Unit 21

SPECIES: Brown/Grizzly Bear

<u>GMU</u>	<u>SUBSISTENCE</u>	<u>COMMERCIAL</u>	<u>RECREATIONAL</u>	<u>COMMENTS</u>
18	1**	2	2*	
19A	0**	3	1*	
19B	0**	3	1*	
19C	0**	3	2*	
19D	0**	1	1*	
20A	0*	1	1**	
20B	0*	0	1**	
20C	0*	1	1**	
20D	0*	1	1**	
20E	0*	0	1**	
21	1**	1	1*	
22	1**	1	2*	
23	1**	1	2*	
24	1**	3	2*	
25-				
Brooks Range	1**	2	1*	
Flats	1**	1	1*	
26A	1**	1	1*	
26B	1**	1	1*	
26C	1**	1	1*	

BROWN-GRIZZLY BEAR PROBLEMS

- I. Scope: At present there are no known conflicts between subsistence uses and other uses of brown/grizzly bears. In certain locales brown/grizzlies are used for food, but these areas overlap very little with recreational use areas. Monitoring of hunting trends should be adequate to anticipate and avoid problems of allocation.

The \$25 resident tag fee and the present season dates may limit subsistence use of grizzly bears in Unit 23 and similar areas.

SPECIES: Caribou

<u>GMU</u>	<u>SUBSISTENCE</u>	<u>COMMERCIAL</u>	<u>RECREATIONAL</u>	<u>COMMENTS</u>
18-				
Andreafsky Herd	3**	0	1*	
Nushagak Herd	1**	1	2*	I
19A	1**	3	2*	
19B	1**	3	3*	
19C	2**	3	3*	I
19D	1**	1	1*	
20A	0*	0	0**	
20B	0*	0	0**	
20C	0*	0	1**	
20D	0*	0	1**	
20E	0*	0	0**	
21	1**	0	1*	
22	2**	0	1*	
23	3**	1	1*	I
24	2**	1	1*	I
25	3**	1	1*	I
26A	3**	1	1*	I
26B	3**	1	1*	
26C	3**	1	1*	

CARIBOU PROBLEMS

J. Local vs. non-local use of caribou

A. Scope: local and non-local hunters compete for available caribou. Some sources of conflicts include:

1. Local hunters claim that non-local hunters cause changes in the migratory path of the herd by shooting at the lead animals.
2. Dissimilar transportation modes (e.g. aircraft vs. boat and snow machine).
3. Indirect competition for animals available for human use.
4. Direct competition for animals available for human use.

B. Regulatory Options:

1. Permit system with permits available in all area villages as well as a minimum of urban centers.
2. Allow surface transportation only.
3. Establish caribou subsistence zone or Subsistence Hunting Area.
4. Establish quota for either local or non-local uses.
5. Establish Controlled Use Area.
6. Provide for only subsistence use, based on eligibility criteria.

C. Existing or potential problem areas:

1. Unit 19C
2. Unit 23
3. Unit 24
4. Unit 25
5. Unit 26

Western Arctic Caribou Herd (Game Management Units 23, 24, 26A and parts of 22 and 25)

1. Present Use:

Western Arctic Herd caribou are hunted mainly for food and clothing by residents of northwestern Alaska. The majority of hunters live within the normal geographic range of the herd. Formerly up to 30,000 caribou from this herd were killed by hunters, but presently the harvest quota set by regulation is 5,000 bulls. Regulations require hunters to obtain a permit for two caribou by registering with a Department representative in a village or at Alaska Department of Fish and Game offices in northern Alaska. Over 95 percent of the permits are issued to residents within the range of the Western Arctic Herd, although others are free to apply.

2. Conflicts/Problems:

The western Arctic caribou population declined from approximately 240,000 in 1970 to nearly 50,000 in 1975. Stringent hunting regulations were adopted which reduced the annual harvest by local residents from 20 to 30 thousand caribou to about 3,000 bulls. Local residents have estimated that 20,000 caribou are required to meet their needs.

The first permit system established was based on need and local residency and was challenged successfully in a court suit initiated by a sportsmen's group from Fairbanks. Subsequent appeals ruled that the original permit system was invalid due to administrative procedures. Need and residency as criteria for permit issuance were not addressed because of the legal changes caused by passage of SL 151.

Local versus non-local use continues to be a conflict with both user groups very adamant in the desire to have an opportunity to take caribou. Method of access, especially the use of aircraft, and to a degree snow machines, is a major source of conflict.

There is some conflict among hunters from the various villages regarding the hunting of the lead animals during the fall and spring migration.

3. Allocation:

In all of the following options subsistence use is the priority use.

4. General options that would give subsistence preference include:

- a) The present method of issuing permits.
- b) Limiting methods of access.
- c) Establishing residency requirements within the area of the western Arctic caribou herd's range.

- d) Adopting longer and/or earlier seasons for subsistence users.
- e) Adopting larger bag limits for subsistence users.
- f) Establishing different harvests quotas for subsistence and non-subsistence users.
- g) Utilizing different combinations of eligibility criteria.
- h) Establishing Subsistence Hunting Areas.
- i) Provide for subsistence hunting only.

5. Specific regulatory examples of four of the above options:

The following eligibility criteria for subsistence users were used in all of the four examples.

- 1) Caribou used for direct family or personal consumption.
- 2) Family has taken caribou from the western Arctic caribou herd three out of the last five years.

Option #1. Subsistence use allowed without restriction; non-subsistence use is regulated.

This option is one possible interpretation of AS 16.05.255. All existing regulations would apply only to non-subsistence hunting. Therefore permit requirements of 5AAC 81.050(17) and 81.055(1) hunting methods and means 81.070 and 81.120, use of game 81.200, removal of big game meat 81.216, and seasons and bag limits 81.320(5) would only apply to non-subsistence users.

Subsistence users would be able to take caribou without limit, anytime, of any sex, by any method or means as long as it met the provisions of the definition of subsistence uses (AS 16.05.940[26]).

Impact of the regulations

1. An overharvest of caribou would probably occur. Historical records show that in the late 1960's and early 1970's an estimated yearly harvest by residents within these Units was from 20 to 30 thousand animals. Therefore it is unlikely that any caribou would be available for taking by non-subsistence users.
2. Management of the herd would be very difficult because there would be no systematic method of estimating the harvest since no harvest ticket or permit would be required for subsistence hunters. Therefore the ability to regulate the harvest at 5,000 bulls would be lost.
3. There would be local, national and international criticism of the careless way the State of Alaska manages its caribou and its hunters.

Option #2 Subsistence eligibility based primarily on residency in the Game Management Unit.

a) Additional eligibility criteria used in this option.

1) Residency within the Game Management Unit.

b) All existing regulations retained except that seasons and bag limits would be established for subsistence use only.

5AAC.81. Subsistence Hunting; Seasons and Bag Limits

Unit 22, that portion draining into Norton Sound and the Bering Sea north of Cape Denbigh, Units 23, 24 and that portion of Unit 25 draining into the Yukon River from and including the drainage of the Tozitna River to and including the drainage of the Hodzana River, 26(A) and 26(B). (See eligibility criteria).	Aug. 10-Oct. 15 Feb. 15-Apr. 15	Two bulls***by permit provided that not more than one bull may be taken from Aug. 10-Oct. 15 (season will be closed by Emergency Order if the total harvest exceeds 5,000 bulls).

5AAC 81.320 Non-Subsistence user: Seasons and Bag Limits

Unit 22, that portion draining into Norton Sound and the Bering Sea north of Cape Denbigh, Units 23, 24 and that portion of Unit 25 draining into the Yukon River from and including the drainage of the Tozitna River to and including the drainage of the Hodzana River, 26(A) and 26(B).	No open season

*** "Bull" caribou refers to any male caribou.

c) Impact of regulation

- 1) Only residents of the Unit could hunt in that Unit. No other subsistence users or non-subsistence users could hunt in that Unit. Some subsistence users normally hunt in adjacent Units.
- 2) Only eligible subsistence users of these Game Management Units could hunt in this area thus eliminating conflict for use of a resource of limited quantity.
- 3) Some monetary loss to the local economy would result from a reduction in the number of outside hunters using local businesses. (Hotels, air taxis, guides and supply stores.)

Option #3 Give subsistence use priority by providing longer and earlier seasons and large bag limits for subsistence users.

All existing regulations retained except that seasons and bag limits would be different for subsistence and non-subsistence users.

5AAC____ Subsistence users: Seasons and Bag Limits

Unit 22, that portion draining into Norton Sound and the Bering Sea north of Cape Denbigh, Units 23, 24 and that portion of Unit 25 draining into the Yukon River from and including the drainage of the Tozitna River to and including the drainage of the Hodzana River, 26(A) and 26(B) (See eligibility criteria)	Aug. 10-Oct. 15 Feb. 15-Apr. 15	Two bulls by permit, provided that not more than one bull may be taken from Aug. 10-Oct. 15 (season will be closed by Emergency Order if the total harvest exceeds 5,000 bulls).

5AAC 81.320 Non-subsistence users: Season and Bag Limits

Unit 22, that portion draining into Norton Sound and the Bering Sea north of Cape Denbigh, Units 23, 24 and that portion of Unit 25 draining into the Yukon River from and including the drainage of the Tozitna River to and including the drainage of the Hodzana River, 26(A) and 26(B).	Sep. 1-Oct. 15	One bull by permit (season will be closed by Emergency Order if the total harvest exceeds 5,000 bulls).

Impact of Regulations:

1. Both subsistence and non-subsistence use would be allowed, however, there would be no non-subsistence users in the field during the early and late part of the subsistence hunting season.
2. Subsistence hunters would have a larger bag limit.

Option #4. Subsistence preference provided by a combination of subsistence hunting areas, a controlled use area, methods and means, residency in a Subsistence Hunting Area, and differential season lengths.

Additional eligibility criteria used in this option:

Residency with the Subsistence Hunting Area.

All existing regulations retained except that seasons and bag limits would be changed. Subsistence Hunting Areas and a Controlled Use Area would be established.

Section 5AAC---- Subsistence caribou hunting areas.

The following areas are closed to the taking of caribou by hunters residing outside of the area: That area within (five) miles of the town center (U.W. Post Office Building) of the following communities in Game Management Unit 23; Bucklnad, Selawik, Shungnak, Kobuk, Ambler, Kiana, Noorvik, Kotzebue, Noatak, Kivalina, and Point Hope; Game Management Unit 26: Barrow, Pt. Lay, Wainwright, Atkasook, Nuiqsut and Anaktuvuk Pass.

Section 5AAC 81.23__ Western Arctic Controlled Use Area.

Those portions of the Game Management Units 23 and 26 which lies with (five miles) of either side of the following main river channels of rivers in BMU 23: Buckland River, Selawik River, Dobuk River to its confluence with the Pah River, Noatak River to its confluence with the Nimiuktuk River and the Wulik River to its confluence with the Ikulukrok Creek and in Game Management Unit 26 the Irisaruk River, Ketik River, Nigisaktuvik River, Meade River, Colville River to its confluence with the Chandler River are closed during any open caribou hunting season, to the use of airplanes in any manner for hunting caribou, including transportation of caribou into or within the Western Arctic Controlled Use Area, and/or the transportation of caribou or any parts of caribou, either to or from this Controlled Use Area; provided that this section does not apply to the the transportation of caribou hunters, or caribou, or parts of caribou, by regularly scheduled flights made to and between villages of carriers that normally provide scheduled services to this Controlled Use Area.

Section 5AAC__ Subsistence Hunting: Seasons and Bag Limits.

Unit 22, that portion draining into Norton Sound and the Bering Sea north of Cape Denbigh, Units 23, 24 and that portion of Unit 25 draining into the Yukon River from and including the drainage of the Tozitna River to and including the drainage of the Hodzana River, 26(A), and 26(b). (See subsistence zones, controlled use areas and eligibility criteria).

Aug. 10-Oct. 15
Feb. 15-Apr. 15

Two bulls***by permit provided that not more than one bull may be taken from Aug.10-Oct.15 (season will be closed by Emergency Order if the total harvest exceeds 5,000 bulls).

Section 5AAC 81.320 Non-subsistence users: Seasons and Bag Limits.

Unit 22, that portion draining into Norton Sound and the Bering Sea north of Cape Denbigh, Units 23, 24 and that portion of Unit 25 draining into the Yukon River from and including the drainage of the Tozitna River to and including the drainage of the Hodzana River; 26(A), and 26(B).	Sep. 1-Oct. 15	One bull by permit (season closed by Emergency Order if the total harvest exceeds 5,000 bulls)

Impact of regulations:

1. Local hunters would have exclusive use of the area immediately surrounding their village but subsistence hunters not from a specific Subsistence Hunting Area could not hunt in that Subsistence Area. This zoning would reduce the number of hunters near a given village thus reducing harassment to the herd which may result in the herd remaining near a given village longer.
2. The conflict between boat and airplane hunters would be greatly reduced.
3. The regulation allows a limited harvest for those hunters residing outside of these Game Management Units plus a chance for local non-subsistence hunters to take a few animals without unduly competing with subsistence hunters.

SPECIES: Moose

<u>GMD</u>	<u>SUBSISTENCE</u>	<u>COMMERCIAL</u>	<u>RECREATIONAL</u>	<u>COMMENTS</u>
18	3**	2	2*	I
19A	3**	2	2*	I
19B	1**	3	3*	
19C	1**	3	3*	
19D	3**	1	2*	I
20A	0*	1	1**	
20B	1*	0	1**	
20C	1*	0	1**	
20D	1*	0	1**	
20E	0*	0	0**	
21	3**	1	2*	I
22	2**	1	3*	I
23	3**	1	2*	I
24 (northern)	1**	3	3*	I
(southern)	3**	1	2*	
25	2**	1	2*	I
26A	1**	1	2*	
26B	1**	1	1*	I
26C	1**	1	1*	

MOOSE PROBLEMS

I. Local vs. non-local use of moose

A. Scope: Problem is in competition for a limited resource between subsistence and commercial/recreational users. Conflicts arise because of:

1. Dissimilar transportation modes (e.g. aircraft vs. boat).
2. User residences differ (e.g. lower river hunters vs. upper river hunters).
3. Assumed unequal opportunity (e.g. high country users kill most of the moose before they can later migrate to the lowlands).
4. Differing use of the resource (e.g. trophy vs. meat gathering).

B. Regulatory Options:

1. Hunting by permit only, permits to be available locally and in larger communities.
2. Surface transportation only in high use areas with overlapping recreational-subsistence food uses.
3. Subsistence zone or hunting area for moose only. Local residents only.
4. Provide subsistence users longer, earlier, or later season than for non-subsistence users.
5. Short season for all users, except long seasons for residents of a specific problem area (same as 4 except excludes non-locals in longer season).
6. Establish a quota for either local or non-local use.

C. Problem Areas:

1. Unit 18
2. Unit 19A
3. Unit 19D
4. Unit 21
5. Unit 22
6. Unit 23
7. Unit 24
8. Unit 25
9. Unit 26 A&B

Kalskag Controlled Use Area, Game Management Unit 18

1) Present Use:

The purpose of this Controlled Use Area is to favor moose hunting by restricting aircraft access. This area is presently used by local residents of 10 lower Kuskokwim villages, 10 lower Yukon villages, alien and non-resident hunters, and Alaska resident hunters from Bethel and Anchorage that formerly used mainly aircraft access.

2) Conflicts/Problems:

Competition for the available moose in the Kalskag Management Area has aggravated conflicts between local residents and other hunters in this area, particularly regarding the mode of transportation used. Local hunters, who mostly use surface transportation, feel that the use of airplanes provides an unfair advantage for the more affluent moose hunter. Airplane hunters have felt that the illegal use of snowmachines in hunting has had a much greater impact on the moose population than the use of aircraft. Lack of compliance with the existing season and bag limits by some local residents has added to the conflict with other resident hunters.

3) Allocations:

Subsistence users will receive preference for moose hunting in the Kalskag Management Area.

4) General options for minimizing conflicts between user groups in this area include:

- a) Leave the controlled use area as is and more closely enforce the existing restrictions.
- b) Create a Subsistence Hunting Area under terms of SL 151.
- c) Create a Subsistence Hunting Area that would be restricted to the local residents of the management area.
- d) Limit methods of transportation for all hunting activities in this area.
- e) Establish a shorter moose hunting season for non-subsistence hunters.
- f) Establish a Subsistence Hunting Area, prohibit use of mechanized vehicles and firearms, and provide for no closed season and no bag limits.
- g) Restrict the use of the area for moose hunting to those who qualify under a combination of subsistence eligibility criteria.

5) Four specific regulatory examples

Two subsistence use eligibility criteria apply to all four examples.

- 1) Fish and Game utilization for direct consumption or barter.
- 2) The hunter shall have been involved in taking moose during the last (5, 10) years in (GMU 18, State of Alaska). (numbers or characteristics in parentheses represent options).

Kalskag Controlled Use Area, Game Management Unit 18

1) Present Use:

The purpose of this Controlled Use Area is to favor moose hunting by restricting aircraft access. This area is presently used by local residents of 10 lower Kuskokwim villages, 10 lower Yukon villages, alien and non-resident hunters, and Alaska resident hunters from Bethel and Anchorage that formerly used mainly aircraft access.

2) Conflicts/Problems:

Competition for the available moose in the Kalskag Management Area has aggravated conflicts between local residents and other hunters in this area, particularly regarding the mode of transportation used. Local hunters, who mostly use surface transportation, feel that the use of airplanes provides an unfair advantage for the more affluent moose hunter. Airplane hunters have felt that the illegal use of snowmachines in hunting has had a much greater impact on the moose population than the use of aircraft. Lack of compliance with the existing season and bag limits by some local residents has added to the conflict with other resident hunters.

3) Allocations:

Subsistence users will receive preference for moose hunting in the Kalskag Management Area.

Option #1 Change the Kalskag Controlled Use Area to the Kalskag Subsistence Hunting Area

- a) By definition AS 16.05.257 (h)(1) and (2) as amended only state residents who qualify as subsistence users may hunt in a subsistence hunting area.
- b) All existing for the regulations would be retained, however 5 AAC 81.233 is redesignated as a Subsistence Hunting Area.

That portion of Game Management Unit 18 between the village of Kalskag on the Kuskokwim to a point west and north near the village of Russian Mission on the Yukon River, and east along the course of the Yukon River to the old village site of Piamute that border Game Management Units 19 and 21, is closed during any open moose hunting season, to the use of airplanes in any manner for hunting moose, including transportation of moose hunters into or within the Kalskag Subsistence Hunting Area and/or the transportation of moose, or any parts of moose, either to or from this subsistence hunting area; provided that this section does not apply to the transportation of moose hunters, or moose, or parts of moose, by regularly scheduled flights made to and between villages by carriers that normally provide scheduled services to this subsistence hunting area.

c) Impacts

- 1) Alien and non-resident hunters would be unable to hunt in this area.
- 2) Only Alaska residents who qualify as subsistence users would be permitted to hunt moose in this area.
- 3) Non-subsistence users wishing to take other species with the use of aircraft would be allowed. This has caused concern among local people in the past because of possible abuses involving moose hunting, and could be addressed by limiting methods and means for all hunting during open moose season in either a Subsistence Hunting Area or Controlled Use Area.
- 4) Only Alaskan residents that have taken moose during the last (5, 10) years would be eligible to hunt moose in this area.
- 5) Many village hunters have not used harvest tickets in the past and it will be very difficult to establish proof of having taken a moose during the last (5, 10) years in (Game Management Unit 18, State of Alaska). This problem is applicable for each of the options discussed since it refers to one of the general eligibility requirements.

Option #2 Establish a Kalskag Subsistence Hunting Area restricting hunting to residents of this Area.

- a) Additional Eligibility Criteria used in this option
 - 1) Residency in the Kalskag Area for the last 12 consecutive months
- b) All other existing regulations retained, except that 5AAC 81.233 is redesignated the Kalskag Subsistence Hunting Area.

That portion of Game Management Unit 18 between the village of Kalskag on the Kuskokwim to a point west and north near the village of Russian Mission on the Yukon River, and east along the course of the Yukon River to the old village site of Piamute that border Game Management Units 19 and 21, is closed during any open moose hunting season, to the use of airplanes in any manner for hunting moose, including transportation of moose hunters into or within the Kalskag Subsistence Hunting Area and/or the transportation of moose, or any parts of moose, either to or from this subsistence hunting area; provided that this section does not apply to the transportation of moose hunters, or moose, or parts of moose, by regularly scheduled flights made to and between villages by carriers that normally provide scheduled services to this subsistence hunting area.

c) Impacts

- 1) Only Alaskan residents that have lived in the villages of Lower Kalskag, Russian Mission or areas contained within the defined boundaries of the Kalskag Subsistence Hunting Area would be eligible to hunt moose in this area.
- 2) The present season, bag limits, and methods and means would remain the same.
- 3) It will be difficult to establish proof of having taken a moose during the last 5, 10 years in Alaska, GMU 18, Kalskag area, since many village hunters have not used harvest tickets in the past.

Option #3 Establish a Kalskag Subsistence Hunting Area and limit method and means.

a) Additional Eligibility Criteria used in this option.

1) (90%) Subsistence Dependence - (90%) of the diet of the household is made up of subsistence foods.

b) Most existing regulations retained except 81.233 is redesignated a Kalskag Subsistence Hunting Area and more restrictive method and means are adopted while providing liberal seasons and bag limits.

That portion of Game Management Unit 18 between the village of Kalskag on the Kuskokwim to a point west and north near the village of Russian Mission on the Yukon River, and east along the course of the Yukon River to the old village site of Piamute that border Game Management Units 19 and 21, is closed to the use of any mechanized vehicle for hunting moose, including transportation of hunters into or within the Kalskag Subsistence Hunting Area and/or the transportation of moose, or any parts of moose either to or from this management area.

c) Big Game

The illegal methods and means of taking big game, in addition to the prohibitions listed in sec. 120 of this chapter are:
(8) with the use of firearms in the Kalskag Subsistence Hunting Area.

d) Big Game Hunting

(9) Moose

Unit 18, Kalskag Subsistence Area No closed season no limit

e) Impact

1) Will provide for Alaskan residents to enter a subsistence lifestyle without previous experience.

2) This option allows for unlimited harvest and unrestricted seasons by strictly controlling the methods and means used local and non-local hunters alike will find this severely limiting.

3) It will be difficult to establish what percent of the diet of the family is made up of subsistence foods.

Option #4 Establish a Kalskag Subsistence Hunting Area which combines several eligibility criteria.

a) Additional Eligibility Criteria used in this option.

- 1) Residency in a moose hunting oriented community for the last (six) consecutive months.
- 2) The hunter lives in a community with a population of (2000) or smaller.
- 3) The regional adjusted per capita cash income for the region the hunters reside in is not more than ____.
- 4) Stores in the hunters community have less than a (\$20,000) inventory of processed food.

b) Retain existing regulations except redesignate 81.233 as the Kalskag Subsistence Hunting Area

That portion of Game Management Unit 18 between the village of Kalskag on the Kuskokwim to a point west and north near the village of Russian Mission on the Yukon River, and east along the course of the Yukon River to the old village site of Piamute that border Game Management Units 19 and 21, is closed during any open moose hunting season, to the use of airplanes in any manner for hunting moose, including transportation of moose hunters into or within the Kalskag Subsistence Hunting Area and/or the transportation of moose, or any parts of moose, either to or from this subsistence hunting area; provided that this section does not apply to the transportation of moose hunters, or moose, or parts of moose, by regularly scheduled flights made to and between villages by carriers that normally provide scheduled services to this subsistence hunting area.

c) Impacts

- 1) With the additional eligibility criteria used fewer subsistence hunters will be eligible to hunt in this area. Of the four options discussed, this option will provide the most restrictive hunting regulations for subsistence users.
- 2) Examples of subsistence users that would not qualify are:
 - a) All Alaskan residents living in communities larger than (2,000) would not be eligible to hunt in this area.
 - b) Hunters living in subsistence communities outside of the moose hunting communities would not be eligible to hunt in the Kalskag Management Area.

- c) Residents in communities with stores that have processed food inventory of (\$20,000) or more would not be eligible to hunt in this area.
- d) Residents of regions with an adjusted cash income of _____ or more would not be able to hunt in this area.

SPECIES: Muskoxen

<u>GMT</u>	<u>SUBSISTENCE</u>	<u>COMMERCIAL</u>	<u>RECREATIONAL</u>	<u>COMMENTS</u>
13-Nunivak	0*	3**	2*	I
Nelson.	0**	0*	0*	I
22	0**	0	0*	
23	0**	0	0*	
26	0**	0	0*	

MUSKOXEN PROBLEMS

I. Local vs. non-local use of muskoxen

A. Scope: Existing problems are confined to Nunivak and Nelson Islands where the largest populations exist. In both places there is interest in subsistence use of muskox, although it is much higher on Nelson Island. Nunivak residents are successfully guiding muskox hunters and appear to want to continue to do so; Nelson Island residents have little interest in guiding.

B. Regulatory Options:

1. Encourage legislature to reduce tag fees charged island residents or for hunting female muskoxen.
2. Adopt permit season; permits to be available at Toksook, Tununak, Nightmute and Bethel. Surface transport only.
3. Adopt subsistence muskoxen zone (Nelson Island only), possibly in combination with alternatives 1 or 2.

C. Problem Areas:

1. Unit 18

SPECIES: Polar Bear

<u>GMU</u>	<u>SUBSISTENCE</u>	<u>COMMERCIAL</u>	<u>RECREATION</u>	<u>COMMENTS</u>
1-17	0	0	0	Under Federal Regulation
18	0*	0**	0**	
22	2*	0**	0**	
23	2*	0**	0**	
26	2*	0**	0**	

SPECIES: Ringed seal

1-16	0	0	0
17	3**	0*	0*
18	3**	0*	0*
22	3**	0*	0*
23	2**	0*	0*
26	3**	0*	0*

SPECIES: Ribbon seal

1-16	0	0	0
17	1*	0**	0*
18	1*	0**	0*
22	1*	0**	0*
23	1*	0**	0*
26	1*	0**	0*

SPECIES: Bearded seal

1-16	0	0	0
17	1**	0*	0*
18	2**	0*	0*
22	2**	0*	0*
23	2**	0*	0*
26	2**	0*	0*

SPECIES: Dall Sheep

<u>GMU</u>	<u>SUBSISTENCE</u>	<u>COMMERCIAL</u>	<u>RECREATIONAL</u>	<u>COMMENTS</u>
19C	1*	3	3**	I
20A	0*	1	1**	
20C	0*	0	1**	
20D	0*	0	2**	
20E	0*	0	1**	
13	1*	1	2**	
24	1*	3	3**	
25	1*	1	2**	
26A	1*	2	3**	
26B	1*	2	3**	
26C	2**	2	3*	I

SHEEP PROBLEMS

I. Subsistence users want winter sheep seasons

A. Scope: Traditional use formerly involved extensive summer-fall hunting trips afoot. Subsequently, early and late winter hunting became more expedient. More recently, changing circumstances precluded the need or the opportunity to hunt sheep in most parts of the state. Current open seasons are in early fall.

B. Regulatory Options:

1. Add new permit season allowing ground transportation only.
2. Add new, short winter season for area residents only.
3. Allocate a quota to local use or to non-local use.

C. Problem Areas:

1. Unit 19C
2. Unit 26B
3. Unit 26C

SPECIES: Small Mammals

<u>GMU</u>	<u>SUBSISTENCE</u>	<u>COMMERCIAL</u>	<u>RECREATIONAL</u>	<u>COMMENTS</u>
18	3**	0	3*	
19	2**	0	1*	
20	2**	0	2*	
21	2**	0	1*	
22	2**	0	1*	
23	2**	0	2*	
24	2**	0	1*	
25	2**	0	1*	
26	2**	0	1*	

SPECIES: Furbearers

<u>GMU</u>	<u>SUBSISTENCE/COMMERCIAL</u>	<u>RECREATIONAL</u>	<u>COMMENTS</u>
18	3**	1*	
19A	3**	1*	
19B	2**	1*	
19C	2**	1*	
19D	3**	1*	
20A	2**	3*	
20B	1*	3**	
20C	2**	2*	I
20D	1*	2**	
20E	2**	2*	
21	2**	1*	
22	2**	1*	I
23	3**	3*	I
24	2**	1*	
25	2**	1*	
26	3**	3*	I (26B)

FURBEARER PROBLEMS

I. Airborne hunters/trappers competing with subsistence users employing ground transportation.

A. Scope: Airborne land-and-shoot trappers/hunters can take many more of certain furbearer species than can those using ground transport.

B. Regulatory Options: Where airborne fur takers are causing a reduction in available furbearers the following options may be useful:

1. Limit methods and means of taking furbearers in certain areas to ground transport only.
2. Provide a short season during which any transportation means may be used and a longer season for ground transport only.

C. Problem Areas:

1. Unit 22
2. Unit 26B

FURBEARER (Continued)

II. Recreational trappers vs. subsistence trappers

- A. Scope: In areas used by both urban-based recreational trappers and rural subsistence (commercial) trappers there is competition for available furbearers.
- B. Regulatory Options:
 - 1. Adopt trapping-by-permit-only seasons in areas where conflicts are serious.
 - 2. Adopt short seasons for all licensed trappers, except longer season for residents of a given conflict area.
 - 3. Include trapping among uses provided for in subsistence zones.
 - 4. Legislatively establish registered traplines.
- C. Potential or Existing Problem Areas:
 - 1. Unit 20B
 - 2. Unit 20C

SPECIES: Belukha whale

<u>GMU</u>	<u>SUBSISTENCE</u>	<u>COMMERCIAL</u>	<u>RECREATION</u>	<u>COMMENTS</u>
1-8	0	0	0	
9	1**	0	0	
10	0	0	0	
15	1**	0	0	
16	1**	0	0	
17	1**	0	0	
18	1**	0	0	
22	3**	0	0	
23	2**	0	0	
26	2**	0	0	

SPECIES: Sea otter

1-8	0	0	0
9	0	0**	0
10	0	0**	0
15	0	0	0
16	0	0	0

SPECIES: Bowhead whale

1-2	0		0	
24-25	0		0	
22, 23, 26	2**	1.5	0	Baleen used for handicrafts.

SPECIES: Elephant seal

1-10	0	0	0

SPECIES: Ribbon seal

<u>GMU</u>	<u>SUBSISTENCE</u>	<u>COMMERCIAL</u>	<u>RECREATION</u>	<u>COMMENTS</u>
13	1*	0**	0*	
22	1*	0**	0*	
23	1*	0**	0*	
26	1*	0**	0*	

SPECIES: Polar Bear

13	0*	0**	0**
22	2*	0**	0**
23	2*	0**	0**
26	2*	0**	0**

SPECIES: Belukha whale

13	1**	0	0
22	2**	0	0
23	3**	0	0
26	2**	0	0

SPECIES: Sea lion

13	0	0**	0
22	0	0**	0
23	0	0**	0
26	0	0**	0

SPECIES: Sea otter

9	0	0**	0
10	0	0**	0

SPECIES: Walrus

<u>GMU</u>	<u>SUBSISTENCE</u>	<u>COMMERCIAL</u>	<u>RECREATION</u>	<u>COMMENTS</u>
1-8	0	0	0	
9	0	1**	0	I
10	0	0	0	
14	0	0	0	
15	0	0	0	
16	0	0	0	
17	1**	1*	0	I
18	2**	2*	1*	I
22	2**	2*	2*	I
23	1**	1*	1*	I
26	1**	1*	1*	I

SPECIES: Sea lion

1-5	1*	0**	0*
6	1*	1**	0*
7	1*	1**	0*
8	1*	1**	0*
9	1*	1**	0*
10	1**	1*	0*
15	0	0**	0*
16	0	0**	0*
17	1**	0*	0*
18	0	0**	0
22	0	0**	0
23	0	0**	0
26	0	0**	0

SPECIES: Spotted seal

1-5	1*	0**	0*
6	1*	2**	0*
7	1*	1**	0*
8	1*	0**	1*
9	1*	0**	1*
10	1*	0**	1*
15	1*	0**	0*
16	1*	0**	0*
17	2*	0**	0*
18	2*	0**	0*
22	2*	0**	0*
23	2*	0**	0*
26	2*	0**	0*

Walrus Problems - All Areas

I. Subsistence vs. commercial use

- A. Scope: The needs for cash income in remote villages has expanded greatly so that most walrus are taken primarily for their ivory. Competition within village quotas between subsistence and commercial users has intensified so that not all of the subsistence meat needs are met while a considerable amount of meat is unsalvaged by commercial hunters.

Presently there is no distinction between commercial and subsistence users and often times they are the same individuals. There is no breakdown of maximum area harvest quotas to individuals and when walrus are available and the weather is favorable the maximum harvest quotas can be reached in 3 or 4 days. Consequently the hunting pressure is intensified as each individual recognizes that the season may be closed on short notice. Some subsistence users may not obtain sufficient meat to meet their needs.

There are several misconceptions regarding the allocation of the total statewide allowable harvest between commercial/ subsistence and recreational users. Presently up to 100 permits to take walrus are allocated to recreational users out of a total annual statewide allowable harvest of 3,000 walrus.

B. Regulatory Options:

- a) Establish commercial walrus hunting regulations.
- b) Breakdown statewide and area quotas for: 1) subsistence users
 - 2) commercial users
 - 3) recreational users
- c) Allow subsistence users to obtain their quota prior to opening of the commercial season.
- d) Include walrus as a wild food animal in the "Waste of Wild Food Animals" provision Sec. 16.30.010.
- e) Develop markets for excess meat.

C. Problem Areas:

- 1. Unit 17
- 2. Unit 18
- 3. Units 22, 23 and 26.

Bering and Chukchi Sea Walrus Management Area: GMU 18, 22, 23 and 26

1. Present Use:

Coastal residents of Alaska who have traditionally depended upon walrus for food and other by-products take over 95% of the annual harvest. During the 10 year period from 1966 through 1976 the average walrus harvest was about 1700 per year; since then the harvest has averaged nearly 2500 annually. This increase in the kill is directly related to the need for more cash by local residents to meet the rising cost of living. The sale of raw ivory and ivory carvings is often a principal source of income for many coastal residents. Currently 80% or more of the walrus killed are taken primarily for their ivory. The predominate use of the resource is commercial.

2. Conflicts/Problems:

Annual area harvest quotas were established in the spring of 1977 to allocate the maximum allowable harvest permitted by federal constraints to all communities that are dependent on the resource. All communities that were assigned quotas expressed displeasure with the system because they contended they were unable to harvest sufficient walrus to meet their cash requirements. Most local hunters contend they are still following a subsistence life style even though they are harvesting walrus primarily for the sale of their raw ivory. A majority of the annual harvest is taken during the spring when walrus habitually rest upon the pack ice during their northward migration. The success ratio is relatively high because the animals can be approached closely and the pods are generally large. Once walrus reach water the success ratio declines and loss rates are several times higher. True subsistence hunters (those few who are principally after meat and hides) have complained that commercial and recreational hunters regularly frighten walrus into the water. In some areas competition from these groups has made it difficult to obtain walrus close to the village. Consequently hunters have begun to abandon traditional methods and means, e.g., skin boats with large cohesive crews, in favor of speed boats with small, unsupervised crews. The result is higher annual harvests and a much lower percentage of retrieved meat. Subsistence hunting patterns are evolving into commercial hunting patterns.

3. Allocation:

Non wasteful subsistence use is given priority; however, it is recognized that the majority of the present and future use will be for commercial purposes.

4. General Options:

- a. Retain present regulations which give coastal residents traditionally dependent on walrus a multiple bag limit.

- b. No restrictions of any kind for subsistence users.
- c. Establish quotas for subsistence, recreational and commercial users based on cash requirements and ability of local residents to utilize the resource.
- d. Establish a Subsistence Hunting Area.
- e. Limit method and means, with the most restrictive methods applied only to recreational and commercial uses.

5. Specific regulatory examples:

Subsistence use could be given preference by one of the following four options.

Subsistence eligibility criteria used in options 2, 3, and 4 are:

- a) Members of the family have taken walrus for food during the last (2) years.
- b) Hunter lives in a fishing, hunting and gathering oriented community.
- c) At least (80%) of the meat from walrus taken is used for direct consumption or barter.
- d) At least (75%) of the diet of the family is made up of subsistence foods.

Numbers or characteristics in parentheses are options.

Option #1 Retain the existing regulations

Under the existing regulations subsistence users are given preference to the resource as follows:

- a) Residents of coastal units traditionally dependent upon walrus for sustenance may take multiple bag limits ranging from unlimited numbers of bulls to 5 walrus. All other residents and non-residents are limited to one bull per regulatory year, and only 100 permits are available for these users.
- b) In Game Management Units 18, 22, 23 and 26 the hunting season is open all year unless closed by emergency order.
- c) In areas where the harvest may become excessive maximum yearly quotas have been established. The largest quotas were established in those locations which have a traditional dependency on walrus meat and walrus by-products such as ivory. Quota sizes were based on records of previous use.

Option #2 No regulations on non-wasteful subsistence users, all other users regulated.

Specific regulatory scheme

5 AAC 81.350 Marine Mammal Hunting

(4) Walrus Subsistence Hunting

	<u>Open season</u>	<u>Bag Limit</u>
GMU 18, 22, 23 and 26	No closed season	No bag limit; provided however, that the edible portions of all walrus must be salvaged for human consumption.

Non-subsistence Hunting

GMU 18, 22, 23 and 26	No closed season	one walrus; by permit only

Impact of Regulation:

1. Residents dependent upon walrus for food could take an unlimited number of animals at any time during the year provided most of the edible meat is salvaged for consumption. It is estimated that this subsistence harvest would be no more than 800 walrus per year and probably considerably less.
2. The remainder of the allowable harvest under the quota established within the terms of Federal law (approximately 1500 animals) would be available for recreational hunters by permit only. However, the recreational demand is currently low, and it is estimated that less than 200 walrus a year would be taken by recreational hunters.
3. Commercial hunting (taking walrus principally for ivory) would not be allowed.
4. The total annual harvest would probably be less than 1000 walrus per year.

Option #3 Sport and commercial harvest would be regulated. The nutritional requirements of subsistence hunters would be accommodated.

Specific regulatory scheme

5 AAC 81.350 marine mammal hunting

(4) Walrus Subsistence Hunting

GMU 18, 22, 23 and 26	<u>Open Seasons</u>
	No closed season

Bag Limits
No bag limit; provided however, that the edible portion of all walrus must be salvaged for consumption.

Non-subsistence Hunting

GMU 18, 22, 23 and 26	No closed season

one walrus, by permit only

Commercial Hunting

Unit 1 thru 18 23 and 26	No open season

Unit 22	1 April - 30 June

The following area quotas apply

Gambell	250
Savoonga	250
Nome-King Island	- 100
Wales	100
Shishmaref	100
Diomede	250

Note: It is the intent of the State of Alaska to limit the annual take of walruses to less than 2,300 per year. Commercial hunting will be closed in all areas if the annual take exceeds 2500 walrus.

Impact of Regulation:

1. This scheme would be adopted only in those areas where a majority of the local residents favor commercial use.
2. The nutritional requirements of subsistence users would be provided for.

Option #4 Subsistence use would be given preference by establishing a walrus subsistence hunting area.

a) Additional eligibility criteria used in this option.

1) Residency in the GMU.

b) Regulations adopted for this option.

Section 5 AAC _____ SUBSISTENCE WALRUS HUNTING AREA

An area within a 15 mile radius of the following villages is open to walrus hunting only by subsistence users living in each village: Gambell, Savoonga, Nome, Teller, Brevig Mission, Wales, Diomede, Shishmaref, Unalakleet, Stebbins, St. Michaels, Elim, Koyuk and Shaktoolik.

5 AAC 81.350 MARINE MAMMAL HUNTING

(4) Walrus Subsistence Hunting

	<u>Open Seasons</u>	<u>Bag Limits</u>
GMU 22	No closed season	No bag limit; provided however, that the edible portion of all walrus must be salvaged for consumption.

Non-subsistence Hunting

GMU 22	No closed season	The following area quotas apply:

Gambell	250
Savoonga	250
Nome-King Island	100
Wales	100
Shishmaref	100
Diomede	250

c) Impact of Regulation

- 1) Only subsistence hunters could take walrus within a 15 mile radius of the coastal villages. All edible meat must be salvaged within this area.
- 2) Walrus could be taken outside the subsistence area only by recreational and commercial users who are residents of GMU 22.
- 3) It would be illegal for commercial and recreational hunters to molest, drive, take or attempt to take walrus within a subsistence walrus hunting area.
- 4) If the quotas outside the subsistence area was reached a season for commercial hunting would be closed by emergency announcement.

Option #4 Subsistence use would be given preference by establishing a walrus subsistence hunting area.

a) Additional eligibility criteria used in this option.

1) Residency in the GMU.

b) Regulations adopted for this option.

Section 5 AAC _____ SUBSISTENCE WALRUS HUNTING AREA

An area within a 15 mile radius of the following villages is open to walrus hunting only by subsistence users living in each village: Gambell, Savoonga, Nome, Teller, Brevig Mission, Wales, Diomede, Shishmaref, Unalakleet, Stebbins, St. Michaels, Elim, Koyuk and Shaktoolik.

5 AAC 81.350 MARINE MAMMAL HUNTING

(4) Walrus Subsistence Hunting

	<u>Open Seasons</u>	<u>Bag Limits</u>
GMU 22	No closed season	No bag limit; provided however, that the edible portion of all walrus must be salvaged for consumption.

Non-subsistence Hunting

GMU 22	No closed season	The following area quotas apply:

Gambell	250
Savoonga	250
Nome-King Island	100
Wales	100
Shishmaref	100
Diomede	250

c) Impact of Regulation

1) Only subsistence hunters could take walrus within a 15 mile radius of the coastal villages. All edible meat must be salvaged within this area.

All Other Marine Mammals - Problems

- A. The Marine Mammal Protection Act prohibits the taking of marine mammals (except walrus) by anyone other than Alaskan Natives, who may take them without limit for subsistence or to make handicraft items. Bowhead and gray whales are protected by international treaty rather than the MMPA.

The sale of raw seal pelts and polar bear hides were important sources of income prior to prohibition by the Marine Mammal Protection Act. The subsistence use of some species is low and they would have greater demand for commercial use if allowed by law.

- B. Regulatory Options: The state of Alaska does not have regulatory authority for these species and until a waiver of the Marine Mammal Protection Act is granted which provides for state management there are no regulatory options. The waiver would not apply to bowhead and gray whales.

SPECIES: Upland Game Birds

<u>GMU</u>	<u>SUBSISTENCE</u>	<u>RECREATIONAL</u>	<u>COMMENTS</u>
18	3**	3*	
19	2**	1*	
20A	0**	1*	
20B	0**	3*	
20C	2**	3*	
20D	1**	3*	
20E	1**	3*	
21	2**	1*	
22	2A**	2A*	
23	2**	1*	
24	2**	1*	
25	2**	1*	
26	2**	1*	

SPECIES: Waterfowl

<u>GMC</u>	<u>SUBSISTENCE</u>	<u>COMMERCIAL</u>	<u>RECREATIONAL</u>	<u>COMMENTS</u>
18	3**	1	3*	
19	1**	0	1*	
20A	0*	0	1**	
20B	1*	0	3**	I
20C	1**	0	1*	I
20D	0*	0	2**	
20E	0**	0	0*	
21	2**	0	1*	
22	3**	1	1*	I
23	3**	0	1*	
24	2**	0	1*	
25	1**	0	1*	
26	3**	0	1*	

WATERFOWL PROBLEMS

I. Local vs. non-local use of waterfowl

- A. Scope: Non-local users of waterfowl compete with local residents of some areas for available waterfowl.
- B. Regulatory Options: Where reductions in waterfowl numbers available to subsistence users are caused by non-local hunters, the following types of regulations may be used to reduce conflicts:
 - 1. Allow surface transportation only in conflict areas.
 - 2. Adopt a short season for all licensed hunters, but have a longer season for local residents only.
- C. Problem Areas:
 - 1. Unit 12
 - 2. Unit 20B
 - 3. Unit 20C
 - 4. Unit 22

Species: Chinook Salmon

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
A-Y-K:				
Kuskokwim	3**	3*	1*	All are same fishermen.
Lower Yukon	2**	3*	1*	High commercial use.
Upper Yukon	3**	2*	1*	
Norton Sound	3**	3*	2*	Taken mainly Shaktoolik and Unalakleet.
Port Clarence	1**	0	1*	Low abundance, commercial prohibited.
Kotzebue	0	0	0	Low abundance.
Northern	1**	0	0	
Bristol Bay	3**	3*	3*	
Cook Inlet	0	1*	2*	Commercial catch is incidental.
Prince William Sound	2*	3**	2	Copper River dip net.
Alaska Peninsula	1*	1**	1*	Low use except Nelson Lagoon and Port Heiden.
Chignik	1*	1*	1**	Commercial harvest incidental.

Continued - Chinook Salmon

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
Kodiak	1*	1*	1**	Some subsistence in Karluk River.
Yakutat	1*	2**	1*	Subsistence take before commercial season.
Southeastern	0	3*	3**	Stocks low; valuable sport species. Subsistence prohibited.

SPECIES: Chinook Salmon

1. Present Use:

Chinook salmon are intensively utilized for commercial and subsistence purposes within the A-Y-K and Bristol Bay Areas, while they are used primarily for commercial or recreational purposes in other areas. Within the subsistence fishery, this salmon species is primarily used for consumption by humans, as opposed to their additional use for dog food as are other salmon species.

2. Conflicts/Problems:

Few conflicts arise between commercial and subsistence fishermen within the A-Y-K and Bristol Bay Areas, since both user groups are generally composed of the same individuals or family units. Potential problems are further minimized by current management or regulatory policies. Subsistence catches in other areas are small, which precludes conflicts; however, chinooks are used at moderate use levels in the Copper River subsistence fishery within the Prince William Sound Area. Consequently, subsistence use of chinooks may not be the highest priority use of the resource in all areas of the State.

3. Allocation:

Subsistence is the highest priority use of the resource in the intensive subsistence use areas of the state, such as within the A-Y-K Area. In other areas subsistence utilization of this species may be small, while other user groups may use this species extensively. Consequently, subsistence may not be designated as the highest priority use of the resource in these areas. However, due to the relative abundance of fisheries resources within the state, subsistence fishermen are able to meet their requirements through use of other fish species or retention of a portion of their commercial or recreational harvests.

4. Options:

Current regulations and management policies have been effective in providing for subsistence requirements and should be maintained.

SPECIES: Chinook Salmon (Kodiak Area)

- I. Increased incidental harvest of chinook salmon by commercial fishermen; increasing sport fishing effort affecting subsistence catch.

A. Scope:

The Karluk River has chinook runs of up to 10,000 fish, while the Red River contains up to 5,000 chinooks. These runs appear to be stable; however, commercial and sport effort and catches are increasing.

The sockeye run is rebuilding and a future commercial fishery targeting early run sockeye can be anticipated. This will result in an increased incidental commercial harvest of chinook salmon and decreased catches for recreational anglers. Sport effort at Karluk Lagoon is increasing, but subsistence effort is stable. Conflicts between recreational chinook fishermen and subsistence fishermen seining in local areas is becoming increasingly common.

B. Options:

1. Zone areas of the Karluk River system for subsistence and sport fishing.
2. Impose a subsistence harvest limit of 500 chinook for the village of Karluk.
3. Allow subsistence and sport fishing in the Karluk River system only when the Department weir counts indicate a surplus of fish.
4. Restrict the harvest of salmon in the Karluk River to non-chinook species.
5. Close the Karluk Lagoon to sport fishing.
6. Provide for release of chinooks taken incidental to commercial operations.

Species: Chum Salmon

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
A-Y-K:				
Kuskokwim	3**	3**	1*	
Lower Yukon	2**	3**	0-1*	High commercial use.
Upper Yukon	3**	3*	1*	High commercial use.
Norton Sound	3**	3*	1*	Commercial target species.
Port Clarence	3**	0	1*	Commercial prohibited.
Kotzebue	2**	3*	1*	Subsistence on Kobuk and Noatak rivers.
Northern	1**	0	0	Low abundance.
Bristol Bay	3**	3*	1*	Subsistence now incidental in many areas.
Cook Inlet	1*	3**	1*	Limited subsistence catch west side.
Prince William Sound	0	3**	1*	Important commercial.
Alaska Peninsula	1*	3**	0	
Chignik	1*	3**	0	

Continued - Chum Salmon

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
Kodiak	2*	3**	1*	High commercial use.
Yakutat	1*	1**	1*	Low subsistence effort.
Southeastern	1*	3**	1*	Low subsistence effort.

SPECIES: Chum Salmon

1. Present Use:

Chum salmon are extensively used for commercial and subsistence purposes within the A-Y-K and Bristol Bay Areas. They are used little for subsistence or recreational purposes in other areas, but are heavily exploited for commercial operations. This species is consumed by humans for subsistence purposes, but is also fed to dogs in large quantities.

2. Conflicts/Problems:

Few conflicts occur between user groups within high use subsistence areas, since the groups are generally composed of the same individuals or family units. Potential conflicts are further minimized by current management or regulatory policies; however, specific problems have been discussed in attachments. No major conflicts are present in most areas of the state, except as described in the attached major problem section.

3. Allocation:

Subsistence is the highest priority use of the resource in intensive subsistence use areas. The lack of subsistence fisheries and the presence of other user groups may preclude subsistence from being designated as the highest priority use of the resource in all fisheries; however, the abundance of alternative fishery resources insures subsistence requirements may be met in all fisheries. In addition, fish may be retained from commercial or sport fishery catches for personal use.

4. Options:

Current management policies and regulations should be maintained, since they adequately provide for subsistence requirements.

Salmon (Nome subdistrict of the Norton Sound Area)

1. Present Use:

Local salmon populations are currently highly utilized for subsistence purposes. Commercial fishermen target chum salmon almost to the exclusion of pink salmon.

2. Conflicts/Problems:

Access to local salmon streams has increased in recent years, which has resulted in increased fishing pressure upon resident stocks. Improved access has resulted in:

a. An expansion of fishing effort into non-traditional or previously little utilized fishing areas.

b. Conflicts between subsistence users. Due to the increased fishing pressure and the limited nature of local stocks, restrictions have been placed upon various user groups. Subsistence permit systems have been enacted in some areas to allow needed subsistence catch data to be collected and, in the some cases, to restrict the harvest and ensure adequate escapements. In some locations additional restrictions placed upon subsistence harvests may result in an inadequate harvest by some users.

c. Conflicts between commercial and subsistence users. Expansion of the subsistence fishery has meant the commercial fishery has been stabilized at conservative harvest levels to ensure adequate fish escapements for the subsistence fishery. In Nome, additional restrictions in the commercial harvest level may result in a non-viable commercial fishery.

3. Allocations:

Subsistence has been designated the highest priority use of the resource.

4. Options:

a. Close or further restrict fishing activities in various streams: those on the Nome-Teller Road.

b. Limit subsistence catches by reducing the number of fish allowed to be taken on each permit. Currently, smaller individual harvests are allowed in streams closest to Nome, while increased harvests are allowed in outlying areas.

- c. Further restrict the commercial fishery by:
 - (i) reducing the harvest guidelines
 - (ii) close the commercial fishery.
- d. Restrict the subsistence fishery:
 - (i) provide for all fishing along the road system to be managed under sport fishing regulations and bag limits
 - (ii) reduce the amount of gear or fishing time
 - (iii) employ subsistence criteria.

5. Eligibility Criteria:

a. Customary and traditional use: Many local residents, caucasian and native alike, have only resided within the area during the last 25 years or so. For example, one of the largest subsistence groups, the King Island residents, have lived in the area for a relatively short time. Consequently, it would be difficult to utilize this criteria in a meaningful fashion.

b. Customary and traditional direct dependence: Fishery resources are used to varying degrees by many local residents; however, they are used as a supplement to other forms of cash or food. To accurately utilize this criteria, the percent dependence upon the resource by permit applicants must be determined. The information would have to be gathered on an individual basis rather than a community basis, if legitimate applicants are not to be excluded. This criteria could be a key in determining subsistence users.

c. Availability of alternative resources: About 200 walrus and 150 moose were harvested by Nome's residents during the fall of 1977 and spring of 1978. This take exceeded the usable protein harvest of subsistence fishermen several fold. Those users able to harvest these game animals may not have as much need for fisheries resources as others who do not. In addition to alternative natural resources, many Nome residents are able to obtain food from stores, so once again the "percent dependence upon natural resources" may be important.

d. Residency: Virtually all subsistence users near Nome live in the community or close by. This criteria would be invalid here.

e. Summary: As a "service center" for Norton Sound communities, Nome provides opportunities for employment and for people to obtain food at several stores. While fishery resources supplement subsistence requirements, game animals provide an abundant source of alternative resources for many. It appears that the two criteria which would be most useful in issuing subsistence fishing permits would be: 1) percent dependence upon the resource; 2) availability of alternative resources.

Species: Coho Salmon

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
A-Y-K Area:				
Kuskokwim	2**	3*	2*	High commercial use on Kuskokwim River.
Lower Yukon	1*	2**	0-1	Low abundance.
Upper Yukon	2**	2*	1*	Low abundance.
Norton Sound	1**	2*	1*	Taken mainly Shaktoolik to Unalakleet.
Port Clarence	1**	0	1*	Commercial prohibited.
Kotzebue	0	0	0	Low abundance.
Northern	1**	0	0	Low abundance.
Bristol Bay	2**	3*	3*	High subsistence use in some villages.
Cook Inlet	2*	2*	3**	Major species available during subsistence season.
Prince William Sound	0*	3**	2*	Important commercial, frequent species.
Alaska Peninsula	1*	2**	1*	
Chignik	1*	3**	1*	

Continued - Coho Salmon

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
Kodiak	1*	3*	2**	Important recreational and commercial species.
Yakutat	1*	3**	2**	Important commercial and recreational.
Southeastern	0	3*	3**	Subsistence prohibited important recreational species.

SPECIES: Coho Salmon

1. Present Use

Cohos are used at moderate use levels for subsistence purposes within the A-Y-K, Bristol Bay and Cook Inlet areas, while they are used for commercial or recreational purposes in other areas.

2. Conflicts/Problems:

Few conflicts are present; however, a recent conflict has arisen in Cook Inlet where recreational fishermen feel the late coho runs to the Kenai River should be reserved for sport fishermen. A similar problem has surfaced in the Karluk Lagoon drainage of the Kodiak area. However, there are no major conflicts between user groups in most areas.

3. Allocation:

In areas of intensive subsistence use, cohos are designated as being primarily for subsistence use; however, subsistence has been designated a lower priority in areas of low subsistence effort or catches. Subsistence requirements in these areas are made from alternate fishery resources or from retention of portions of commercial or sport harvests.

4. Options:

Current management and regulatory policies have adequately provided for subsistence requirements and should be maintained.

Species: Pink Salmon

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
A-Y-K:				
Kuskokwim	1*	1**	2*	Taken mainly Quinhagak Goodnews.
Lower Yukon	1**	1*		Low abundance.
Upper Yukon	0	0	0	
Norton Sound	3**	3*	1*	Not a commercial target.
Port Clarence	3**	0	0-1*	Commercial prohibited.
Kotzebue	0**	0	0*	Low abundance.
Northern	1**	0	0	Low abundance.
Bristol Bay	2**	3*	1*	Even years only; incidental harvest.
Cook Inlet	1*	3**	2*	High commercial, frequent use.
Prince William Sound	0	3**	1*	Important commercial species.
Alaska Peninsula	1*	3**	1*	
Chignik	1*	3**	1*	
Kodiak	2**	3**	3*	Very abundant.

Continued - Pink Salmon

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
Yakutat	1*	2**	2*	
Southeastern	1*	3**	3*	Becoming important recreational fish.

SPECIES: Pink Salmon

1. Present Use:

Pink salmon are not important subsistence species except within the Port Clarence, Norton Sound, and Bristol Bay areas; however, this is a very important commercial and recreational fish in some areas; e.g. Kodiak and Southeastern.

2. Conflicts/Problems:

None.

3. Allocation:

Pink salmon are not commercial target species in any area of intensive subsistence use, such as Norton Sound. In Bristol Bay they are taken incidentally to other fisheries. Consequently, subsistence is the highest priority use of the resource in these areas. In other areas of the state where subsistence catches of pink salmon are small in comparison to utilization by other user groups, subsistence may not be the highest priority use. However, subsistence requirements may be met through the use of other fishing resources or the retention of fish from commercial or recreational harvests.

4. Options:

Maintain current management and migratory policies which adequately provide for subsistence requirements.

Species: Sockeye Salmon

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
A-Y-K:				
Kuskokwim	3**	3*	2*	Taken mainly Goodnews and Kanektok.
Lower Yukon	0	0	0	Low abundance.
Upper Yukon	0	0	0	Low abundance.
Norton Sound	0	0	0	Low abundance.
Port Clarence	3**	0	0-1*	Commercial prohibited.
Kotzebue	0	0	0	Low abundance.
Northern	1**	0	0	Low abundance.
Bristol Bay	3**	3*	2*	Same people in subsistence and commercial.
Cook Inlet	1*	3**	2*	Major commercial species.
Prince William Sound	2**	3*	1*	Copper River dip net is major subsistence.
Chignik	1*	3**	0*	
Alaska Peninsula	1*	3**	0*	

SPECIES: Sockeye Salmon

1. Present Use:

Sockeyes are used for subsistence purposes in significant amounts within the A-Y-K, Bristol Bay and Prince William Sound (including the Copper River drainage) areas. In most areas of the state they are used primarily for commercial purposes and only moderately for recreation.

2. Conflicts/Problems:

Few conflicts occur pertaining to subsistence use of this species; however, a problem is present within the Copper River drainage of the Prince William Sound area. This fishery is discussed in greater depth in the attached problem analysis.

3. Allocation:

In areas where sockeye salmon are important to subsistence fisheries, subsistence has been designated as the highest priority use of the resource. In areas where subsistence utilization is low other uses have been assigned a higher priority. Subsistence fishermen are still able to meet subsistence requirements through the use of alternate fishery resources and/or the retention of fish from commercial or recreational harvests.

4. Options:

Maintain current regulatory and management policies, which have adequately provided for subsistence requirements.

Continued - Sockeye Salmon

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
Kodiak	2**	3*	1*	
Yakutat	1*	3**	1*	Low subsistence effort.
Southeastern	1*	3**	1*	Low recreational use; low subsistence effort.

Copper River Salmon Fisheries

1. Present Use: Although commercial fishing is prohibited in the Copper River proper, high use of these stocks is made in a large commercial fishery located offshore from the river mouth.

Moderate to high subsistence use is made upriver, but the total harvest resulting from this fishery is much smaller than the commercial catch. There are two subsistence user groups. One small group consists mainly of watershed residents with long standing high dependency on these resources, who utilize fishwheels as capture gear. The other larger group consists mainly of urban residents who utilize dip nets, and fishwheels to a lesser extent.

Sport fishing use is low except in a relatively few streams including the Gulkana River.

2. Conflicts/Problems:

- a. Allocation of catches between user groups during periods of low salmon abundance. Commercial fishermen feel threatened by potential increases in urban subsistence participants, resultant harvests, and the political clout they represent. Subsistence fishermen claim overharvesting by the commercial fishery and in addition, watershed residents resent sharing their traditional fishery with increasing numbers of urban residents.
- b. Many people question the need or right of urban residents to take salmon in this area under liberal subsistence regulations.
- c. Run strength cannot be adequately determined until a few weeks into the commercial fishery located at the river mouth. During years of small runs the upriver subsistence fishery may require more restrictions proportionately than the commercial fishery to provide for adequate brood stocks.

3. Allocation: Subsistence use is given preference, but should be stabilized at current levels. Subsistence harvests for individuals or households should be allocated on the basis of direct dependence on Copper River drainage fish and game resources. It is recognized that the commercial fishery will be the major user of the salmon resources, but must be managed in a manner to allow an upriver escapement sufficient for spawning and subsistence fishing requirements.

4. Options:

- a. Place all dipnetting activities under sport fishing regulations, retaining similar seasons, open fishing periods and areas, bag limits, etc. Urban and high income users would continue to have access to this fishery.

- b. Continue existing subsistence regulations (permit required, fishing seasons and periods, open and closed areas, etc.) and establish a subsistence catch quota for sockeye salmon, the primary species in conflict, based on a previous 5 or 10 year average catch. Watershed residents having greater subsistence dependencies would be allocated the largest harvests based on the attached allocation formula.
- c. Allocate subsistence harvests of sockeye salmon to individuals or heads of household based on direct resource dependancy according to the attached formula.
- d. Regulations and policies implementing allocation of harvests between all user groups should be examined by the Board of Fisheries at least every three years, taking into account any interim changes in run status and user group need.
- e. Develop regulations, strategies, and techniques to manage the commercial fishery so as to insure that the subsistence catch quota can be taken without impairing spawning requirements, even during years of low salmon abundance.
 - 1) Salmon enhancement programs are currently underway and, if successful, salmon that are surplus to spawning and hatchery needs could be given to subsistence users.
 - 2) An expanded sonar program will be implemented and should improve in-season run assessment, if a small run is indicated, a reduction in commercial fishing time must be accomplished prior to the completion of the early sockeye run which constitutes upriver spawning stocks important to the subsistence fishery.
- f. Prohibit susbsistence fishing along any new access points (road, trail, airport) if such use is not already in existence.

Allocation of salmon by income and family size for the Copper River
Subsistence Fishery

Salmon per permit issued to:	More than: but less than:	Income Increments				
		0 \$6,000	\$6,000 \$10,000	\$10,000 \$14,000	\$14,000 \$20,000	\$20,000
An individual		100	30	20	15	10
A family		200	60	40	30	25
For each additional child in a family		20	5	5	5	0
Total allowed for additional children in a family		100	20	20	10	0
Maximum permit allocation		300	80	60	40	25

NOTE: This allocation formula was submitted in the form of a regulatory proposal by the Copper River Advisory Board to the Board of Fisheries in December, 1977.

Species: Arctic Char / Dolly Varden

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
A-Y-K:				
Kuskokwim	2**	0	3*	Important local use recreational fishery; limited subsistence use.
Yukon	2*	0	1**	Limited abundance; important recreational fish.
Norton Sound	2*	1*	3**	Important recreational species.
Port Clarence	1*	0	2**	Important recreational species.
Kotzebue	3**	1	1*	Important subsistence and recreational species.
Northern	2*	0	3**	Important recreational species.
Bristol Bay:				
Kvichak - Naknek	1*	0	2**	In Kvichak drainage recommended for subsistence.
Togiak	2**	1	2*	
Nushagak - Mulchatna	2**	0	2*	
Prince William Sound	0	0	1**	
Cook Inlet:				
West Side (Susitna to Cape Douglas)	0	0	2	

Continued - Arctic Char / Dolly Varden

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
East Side (Susitna to Portage)	0	0	3**	
Anchor Point to Cape Fairfield	0	0	3**	
Alaska Peninsula	1*	0	1**	Small population available not accessible for subsistence.
Kodiak:				
Kodiak Island, West of Hidden Basin to Kekur Point.	1**	1	1*	
Afognak - Raspberry Island; Kodiak Island Hidden Bay to Kekur Point.	0*	0	3**	Abundant.
Southeastern	1*	0	3**	Important recreational fishery.

Arctic Char/Dolly Varden:

I. Conflict of subsistence and recreational fishermen.

Increase in recreational fishing pressure may interfere with subsistence harvests.

A. Scope

In many cases (Kivalina, Noatak, Kuskokwim drainage, Bristol Bay) subsistence and recreational fishermen are the same person. Recreational harvest in most cases only a small percentage char are important subsistence and recreational species in the state with a few small commercial fisheries operating.

B. Regulatory Options

1. Allow subsistence fishing by permit.
2. Zone areas where subsistence fishing only and where recreational fishing only.
3. Prohibit use of airplanes for subsistence fishing.
4. Separate regulations for anadromous char as opposed to resident char.

C. Potential Problem Areas

1. Kuskokwim district.
2. Norton Sound district.
3. Northern district.

Species: Burbot

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
A-Y-K:				
Kuskokwim	3**	0	1*	
Yukon	3**	0	2*	
Norton Sound	1**	0	1*	
Port Clarence	1**	0	0*	
Kotzebue	3**	0	1*	
Northern	1**	0	1*	
Bristol Bay:				
Kvichak - Naknek	1**	0	1*	
Togiak	1**	0	0*	
Nushagak - Mulchatna	1**	0	0*	
Prince William Sound	0	0	3**	
Cook Inlet:				
West Side (Susitna to Cape Douglas)	0**	0	1*	
East Side (Susitna to Portage)				absent

Continued - Burbot

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
Anchor Point to Cape Fairfield				absent
Alaska Peninsula	1**	0	0*	
Kodiak				absent
Southeastern				absent

Species: Grayling

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
A-Y-K:				
Kuskokwim	1*	0	3**	Important recreational species.
Yukon	1*	0	3**	Important recreational species.
Norton Sound	1*	0	3**	Important recreational species.
Port Clarence	1*	0	3**	Important recreational species.
Kotzebue	1*	0	3**	Important recreational species.
Northern	1*	0	3**	Important recreational species.
Bristol Bay:				
Kvichak - Naknek	1*	0	2**	
Togiak	1	0	1**	Important recreational fishery
Nushagak - Mulchatna	1*	0	2**	Near villages, subsistence preference recommended.
Prince William Sound	0	0	3**	
Cook Inlet:				
West side (Susitna to Cape Douglas)	0	0	2**	
East side (Susitna to Portage)	0	0	3**	

Continued - Grayling

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
Anchor Point to Cape Fairfield				absent
Alaska Peninsula	1*	0	2**	Alternate resources available.
Kodiak:				
Kodiak Island West of Hidden Basin Kekur Point				absent
Afognak - Raspberry Island Kodiak Island Hidden Basin to Kekur Point.	0	0	2**	Stocked lakes.
Southeastern Alaska	0	0	3**	High recreational use.

Species: Northern Pike

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
A-Y-K:				
Kuskokwim	3**	0	1*	Locally important recreational fisheries.
Yukon	3**	0	2*	See "Problems".
Norton Sound	1*	0	3**	
Port Clarence	1**	0	1*	
Kotzebue	3**	0	1*	
Northern	1*	0	3**	Very limited distribution and abundance.
Bristol Bay:				
Kvichak - Naknek	1**	0	1*	
Togiak	1**	0	1*	
Nushagak - Mulchatna	1*	0	2**	Subsistence recommended in Wood River system.
Prince William Sound				absent
Cook Inlet:				
West side (Suistna to Cape Douglas)	0**	0	1*	

Continued - Northern Pike

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
East Side (Susitna to Portage)				absent
Anchor Point to Cape Fairfield				absent
Alaska Peninsula	1**	0	1*	
Kodiak				absent
Southeastern	0	0	1*	Very low abundance.

Northern Pike:

- I. Subsistence fishermen in Minto Flats net northern pike which are highly desired by recreational fishermen.

- A. Scope

The village of Minto relocated from the Tanana River to the Tolovana River. This has resulted in increased harvest of pike in the vicinity of the village. Recreational fishermen have also used the area for years. Conflicts will result with increased harvest by either user groups. Most subsistence fishing is done with nets and often whitefish are the target species but pike are still caught incidentally.

- B. Regulatory Options

1. Subsistence fishing by permit.
 2. Close certain areas to recreational fishing.
 3. Allow no expansion of subsistence fishery.
 4. Lower sport bag limit.
 5. Adopt subsistence harvest methods that protect pike.

- C. Problem Area

Yukon district.

Species: Sheefish

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
A-Y-K:				
Kuskokwim	3**	0	2*	Important subsistence locally important recreational fishery.
Yukon	3**	1*	2*	See "Problems."
Norton Sound	2*	0	1**	Low abundance.
Port Clarence				absent
Kotzebue	3**	2	1*	See "Problems".
Northern				absent
Bristol Bay				absent
Cook Inlet				absent
Prince William Sound				absent
Chignik				absent
Alaska Peninsula				absent
Kodiak				absent
Yakutat				absent
Southeastern				absent

POTENTIAL PROBLEM AREAS

Sheefish:

- I. Heavy urban subsistence netting in Tanana River near Fairbanks may be incidentally capturing local sheefish population.

- A. Scope

Subsistence salmon netting in Tanana River has been increasing and incidental harvest of sheefish could wipe out this small, but expanding sheefish population. This is one of few areas where sheefish are available to urban recreational fishermen.

- B. Regulatory Options

1. Abolish or reduce urban subsistence fishery.
 2. Subsistence fishing by permit but more restrictive than present.
 3. Zone subsistence fishing areas.
 4. Partial closed season.

- C. Problem Areas

Yukon District

- II. Commercial and subsistence gill net fisheries may be reducing sheefish population in Kuskokwim River.

- A. Scope

The increased gill net fishery mainly for salmon is incidentally harvesting large numbers of sheefish. The anadromous sheefish are taken by gill net from breakup until freezeup. They are important for subsistence especially early in summer before the king salmon run. Important recreational fisheries (mainly local residents) exist in the Aniak and Sleetmute areas. Incidental harvest of sheefish needs to be determined.

- B. Regulatory Options

1. Subsistence fishing by permit only.
 2. Closed season on spawning grounds.
 3. Lower sport bag limit entire drainage.
 4. Close commercial fisheries in areas of high sheefish concentrations.

III. Kotzebue area commercial fishery conflicts with Kobuk River subsistence harvest.

A. Scope

Upriver residents feel that Kotzebue area commercial fishery is taking their fish. The commercial fishery has a limit of 25,000 pounds. There is a large upriver subsistence fishery plus the Kotzebue area and Selawik winter and summer subsistence fishery. A small recreational fishery (mainly local residents) occurs in the Kotzebue, Kobuk River and Selawik areas.

B. Regulatory Options

1. Prohibit commercial fishing for sheefish.
2. Lower sport bag limit.
3. Subsistence fishing by permit and possibly quota.

C. Problem Areas

Kotzebue district.

Species: Steelhead

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
A-Y-K				absent
Bristol Bay				absent
Prince William Sound	1*	0	1**	
Cook Inlet	1*	0	3**	Subsistence catch composed of incidental catch August thru September.
Kodiak	2*	0	3**	Alternate resources available.
Southeastern	1*	0	3**	Important recreational fish moderate abundance.

SPECIES: Steelhead (Kodiak Area)

- I. Increased sport fishery effort conflicts with the subsistence fishery; a commercial coho salmon fishery incidentally harvests steelhead.

A. Scope:

The Karluk River has a run of about 5,000 steelhead and 10,000-20,000 coho salmon. Karluk villagers take steelhead for subsistence purposes, while recreational fishermen utilize this species also. A commercial fishery is conducted for coho salmon.

Sport fishing effort within the Karluk River system is increasing, which is impacting the subsistence fishery. Commercial fishermen are required to release incidentally caught steelhead; however, the results of this procedure have not been measured.

B. Options:

1. Zone areas of the Karluk system for subsistence and sport fishing.
2. Impose a subsistence limit of 500 steelhead for the village of Karluk.
3. Allow subsistence and sport fishing in the Karluk System only when weir counts indicate a surplus of fish.
4. Restrict the harvest of salmon in the Karluk area to species other than steelhead.
5. Make it illegal for steelhead to be possessed by canneries or tenders in the Karluk District.
6. Steelhead killed incidental to commercial fishing at Karluk Lagoon become the property of the State.

Species: Cutthroat Trout

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
A-Y-K				absent
Bristol Bay				absent
Prince William Sound	0	0	2*	
Cook Inlet				absent
Kodiak				absent
Southeastern	0	0	3**	High recreational value.

Species: Lake Trout

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
A-Y-K:				
Kuskokwim	1*	0	3**	Important recreational species low subsistence use.
Yukon	1*	0	3**	Important recreational species low subsistence use.
Norton Sound				absent
Port Clarence				absent
Kotzebue	0	0	3**	Important recreational species low subsistence use.
Northern	1*	0	3**	Important recreational species low subsistence use.
Bristol Bay:				
Kvichak - Naknek	2*	0	1**	Important recreational fish alternate resources.
Togiak	0*	0	1**	Not readily accessable.
Nushagak - Mu chatna	0*	0	1**	Low abundance.
Prince William Sound	0	0	3**	
Cook Inlet:				
West Side (Susitna to Cape Douglas)	0	0	1**	

Continued - Lake Trout

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
East Side (Susitna to Portage)	0	0	3**	
Anchor Point to Cape Fairfield				absent
Alaska Peninsula	0*	0	1**	Not readily accessible to subsistence fishermen.
Kodiak:				
Kodiak Island West of Hidden Basin to Kekur Point.				absent
Afognak - Raspberry Island; Island Hidden Basin to Kekur Point.				absent
Southeastern				absent.

Lake Trout

- I. Increased use by airplane subsistence fishermen may impact lake trout populations.

- A. Scope

Presently nearly all lake trout lakes in the A-Y-K area are open to subsistence fishermen without permit, limit or gear restrictions. The lake trout, because of its remoteness, is generally unavailable to traditional subsistence fishermen. It is one of the most important recreational fish in Interior Alaska. Harvest is low but lake trout populations in Interior and Arctic Alaska will never be able to sustain large harvests. With the possible tightening of subsistence fishing opportunities close to the urban areas (Fairbanks, Nome), the urban 'subsistence' fishermen, using an airplane could legally gill net lake trout in most of the lakes.

- B. Regulatory Options

1. Close all lakes to subsistence fishing.
 2. Subsistence fishing for lake trout by permit only.
 3. Subsistence fishing for lake trout by hook and line only.
 4. Closed season during May and September thru October when lake trout are more vulnerable to harvest.

Species: Rainbow Trout

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
A-Y-K:				
Kuskokwim	2*	0	3**	See "Problems".
Yukon	0	0	3**	Stocked lakes only.
Norton Sound				absent
Port Clarence				absent
Kotzebue				absent
Northern				absent
Bristol Bay:				
Naknek	1*	0	3**	I (see narrative).
Togiak	1*	0	2**	Alternate resources available.
Nushagak - Mulchatna	1	0	2**	Low abundance.
Prince William Sound	0	0	2*	
Cook Inlet:				
West Side (Susitna to Cape Douglas)	0	0	2**	
East Side (Susitna to Portage)	0	0	3**	Area now closed to commercial and subsistence fishing.

Continued - Rainbow Trout

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
Anchor Point to Cape Fairfield	0	0	1**	Isolated lake populations.
Alaska Peninsula	0	0	1**	Low abundance.
Kodiak:				
Kodiak Island West of Hidden Basin to Kekur Point.	0	0	2**	Low abundance; alternate resources.
Afognak - Raspberry Island Kodiak Island Hidden Basin to Kekur Point.	0	0	2**	Low abundance; alternate resources available.
Southeastern Alaska	0	0	3**	Stocked in lake systems.

Rainbow Trout:

- I. Late winter recreational subsistence fishermen may be impacting rainbow trout populations.

A. Scope

A local use rainbow trout fishery has been operating in the Aniak River and other streams of the lower Kuskokwim. This late winter fishery uses hook and line as the capture method. By legal definition this could be called either a recreational fishery or a subsistence fishery. Most participants are local residents, although some Bethel residents land via airplane in the middle Aniak River to fish for trout. The harvest has probably been increasing due to increased access via snow machine to the Aniak River.

B. Regulatory Options:

1. Partial stream closure to all users in late winter.
2. Rainbow trout legal gear - hook and line only.
3. Rainbow trout subsistence fishery by permit only.
4. Lower sport bag limit.
5. Prohibit use of airplane for winter rainbow subsistence fishery.
6. Re-define gear and administer under sport fishing regulations.

C. Potential Problem Area

Kuskokwim district.

Species: Whitefish

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
A-Y-K:				
Kuskokwim	3**	1*	0*	Important subsistence fish small recreational fishery.
Yukon	3**	1*	2*	Important subsistence fish.
Norton Sound	3**	1*	1*	Important subsistence fish.
Port Clarence	3**	0	0	Important subsistence fish.
Kotzebue Sound	3**	0	1*	Important subsistence fish.
Northern	3**	2*	1	Important subsistence fish.
Bristol Bay:				
Kvichak - Naknek	3**	0	1*	Important subsistence.
Togiak	2**	0	0*	Important subsistence.
Nushagak - Mulchatna	1**	0	0*	Important subsistence.
Prince William Sound	1**	1	2*	
Cook Inlet:				
West side (Susitna to Cape Douglas)	0**	0	1*	
East side (Susitna to Portage)				absent

Continued - Whitefish

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
Anchor Point to Cape Fairfield				absent
Alaska Peninsula	1**	0	0*	
Kodiak				absent
Southeastern				absent

Kusko'wim River Whitefish

1. Present Use: High subsistence use by local residents for food for humans and dogs; low commercial use at present, but has potential to increase substantially; no sport fishing use.
2. Conflicts/Problems:
 - a. Few conflicts between subsistence and commercial fishing at present, but gear conflicts and overharvesting could result if there were a substantial increase in commercial fishing.
 - b. Present subsistence fishery in some locations is wasteful and may be resulting in overharvesting. Specific problems include leaving gillnets unattended for long periods of time and blocking waterways with fishing gear.
 - c. Subsistence harvests, and therefore need, are not adequately documented.
 - d. Some whitefish stocks undergo extensive migrations and their management must encompass a large portion of the drainage.
3. Allocation: Local subsistence use to be given preference with a small surplus allocated to commercial fishery mainly for local markets. Participation of residents from outside the watershed in these fisheries should remain insignificant. Sport fishing use is expected to remain insignificant.
4. Options:
 - a. Continue present regulations and policy in respect to commercial fisheries:
 - 1) Commercial fishing closed in the Johnson River drainage.
 - 2) Commercial fishing authorized by special permit only which places harvest limitations on individual buyers and prohibits use of gillnets less than 5 inch mesh.
 - b. Consider regulatory proposal creating area or subarea catch quotas for commercial fishing.
 - c. In locations where subsistence fishing abuses are occurring require that gillnets be removed from the water at regular intervals and begin enforcing present regulations pertaining to identification of fishing gear and blocking waterways with fishing gear.
 - d. Expand I & E program to discuss issues with local residents.
 - e. Initiate program to determine subsistence use levels and need.

Species: Bottomfish

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
A-Y-K				under "other species"
Bristol Bay				under "other species"
Cook Inlet:				
West Side (Susitna to Cape Douglas)	0*	1**	0	
East Side (Susitna to Portage)	0**	0*	0	Stocks unknown.
Anchor Point to Cape Fairfield	0**	2*	1*	May be high potential.
Kodiak				under "other species"
Southeastern				under "other species"

Species: Halibut

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
A-Y-K:				
Kuskokwim	1**	0	0	
Yukon	0	0	0	
Norton Sound	1**	0	0	
Port Clarence	0	0	0	
Kotzebue	0	0	0	
Northern	0	0	0	
Bristol Bay				under "other species"
Cook Inlet:				
West Side (Susitna to Cape Douglas)	1**	2*	1*	
East Side (Susitna to Portage)	0**	1*	2*	
Anchor Point to Cape Fairfield	1*	3**	2*	
Kodiak:				
Kodiak Island West of Hidden Basin to Kekur Point	2**	3*	0*	

Continued - Halibut

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
Afognak - Raspberry Island Kodiak Island Hidden Basin to Kekur Point	2**	3*	3*	
Southeastern	1	0	3**	High recreational use.

Species: Herring

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
A-Y-K:				
Kuskokwim	3**	1*	0	
Yukon	2**	1*	0	
Norton Sound	1**	0*	0	
Port Clarence	1**	0*	0	
Kotzebue	1**	0*	0	
Northern	1**	0	0	
Bristol Bay:				
Kvichak - Naknek				under "other species"
Togiak	1**	3*	0	
Nushagak - Mulchatna				under "other species"
Prince William Sound	1*	3**	1*	Recreational use for bait capture.
Cook Inlet:				
West Side (Susitna to Cape Douglas)	1*	3**	0	
East Side (Susitna to Portage)	1**	2*	0	

Continued - Herring

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
Anchor Point to Cape Fairfield	1**	2*	0	
Alaska Peninsula				under "other species"
Kodiak				under "other species"
Southeastern	1**	1*	1*	

Herring Fisheries - Cape Newenham to Yukon River

1. Present Use: Low to high subsistence use by local residents depending on location, with very high use in Nelson Island area (present subsistence catch is small compared to the estimated herring population). Domestic commercial use currently low but potentially high; foreign commercial use of these same stocks in inshore waters is currently high.
2. Conflicts/Problems
 - a. Herring resources have declined in past years and are only recently showing good recovery. Subsistence users are fearful of overharvesting by an expanding domestic commercial fishery. Overharvesting may result from fisheries within local areas and fisheries intercepting stocks bound for other areas.
 - b. Subsistence users are fearful that introduction of commercial fishing will result in subsistence fishing restrictions.
 - c. Some local residents are interested in commercial fishing but feel that present regulations allowing purse seines favor the operation of large, mobile and more competitive fishing fleets from Kodiak and other areas of the state.
 - d. Failure of domestic fisheries to take available surplus of eastern Bering Sea herring stocks will perpetuate and possibly increase offshore harvests of the foreign fishing fleet (based on the Fisheries Conservation and Management Act of 1976).
3. Allocation: Local subsistence is given preference with any surplus beyond subsistence needs allocated to domestic commercial fishery. Local residents should be encouraged to participate in the domestic commercial fishery. The foreign commercial fishery in offshore waters should be reduced to only the incidental take of herring in fisheries targeting on other species.
4. Options:
 - a. Regulations adopted for the 1978 season represent partial solutions:
 - 1) The coastline between Carter Spit and Dall Point is closed to commercial fishing (includes Kuskokwim Bay, Nelson Island, Nunivak Island, Hooper Bay, etc).
 - 2) Commercial fishing districts have been established immediately adjacent to known spawning areas to minimize interception of stocks bound for other areas; also these districts have been established in areas where subsistence fishing is minimal or non-existent.

- 3) Commercial fishery is restricted to relatively small guideline harvest levels. Intensive monitoring of the fisheries is done to insure harvestable surpluses.
 - 4) No restrictions on subsistence fishing.
- b. Additional regulation proposals to be considered include:
- 1) Prohibition of purse seines, thus allowing only gillnets and beach seines as commercial fishing gear; or establish separate quotas for each gear type.
 - 2) Area registration, which restricts commercial fishermen to fishing in just one "area" during any fishing season.
 - 3) The above regulations would favor local resident participation, result in a slower paced, easier to manage fishery, and minimize conflicts between subsistence and commercial fishermen.
- c. An expanded I & E program consisting of the following elements:
- 1) Frequent meetings between Department and local residents to discuss issues.
 - 2) Distribute in-season information to local residents regarding abundance and distribution of herring and fishing techniques that will make fishing more productive.
 - 3) Encourage local residents in adjacent villages to share catches or fishing grounds if there is a shortage of herring due to inclement weather or unusual fish migration patterns.
- d. Continue no restriction of subsistence fishery unless illegal sale of subsistence caught fish is occurring.

Species: Smelt

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
A-Y-K:				
Kuskokwim	3**	0	0	
Yukon	3**	0	0	
Norton Sound	3**	0	0	
Port Clarence	3**	0	0	
Kotzebue	3**	0	0	
Northern	3**	0	0	
Bristol Bay:				
Kvichak - Naknek	3**	0	1*	
Togiak	3**	0	1*	
Nushagak - Mulchatna	3**	0	1*	
Prince William Sound	1**	0*	0*	
Cook Inlet:				
West side (Susitna to Cape Douglas)	0**	0	1*	
East side (Susitna to Portage)	3**	0	2*	Subsistence - mouth of Kenai only.

Continued - Smelt

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
Anchor Point to Cape Fairfield	0**	0	0	
Alaska Peninsula	1**	0*	0*	
Kodiak				(under other species)
Southeastern	1*	0	3**	Important future recreational use.

Other Species: Lamprey, sucker, blackfish, stickleback, chub, sculpins and numerous marine species.

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
A-Y-K:				
Kuskokwim	3**	0*	0*	
Yukon	3**	0*	0*	
Norton Sound	3**	0*	0*	
Port Clarence	3**	0*	0*	
Kotzebue	3**	0*	0*	
Northern	3**	0*	0*	
Bristol Bay:				
Kvichak - Nushagak	1**	0	0*	
Togiak	1**	0	0*	
Nushagak - Mulchatna	1**	0	0*	
Alaska Peninsula	1**	0	0*	
Kodiak:				
Kodiak Island West of Hidden Basin to Kekur Point	1**	3*	0*	
Afognak - Raspberry Island Kodiak Island Hidden Basin to Kekur Point.	0**	1	2*	

Continued - Other Species

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
Southeastern flounder cod rockfish	1*	0	3**	High recreational use; will become more important for recreation.

Species: King Crab 1/

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
Kodiak	2*	3**	1*	High commercial use.
Alaska Peninsula	2*	3**	1*	High commercial use.
Dutch Harbor	2*	3**	1*	High commercial use.
Adak	2*	3**	1*	Commercial species.
Bering Sea	2*	3**	1*	

1/ Data for other areas unavailable at time of printing.

SPECIES: King Crab

1. Present Use:

Current commercial utilization is extremely high, while subsistence/recreational use levels are low to moderate. Many people who fish recreationally take shellfish under the subsistence portions of current regulations. One area of above average subsistence and recreational use is in the Nome section of the Northern Bering Sea district.

2. Conflicts/Problems:

There are no conflicts between most user groups; however, problems associated with the Nome section fishery are discussed in an attachment.

3. Allocation:

In most areas king crab are used primarily for commercial purposes, while subsistence effort and catches are low. Consequently, commercial uses are designated as the highest priority use of this resource. However, in the Nome section of the Northern Bering Sea district longstanding subsistence and recreational fisheries have occurred. In this section regulations and policies have been designed to protect these fisheries. In all areas, few regulations exist limiting subsistence use of king crab.

4. Options:

Maintain current regulations and management policies in most areas, since they adequately provide for subsistence requirements.

King Crab (Nome Section of Northern Bering Sea)

1. Present Use:

King crab are currently being utilized by subsistence fishermen at low to moderate levels. Commercial fishing effort and catches have increased tremendously during the last few seasons after initiation of a winter "through the ice" fishery and a summer large vessel fishery.

2. Conflicts/Problems:

a. King crabs are used for recreation and subsistence by local residents during the winter months. These people feel expanded commercial use, especially by a large vessel fishery, will result in overharvest of the resource and will impact local harvests.

b. The winter fishery was initiated by local residents in an effort to provide employment during the lean winter months. They have requested the Department and the Board of Fisheries (both through the local fishermen's association and advisory committee) to keep the fishery limited until additional biological data is available to ensure the resource is not overharvested. Many local commercial fishermen feel:

- (i) the large vessel fishery poses a threat to the resource in the form of overharvest
- (ii) the large vessel fishery is too efficient and prevents local fishermen from entering the fishery
- (iii) the large vessel fishery is counterproductive to the local economy since it receives no benefits from the offshore operation.

On the other hand, large vessel operators feel local sentiment is parochial and designed to keep non-local fishermen from the resource. In addition, they feel the resource is abundant and the fishery can be expanded.

c. There is little enforcement capability to monitor the large vessel operation during the summer. Consequently, significant illegal fishing has occurred by the large vessel fleet.

3. Allocation

The recreational/subsistence fishery has the highest priority use of the resource. In addition, the Board has indicated the local commercial fishery would be reallocated additional crab from the summer fishery as it expands.

4. Options:

a. Maintain current regulations and guideline harvest levels, while gathering additional data from the commercial and subsistence fisheries and research projects.

b. Improve enforcement capabilities in the Northern Bering Sea through additional use of U. S. Coast Guard aid.

Species: Dungeness Crab 1/

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
Kodiak	2*	3**	1	High commercial use.
Alaska Peninsula	2*	1**	1	Commercial species.
Dutch Harbor	2*	3**	1	
Adak	2*	1**	1	
Bering Sea	1*	1**	1	

1/ Data for other areas unavailable at time of printing.

SPECIES: Dungeness Crab

1. Present Use:

Dungeness crab are used primarily and extensively for commercial purposes. Recreational and subsistence use is low to moderate. Recreational fishermen obtain dungeness under subsistence provisions of current regulations.

2. Conflicts/Problems:

None.

3. Allocation:

Subsistence and recreational use of dungeness crab are currently at much lower catch and effort levels than the commercial fishery. Consequently, the commercial fishery has been designated the highest priority use of the resource. However, subsistence and recreational harvests are essentially unregulated, so harvests requirements may be adequately satisfied.

4. Options:

Maintain current management and regulatory policies which allow for subsistence requirements to be satisfied.

Species: Tanner Crab ^{1/}

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
Kodiak	2*	3*	1	High commercial use.
Alaska Peninsula	2*	3**	1	High commercial use.
Dutch Harbor	2*	3**	1	High commercial use.
Adak	2*	2**	1	Under-exploited.
Bering Sea	2*	3**	1*	High commercial use.

^{1/} Data for other areas unavailable at time of printing.

SPECIES: Tanner Crab

1. Present Use:

Tanner crab are used primarily for commercial purposes, while subsistence and recreational catches are made under subsistence provisions of current regulations.

2. Conflicts/Problems:

None.

3. Allocation:

The commercial fishery is designated as the highest priority use of the resource due to the high level of utilization; however, few limitations are placed on the subsistence or recreational fisheries, except for those provisions designed to keep these crab from entering commercial channels. Consequently, subsistence and recreational fishermen are able to adequately satisfy their requirements.

4. Options:

Maintain current regulations and policies, which have provided for subsistence requirements to be met.

Species: Scallops 1/

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
Kodiak	1*	2**	1	
Alaska Peninsula	1*	1**	1	
Dutch Harbor	1*	1**	1	
Adak	1*	1**	1	
Bering Sea	1*	1**	1	

1/ Data for other areas unavailable at time of printing.

SPECIES: Scallops

1. Present Use:

Scallops are only used at moderate levels for commercial purposes, while use by subsistence or recreational fishermen is low.

2. Conflicts/Problems:

None.

3. Allocation:

Due to the low use levels by all users, few regulations or policies have been formulated. Consequently, subsistence use remains unrestricted.

4. Options:

Maintain current management and regulatory policies until use of this species increases.

Species: Shrimp 1/

AREA/DISTRICT	SUBSISTENCE	COMMERCIAL	RECREATIONAL	COMMENTS
Prince William Sound	1*	2**	0	
Cook Inlet	2*	3**	0	Some recreational use but under subsistence.
Kodiak	2*	3**	1	High commercial use.
Alaska Peninsula	2*	3**	1	High commercial use.
Dutch Harbor	2*	3**	1	High commercial use.
Adak	1*	1**	1	
Bering Sea	1*	1**	1	

1/ Data for other areas unavailable at time of printing.

SPECIES: Shrimp

1. Present Use:

Shrimp are used extensively for commercial purposes, while recreational and subsistence user levels are low to moderate. Recreational harvests are made under subsistence provisions of current regulations.

2. Conflicts/Problems:

None.

3. Allocation:

The commercial catches and effort are much higher than for the recreational or subsistence fisheries. Consequently, commercial uses have been designated as the highest priority use of the resource. The recreational fishermen is able to harvest shrimp under subsistence regulations. These regulations are very unrestrictive and are designed to keep recreational or subsistence catches from entering commercial channels. Consequently, recreational and subsistence fishermen are able to adequately satisfy their requirements.

4. Options:

Maintain current regulatory and management policies, which provide for adequate subsistence and recreational catches to be made.

SPECIES: Clams

1. Present Use:

Clams are currently being used primarily for recreational or subsistence purposes; however, a commercial potential is present in some areas.

2. Conflicts/Problems:

None.

3. Allocation:

Due to the low level of utilization in most areas, few policies or regulations have been formulated. There are virtually no restrictions on subsistence use and, in several areas, subsistence has been designated as the highest priority use of the resource. However, in some areas the potential for commercial fisheries exists and would not affect low subsistence harvests. Consequently, commercial uses have been assigned a higher priority in these areas.

4. Options:

Maintain current management and regulatory strategies until the various fisheries develop.

APPENDIX IV
CURRENT POLICIES AND REGULATIONS THAT ACCOMODATE
SUBSISTENCE USES

COMPARISONS BETWEEN THE "SUBSISTENCE LAW" AND POLICY STATEMENTS
BY THE COMMISSIONER AND ALASKA BOARD OF FISH AND GAME

Attached is a subsistence utilization policy statement by the Commissioner and Alaska Board of Fish and Game first issued in May 1973 and still in effect. The following excerpts from this policy demonstrate its similarity to the intent of the subsistence law presented in Appendix I:

- (1) Direct domestic utilization of fish and game is still vital to the existence of many rural Alaskans and is an essential supplement to the larders of some urban citizens.
- (2) Home consumption of fish and game tends to preserve cultures and traditions.
- (3) Existing cultures and life styles in Alaska are of great value and should be preserved.
- (4) Domestic utilization is still of fundamental importance to many Alaskans. Accordingly it is assigned the highest priority among beneficial uses.
- (5) Within legal constraints fish and game will be allocated to subsistence users on the basis of need.
- (6) Elements considered in establishing the level of need include:
 - (a) cultures and customs
 - (b) economic status
 - (c) alternative resources (availability of social services)
 - (d) location
 - (e) voluntary choice of life style
- (7) Recreational and commercial uses will continue to be permitted where and to the extent that they do not interfere with or jeopardize subsistence resource use.

Differences between this policy statement and the subsistence law include:

- (1) The law appears to emphasize "customary and traditional" aspects of subsistence uses while the policy statement emphasizes "need", especially when allocating subsistence harvests.
- (2) The policy includes the statement that "limitations on the productivity of fish and game stocks prohibit continued increases in the numbers of subsistence resource users" while the law makes no mention of the latter condition.

SUBSISTENCE UTILIZATION OF FISH AND GAME POLICY
STATEMENT BY THE COMMISSIONER AND ALASKA BOARD OF FISH AND GAME

Although fish and game resources were once a crucial factor in the survival of all Alaskans, a growing population segment is becoming partially or totally independent of these resources. This change is the result of advanced food production technologies elsewhere, rapidly improving logistics, and a growing immigrant population whose demands mainly involve recreational uses of the resource. Nevertheless, direct domestic utilization of fish and game is still vital to the existence of many rural Alaskans and is an essential supplement to the larders of some urban citizens. Beyond directly satisfying food requirements, home consumption of fish and game tends to preserve cultures and traditions and gives gratification to a strong desire possessed by many to hunt and fish. The latter functions seem genuinely important to the physical and psychological wellbeing of a large number of Alaskans.

By reason of culture, location, economic situation or choice, large numbers of people will find it impossible to abandon or alter their way of life at a pace paralleling changes brought by new shifts in land status and ownership, nonrenewable resource developments, transportation improvements and a phenomenal rate of population growth. The following policy statement on subsistence use of the fish and game resource has been prepared in recognition of the above facts and of the responsibilities mandated to the Board and the Commissioner.

The Fish and Game Board and the Commissioner of Fish and Game recognize that existing cultures and life styles in Alaska are of great value and should be preserved.

The Board and the Commissioner believe that, although limitations on the productivity of fish and game stocks prohibit continued increases in the numbers of subsistence resource users, domestic utilization is still of fundamental importance to many Alaskans. Accordingly it is assigned the highest priority among beneficial uses.

Within legal constraints fish and game will be allocated to subsistence users on the basis of need. Needs of individuals, families or cultural groups differ in type and degree and it is recognized that subjective judgement will be an unavoidable necessity in weighing actual need. Elements considered in establishing the level of need include cultures and customs, economic status, alternative resources (availability of social services), location and voluntary choice of life style.

The Board and Commissioner also understand that subsistence requirements will not affect all resources in all areas equally, and recreational and commercial uses will continue to be permitted where and to the extent that they do not interfere with or jeopardize subsistence resource use.

REVIEW OF CURRENT REGULATIONS, STRATEGIES AND OTHER LAWS AND POLICIES THAT ACCOMMODATE SUBSISTENCE USE PREFERENCES

In addition to the aforementioned policy statement by the Commissioner and Alaska Board of Fish and Game, policies favoring subsistence uses have been explicitly stated in Alaska Game Management Policies and implicitly in various regulations and management plans, particularly with respect to fisheries. Many of these are specifically designed to give subsistence use preferences through various methods including timing and duration of seasons, liberal or nonexistent bag limits, legalization of barter, constraints on means of access and even selective enforcement. The following partial list of regulations, laws and policies are presented separately for hunting and fishing and pertain mainly to that portion of the State north of the Alaska Range and Bristol Bay, where subsistence dependence is the greatest.

HUNTING--TRAPPING

Alaska's game laws and regulations have since statehood and before provided regulations to accommodate the special needs of subsistence users. Traditionally, hunting seasons have been long and bag limits have been large, especially in those sections of Alaska away from the centers of population. In recent years, changing game populations due to natural fluctuations, changed environmental conditions, hunting, predation and other causes has necessitated shorter seasons and smaller bag limits.

Nevertheless, when the species in question is abundant, game managers and the boards have generally tried to set seasons at times which either favor local users or at least provide for this use. When game populations are low, seasons are short or closed. Short seasons are designed primarily to keep harvest low. They do, however, have a built in advantage for local users who are likely to be intimately familiar with a given area and its game resources, and are often more likely to take game than non-local persons.

While all of the regulations at least provide an opportunity for subsistence users to take game, some sections favor these users or at least accommodate their special needs. The following lists the laws and regulations which meet these criteria in the 1978-79 Alaska Hunting and Trapping Regulations. This is a preliminary list, and some laws or regulations are listed more than once in separate sections.

A. Licenses and tags

1. An Alaska resident trapping license sells for \$3. AS 16.05.340
2. A \$0.25 license is available to those residents who qualify under certain income or assistance guidelines. AS 16.05.340

3. The 35-year residents of Alaska who have attained their 60th birthday are not required to purchase a license for sport hunting, sport fishing or trapping. AS 16.05.400. The Department provides a convenient free identification card on request.
4. Big game tags for all food species except brown/grizzly bear--both relatively minor food items--are free to residents. AS 6.05.340
5. Residents under 16 years of age are not required to have a license for sport hunting, sport fishing or trapping. AS 16.05.400
6. Caribou hunting in the range of the Western Arctic herd is by permit only. Permits are available in all villages in that area. The season is August 10 to October 15 and February 15 to April 15. Two bulls may be taken, but only one from August 10 to October 15. 5 AAC 81.055, 5 AAC 81.320(5)
7. Persons transporting caribou south of the Yukon River must obtain Arctic Caribou Harvest Tickets, and only two caribou per year may be transported from Units 25 and 26(c). 5 AAC 81.010, 5 AAC 81.320(5)

B. Permits

1. Caribou hunting in the range of the Western Arctic herd is by permit only. Permits are available in all villages in that area. The season is August 10 to October 15 and February 15 to April 15. Two bulls may be taken, but only one from August 10 to October 15. 5 AAC 81.055, 5 AAC 81.320(5)
2. Moose hunting in Unit 5(A) is from October 15-November 15 and is by permit only. Permits are available at Yakutat only. 5 AAC 81.320(9)
3. Walrus hunting in Unit 17 is by permit only. Permits are available on a first come, first served basis at Togiak, Manokotak, Twin Hills and Clarks Point only. Only residents may hunt. 5 AAC 81.350(4)
4. Walrus hunting in Units 22, 23, and 26 is available without permit to residents traditionally dependent on the animals. All other persons must obtain one of the 100 available permits. 5 AAC 81.350(4)

C. Exclusive use based on residency, race or traditional use

1. Walrus hunting in Unit 17 is by permit only. Permits are available on a first come, first served basis at Togiak, Manokotak, Twin Hills and Clarks Point only. Only Alaska residents may hunt. 5 AAC 81.350(4)
2. In Alaska, Eskimos, Aleuts, and Indians may take auks, auklets, guillemots, murre, and puffins and their eggs for food or clothing.

D. Some activities permitted in certain areas only

1. Some species may be sold or bartered, for example hares or unclassified game, and caribou may be bartered in Units 22 through 26. 5 AAC 81.200
2. Snowy owls may be taken only for food and only in Units 17, 18, 22, 23, and 26.

E. Emergency taking for food

1. Any person may take game for food during the closed season in case of dire emergency. 5 AAC 81.370.

F. Restrictions on transportation

1. Persons transporting caribou south of the Yukon River must obtain Arctic Caribou Harvest Tickets, and only two caribou per year may be transported from Units 25 and 26C. 5 AAC 81.010, 5 AAC 81.320(5)
2. Hunters in the Paradise Management area may not use aircraft transportation of themselves or moose. 5 AAC 81.231
3. Hunters in the Kalskag Management area may not use aircraft transportation of themselves or moose. 5 AAC 81.232
4. Hunters in the Koyukuk Management area may not use aircraft transportation of themselves or moose. 5 AAC 81.234

G. Season timing and bag limit

1. Caribou hunting in the range of the Western Arctic herd is by permit only. Permits are available in all villages in that area. The season is August 10 to October 15 and February 15 to April 15. Two bulls may be taken, but only one from August 10 to October 15. 5 AAC 81.055, 5 AAC 81.320(5)
2. Moose hunting in Unit 5A is from October 15 to November 15 and is by permit only. Permits are available at Yakutat only. 5 AAC 81.320(9)

3. Black bear seasons are open year round in many areas and in other areas the season runs during the period of pelt primeness and maximum edibility. 5 AAC 81.320(1)
4. Caribou season on Kodiak Island is open year round, and there is no limit. 5 AAC 81.320(5)
5. Caribou hunting in Units 9 and 17 is available during the fall when one caribou may be taken and during a winter season when two or four may be taken, depending on the area. 5 AAC 81.320(5)
6. In Unit 10, except Unimak and Adak Islands, caribou hunting is available year round, and there is no bag limit. 5 AAC 81.320(5)
7. Caribou in Unit 18 may be hunted only during late winter. The bag limit is one caribou. 5 AAC 81.320(2)
8. In Units 19A and 19B, two caribou may be taken, provided that only one may be taken per day, and only one may be taken from August 10 to October 31. The season runs August 10 to March 31. 5 AAC 81.320(5)
9. Caribou hunting in Units 25 and 26C is from July 1 to March 31 and the bag limit is five caribou. Two only may be transported from these units. 5 AAC 81.320(5)
10. Black-tailed deer seasons run three to five months in most areas where they are available, and bag limits range from one to four deer depending on deer populations. 5 AAC 81.320(6)
11. Mountain goat seasons begin from August 1 to October 1 and end from October 30 to December 31, depending on the area. Bag limit is one goat. 5 AAC 81.320(8)
12. Moose hunting in Units 9B and 9C runs from September 10-30 and December 1-31. The bag limit is one moose, but antlerless moose may be taken in the late season only. 5 AAC 81.320(9)
13. In Unit 9E moose hunters may take moose from September 10-October 10 and December 1-31, provided that bulls must be at least 50 inches in antler spread, and cows may be taken in the late season only. 5 AAC 81.320(9)
14. Unit 17 moose hunters may take one bull moose from September 10-20 or December 10-31. 5 AAC 81.320(9)
15. In Part of Unit 18 the season runs from September 1 to December 31. The bag limit is one bull. 5 AAC 81.320(9)

16. Moose hunting in 19A is from September 1-20 and November 1-30. The bag limit is one bull. 5 AAC 81.320(9)
17. Unit 19B and 19C moose hunters may bag one bull during the period September 1 to October 10. 5 AAC 81.320(9)
18. In Unit 19D the moose season spans the entire months of September and November. The bag limit is one bull. 5 AAC 81.320(9)
19. In part of Unit 21 the season runs September 10-30 and November 1-30, with a one bull bag limit. 5 AAC 81.320(9)
20. In one part of Unit 22 the season runs August 1 to March 31 with a one moose bag limit. Antlerless moose may be taken by permit only, the permits being available in Nome. 5 AAC 81.320(9)
21. In a second part of Unit 22, the season is August 1 to November 30 with the same bag limit and permit stipulations as 20 above. 5 AAC 81.320(9)
22. The third part of Unit 22 has a season spanning August through January with the same bag limit and permit stipulations as 20 above. 5 AAC 81.320(9)
23. Unit 23 moose hunters may hunt during the months August through December and may take one moose. Antlerless moose may be taken by permit only, and the permits are available only in Kotzebue. 5 AAC 81.320(9)
24. In part of Unit 24, moose hunting runs September 10-30 and November 1-30. The bag limit is one bull. 5 AAC 81.320(9)
25. Unit 26 moose hunters may take one bull from September 10-December 31. 5 AAC 81.320(9)
26. Fox hunters in Units 9 and 17 may take Arctic fox without limit from December 1 to March 15. 5 AAC 81.330(3)
27. With the exception of Chugach State Park, red squirrel may be taken without limit at any time of year. 5 AAC 81.330(14)
28. In Units 1-5, wolves may be taken without limit at any time of year by hunters. 5 AAC 81.320(15)
29. Unit 23, 24, and 26 hunters may take wolves without limit from August 10 to April 30. 5 AAC 81.320(15)
30. Grouse seasons run from early fall to late winter in most parts of the state with bag limits of 15 per day, except in Southeast Alaska where the limit is 5. 5 AAC 81.340(1)

31. Hare seasons in the Interior/Arctic are never closed and there is no limit. In southeast Alaska, the season runs from September 1 to the last day of April. The limit there is five per day. 5 AAC 81.340(2)

32. Ptarmigan hunters may take 20 birds per day (except in Chugach State Park where the limit is 10). Seasons in rural areas run from early August till late winter. 5 AAC 81.340(3)

33. Porcupines may be taken at any time without limit statewide except in Chugach State Park, where the season is closed. 5 AAC 81.350(1)

FISHING: COMMERCIAL AND SUBSISTENCE FISHING REGULATIONS

A. Statewide

1. There is no use fee (permit or license) associated with subsistence fishing (regulation).
2. Most traditional types of gear can be used for subsistence fishing (regulation).
3. Salmon and halibut may only be taken for subsistence by State residents (regulation).
4. There are fewer subsistence fishing regulations compared to commercial fishing regulations (10 versus 57 equivalent pages in the 1978 regulation booklet).

B. Arctic-Yukon-Kuskokwim Region (regulations and policies that generally apply to the State north of Bristol Bay and the Alaska Range where approximately 75 percent of the statewide subsistence harvest is made).

1. Subsistence fishing permits are not required for the majority of the intensive use subsistence fishing areas except adjacent to Nome, Fairbanks and the haul road crossing of the main Yukon River (regulation).
2. There are no restrictions on harvest or seasons for most species including salmon except adjacent to Nome, Fairbanks and the haul road crossing of the main Yukon River (regulation).
3. Commercial fishermen may retain any portion of their catch made during open commercial fishing periods for subsistence use. Commercial fishermen may continue to subsistence fish before and after the commercial fishing seasons with a few exceptions (regulation).
4. The use of a line attached to a rod or pole, when fished through the ice, is considered a method of subsistence fishing (regulation).
5. Conservative management of the commercial salmon fishery is required due in part to the need to provide for both upriver spawning and subsistence fishing requirements (policy in 1978 Management Plans).
6. Due to the inherent inefficiency in harvesting and processing associated with some subsistence fisheries, a relatively large fish population must be available for a optimum harvesting (unwritten policy).

4. Commercial fishing during July, when Kobuk River stocks are present, is intensively monitored to insure that spawning and subsistence fishery requirements are met. A catch per unit effort of less than 2.5 when effort is more than 100 boats during the early portion of the run, indicates a smaller than average run and the need for commercial fishing restrictions (policy in 1978 Management Plan).
5. Regulations and policies referenced in B, above.

Other Species

1. There are no subsistence fishing restrictions except that gear must be identified and cannot block waterways (regulation).
 2. Commercial fishing for sheefish is authorized by permit only and is restricted to a 25,000 pound quota (3,000 to 4,000 fish) from Hotham Inlet and Selawik Lake only (policy and permit stipulations).
 3. Commercial fishing for char, whitefish, and other freshwater species (except sheefish) is prohibited (unwritten policy).
 4. An earlier closure of the commercial salmon fishery has been implemented to reduce the incidental capture of Arctic char. The season in former years continued through late September and now closes August 31 (regulation).
 5. Regulations and policies referenced in B, above.
- E. Port Clarence Area: That portion of the A-Y-K region between the latitudes of Cape Douglas and Cape Prince of Wales.

Salmon

1. Commercial fishing prohibited due to relatively small runs and subsistence fishing importance (regulation).
2. Subsistence fishing can occur without restriction except during 7/1-8/15 when 5 days/week fishing allowed for sockeye salmon conservation reasons. Also gear must be identified and cannot block waterways and permits required for the Pilgrim River drainage (regulation).
3. Regulations and policies referenced in B, above.

Other Species

1. There are no restrictions except gear must be identified and waterways cannot be blocked, (regulation).
 2. Regulations and policies referenced in B, above.
- F. Norton Sound Area: That portion of the A-Y-K region between the latitudes of Canal Pt. light (near St. Michaels) and Cape Douglas including St. Lawrence Island.

Salmon

1. Subsistence fishing outside the described commercial fishing boundaries (except the Nome subdistrict) may occur without restriction except that gear must be identified and cannot block waterways. Permits stipulating harvest and gear restrictions required for Nome subdistrict (regulation).
2. Unlicensed commercial fishermen may fish for subsistence seven days a week within the commercial fishing boundaries (except the Nome subdistrict) (regulation).
3. Commercial fishermen may subsistence fish before and after the commercial fishing season and during the open commercial fishing periods when the season is in progress (regulation).
4. If the number of subsistence fishing permits issued for the Nome subdistrict exceeds 100 by July, a reduction of commercial fishing time will be considered (policy in 1978 Management Plan).
5. The commercial chum harvest for the Nome subdistrict should not be allowed to exceed 5,000 to 7,000 fish unless a strong run is indicated. If the commercial fishery is closed, subsistence fishing normally will be allowed to continue by emergency order for four days a week fishing if escapements are not impaired (policy in 1978 Management Plan).
6. Commercial fishery restricted to areas adjacent to spawning areas to minimize interception of stocks bound for other areas (regulation).
7. Regulations and policies referenced in B, above.

Other Species

1. There are no subsistence fishing restrictions except that gear must be identified and cannot block waterways (regulation).
2. Commercial fisheries are authorized by permit only with strict stipulations to insure that brood stock and subsistence fishing are not seriously affected (regulation and policy).
3. Regulations and policies referenced in B, above.

- G. Yukon Area: that portion of the A-Y-K Region between the latitudes of the westernmost point of the Naskonat Peninsula and Canal Point light near St. Michaels.

Salmon

1. In the intensive commercial fishing areas, both commercial and subsistence fishermen may fish for subsistence only during periods open to commercial fishing, which ranges from two to seven days a week depending on the species, area, and current status of the run. In areas where commercial fishing is prohibited, for example Koyukuk River, Innoko River, Tanana River upstream from the Salcha River mouth, etc., subsistence fishing may occur seven days a week (regulation).
2. Subsistence fishing (by commercial and subsistence fishermen) can occur before and after the commercial fishing season in most portions of the drainage (regulation).
3. Subsistence fishing in the lower Yukon River is open seven days a week after August 20 if the commercial salmon season is closed (regulation).
4. Special subsistence fishing openings may be announced by emergency order after August 10 in the lower Yukon River during prolonged closures of the commercial fishing season (policy in 1978 Management Plan).
5. Commercial fishing is regulated on the assumption that a harvestable surplus of salmon is available after providing for spawning and subsistence utilization requirements (policy in 1978 Management Plan).
6. Subsistence fishermen in several areas are exempt from commercial fishing requirements of using small mesh gear after various dates later in the season (regulation).
7. Generally, commercial fishing time has been reduced in recent years commensurate with increased effort and efficiency in order to fulfill upriver spawning and subsistence utilization requirements. Reduction in weekly commercial fishing periods results in spreading the harvest throughout the run and reduces the possibility of overharvesting run segments vital to upriver spawning and subsistence needs (policy in 1978 Management Plan).
8. The sale of roe from subsistence caught salmon was prohibited in 1978 after a four year trial period. It was apparent that introduction of a profit incentive was resulting in an increase in subsistence fishing abuses which eventually would have required severe restriction of this fishery (regulation).

9. Subsistence fishing is prohibited adjacent to the pipeline haul road north of the Yukon River. This prevents the development of a new nontraditional subsistence fishery along this new access route, which would have placed additional fishing pressure on salmon and other species currently being utilized in downriver traditional fisheries (regulation).
10. Commercial summer chum season in Tanana River re-opened only if subsistence catches appear to be average to above average (policy in 1978 Management Plan).
11. Commercial fishermen may not fish more than one type of gear at a time while subsistence fishermen are unrestricted (regulation).
12. Several locations in the upper Tanana near Fairbanks are closed to subsistence fishing; however, whitefish and suckers may be taken by permit designating restrictive measures for protection of other species (regulation).
13. Although the main Tanana River is closed to subsistence fishing between the Salcha and Gerstle Rivers, salmon may be taken after November 20 in recognition of a long standing carcass fishery in the vicinity of Richardson Highway bridge and in the Delta River (regulation).
14. In the main Yukon River, between the Rodo and Nowitna Rivers, fish other than salmon may be taken by permit during 6/15-7/15 (regulation).
15. Regulations and policies referenced in B, above.

Other Species

1. For species inhabiting freshwater drainages, there are generally no subsistence fishing restrictions except: a) weekly closures of the commercial salmon fishing season; b) identification of gear; c) blocking of waterways with fishing gear; and d) some stream closures in the Fairbanks area (regulation).
2. There are no subsistence fishing restrictions for marine species except that fishing gear must be identified and cannot block waterways (regulation).
3. Commercial herring fishing is prohibited in areas where subsistence fishing occurs (regulation).
4. Regulation and policies referenced in B, above.

- H. Kuskokwim Area: that portion of the A-Y-K Region between the latitudes of Cape Newenham and the westernmost point of the Naskonat Peninsula, including Nunivak and St. Matthew Islands.

Salmon

1. The commercial fishing season in the lower Kuskokwim River is delayed until the early portion of the run is distributed throughout the fishery, which provides for improved escapements and uninterrupted subsistence fishing (policy in 1978 Management Plan).
2. Subsistence fishing is allowed five to seven days a week compared to commercial fishing time of only 12 to 72 hours a week depending on the subdistrict, species, and current status of the run (regulation).
3. If the salmon returns are small, the last action taken to ensure escapements will be reductions in subsistence fishing time (policy in 1978 Management Plan).
4. There are no harvest restrictions placed on subsistence fishing compared to commercial fishing harvests which are controlled by either quota regulations or a guideline harvest policy (regulation and policy in 1978 Management Plan).
5. The total chum salmon harvest (commercial and subsistence) should not exceed 400 thousand fish except during years of exceptional abundance. To ensure adequate fish for subsistence purposes, commercial catches should be maintained at 150-200 thousand fish (policy in 1978 Management Plan).
6. Kuskokwim River upstream of Akiak is more subsistence oriented and therefore commercial fishery is restricted to a limited quota system (regulation).
7. Commercial chum salmon fishery in lower Kuskokwim River is limited to a small area downstream of Napakiak to ensure that upriver subsistence needs are met (regulation).
8. Subsistence fishing (by both commercial and subsistence fishermen) can occur seven days a week both before and after the commercial fishing season (regulation).
9. The sale of roe from subsistence caught salmon was prohibited in 1978 after a four year trial period. It was apparent that introduction of a profit incentive was resulting in an increase in subsistence fishing abuses which eventually would have required severe restriction of this fishery (regulation).
10. Salmon may be taken for subsistence purposes by spear in the Holitna River drainage (regulation).
11. Regulation and policies referenced in B, above.

Other Species

1. Commercial fishing for sheefish is prohibited except those taken incidentally during a legal commercial fishery targeting on other species (policy and commercial fishing permit stipulations).
 2. Commercial fishing for other freshwater species is authorized by special permit only with stipulations designed to minimize adverse effect on subsistence fishing. For example, commercial fishing for whitefish and other freshwater species is prohibited in the Johnson River drainage (policy and commercial fishing permit stipulation).
 3. There are no subsistence fishing restrictions for these "other species" except that fishing gear must be identified and cannot be used to block a waterway (regulation).
 4. Commercial fishing for herring in the Nelson Island-Etolin Strait area is prohibited (regulation).
 5. Commercial fishing for herring in Goodnews Bay and Security Cove district is subject to relatively small guideline harvest levels (regulation) and intensive monitoring to insure that harvestable surpluses are present.
 6. Regulation and policies referenced in B, above.
- I. Alaska Peninsula: all waters from Unimak Pass to Cape Menshikof, then easterly to Kupreanof Point.

Salmon

1. Salmon may be taken for subsistence at any time without a permit, except that from June 1 to 48 hours after the close of the commercial season a permit is needed (regulation).
2. Salmon may be taken by any form of legal gear, except that set gill nets may not exceed 100 F in length (regulation).

Other Finfish

There are no regulations restricting subsistence fishing for non-salmon species.

Shellfish

Shellfish may be used for subsistence virtually without regulation, except for a few regulations pertaining primarily to commercial license or vessel holders.

- J. Aleutian Islands Area: all waters in the Aleutian Islands west of, and including, Unimak Pass.

Salmon

1. Salmon may be taken at any time without a permit, except that from June 1 to 48 hours after the close of the commercial season a permit is needed in the Akutan and Unalaska districts. There is no closed season on salmon taken for subsistence purposes in Umnak and Adak districts (regulation).
2. Salmon may be taken by all forms of legal gear (regulation).

Salmon and Other Finfish

1. There are no regulations restricting subsistence use for non-salmon.
2. All waters are open to subsistence fishing except that Unalaska Lake, the streams feeding it and the exit stream and within 500 yards of its mouth are closed to subsistence fishing (regulation).

Shellfish

There are virtually no restrictions on subsistence use of shellfish, except for regulations dealing primarily with commercial operations.

- K. Chignik Area: all waters on the south side of the Alaska Peninsula between the southern entrance to Imuya Bay near Kilokak Rocks and Kupreanof Point.

Salmon

1. Salmon may be taken for subsistence purposes at any time except that from June 1 to 48 hours after the close of the commercial salmon season a permit is required (regulation).
2. Salmon may be taken for subsistence purposes in any location by net, except above the Department counting tower or weir site in the Chignik River, Chignik Lake, Black Lake, and all tributaries of these lakes (regulation).

Other Finfish

There are no regulations restricting subsistence fishing for non-salmon species.

- L. Kodiak Area: all waters from the southern entrance of Imuya Bay near Kilokak Rocks to Cape Douglas, including Kodiak, Afognak, and adjacent islands.

Salmon

Salmon may be taken by permit for 15 hours daily from May 1 until November 30 within designated areas, except that commercial salmon net gear and registered salmon purse seine vessels may not be used to take salmon for subsistence purposes from June 1-September 15 (regulation).

Other Finfish

Halibut may be taken for subsistence purposes at any time between March 1-October 31 (regulation).

Shellfish

Subsistence fishermen may take shellfish with little restriction, except for regulations dealing primarily with commercial operations.

FISHING: SPORT FISHING REGULATIONS

Arctic-Yukon-Kuskokwim Region

1. Very liberal bag limit. A person could take daily 15 total of grayling, trout, and char simply by having a 25¢ or regular sport fishing license. Possession limit is 2 daily bag limits. Ten sheefish and 15 salmon daily can be taken with a possession limit of twice this amount (regulation).
2. No bag limit or season on northern pike except near Fairbanks (regulation).
3. No limit on burbot or whitefish (regulation).
4. Whitefish may be taken by spear without limit January 1-March 31 and September 1-December 31 (regulation).
5. Restrictive salmon regulations in Tanana drainage near Fairbanks to protect traditional downstream fisheries (regulation).
 - a. only one king salmon permitted
 - b. total salmon bag limit
 - c. Chena River above Little Chena closed to sport fishing
 - d. Goodpasture River drainage closed to salmon fishing
 - e. Salcha River closed above Redmond Creek.
6. Other restrictive measures to protect traditional subsistence fishery (regulation):
 - a. only 2 sheefish can be taken in the Tanana drainage
 - b. a five mile strip along the pipeline corridor (Haul road) is closed to sport fishing
 - c. Salmon Lake (Seward Peninsula) and tributaries closed to taking of salmon.
7. There are no closed seasons or bag limits in salt water (regulation).

APPENDIX V

NEW REGULATIONS, POLICIES AND STRATEGIES
FOR THE MANAGEMENT OF SUBSISTENCE USE

NEW REGULATIONS, POLICIES AND STRATEGIES FOR THE MANAGEMENT OF SUBSISTENCE USE

The following partial list of recommended guidelines relating to the management of subsistence use is presented in outline form. It is hoped that further discussions between the Boards, public and department will result in a more comprehensive set of guidelines, many of which can be transformed into workable regulations and policies.

1. The degree of harvest regulation and management required for any species or stock is based on biological productivity, cumulative demand and utilization of all competing user groups and vulnerability for overharvesting. Harvest regulation may be unnecessary or very minimal if harvestable surpluses of certain species or stocks are available. Several stocks that may qualify in this respect in certain areas include whitefish, pike, blackfish, many Bering Sea marine fishery resources, rabbits and hares, squirrels, etc.
2. Some species or stocks should be taken only under commercial and/or recreational regulations based on the following considerations:
 - a. the pursuit of fish and game primarily to satisfy recreational or commercial needs should not be accomplished under subsistence regulations which diminish the integrity of traditional subsistence use and the ability of the State to demonstrate a preference for this use.
 - b. some species or stocks have become highly important to recreational and/or commercial users partially due to no or minimal demand by subsistence users.
 - c. harvesting under recreational and commercial use regulations will partially fulfill subsistence needs; although a license is required (25¢ recreational use license for low income persons), recreational regulations may still permit liberal seasons and bag limits for some stocks.
 - d. management of a particular stock may be circumvented by allowing harvesting under two or more regulatory schemes, e.g. commercial, subsistence, and sport fishing regulations.
 - e. species or stocks having low productivity cannot adequately sustain subsistence needs and harvesting is best controlled under recreational regulations.
 - f. subsistence needs can be sustained by use of other species or stocks.

A partial listing of species or stocks that may be considered for harvesting under only commercial and/or recreational regulations, recognizing that legitimate subsistence uses do occur in specific areas and must be accommodated, is presented below:

- * king and coho salmon in Southeastern Alaska
- * hatchery releases of all fish species in lakes having no access to the ocean

- * rainbow-steelhead trout
- * grayling
- * lake trout, Arctic char, and Dolly Varden trout in lakes
- * many marine finfish and shellfish species.

3. Permit only subsistence and/or recreational harvesting of species or stocks not being used commercially. Commercial harvesting may be allowed but only through formal proposals and action by the Board of Fisheries. Present regulations allow commercial fishing for many species without initial restrictions being imposed. Examples include sheefish, whitefish, and many marine finfish species.
4. Subsistence use levels should be maintained at the levels of such uses occurring during the most recent five or ten year period. The Boards of Fisheries and Game should maintain flexibility by periodically examining changes in social or economic conditions which may warrant allowing an increase in legitimate subsistence uses.
5. New nontraditional subsistence use activities should not be allowed. Subsistence uses should be confined to areas and/or species and stocks where such use has occurred during recent years.
 - a. if allowed, such subsistence use should be given secondary preference to other traditional uses currently being made.
 - b. subsistence harvesting should not be permitted adjacent to new access points (roads, airports), if traditional subsistence uses do not exist in these areas.
6. Consider restrictions on the use of some species or stocks under the following conditions:
 - a. fish that are fed to sled dogs which are not utilized to provide transportation associated with subsistence pursuits.
 - b. fish that are utilized as bait for trapping and commercial fishing.
 - c. prohibit commercial fishermen in some areas from taking subsistence fish during the entire season or portions of the season.
 - d. under a and b consider restricting use of those species or stocks having high demand as human food (salmon, halibut, rainbow trout, etc.).
7. Restrict some non-traditional subsistence harvesting methods, for example:
 - a. prohibit use of purse seines, trawls, diving gear, power troll gear, hydraulic clam digger, etc.
 - b. prohibit use of road vehicles and aircraft in taking or transporting subsistence caught fish and game.
8. Only state residents may subsistence fish (similar to statutes regarding subsistence hunting).
 - a. presently nonresidents are allowed to subsistence fish for all species except salmon and halibut.

- b. another option is to allow nonresidents to take fish for subsistence purposes only under the terms of a permit to be issued to those persons intending to reside in the state and in areas where subsistence is given high priority.
- 9. Preference for subsistence use, now mandated by law, places a greater responsibility on subsistence users to:
 - a. accept the sustained yield principal of fish and wildlife management.
 - b. provide access to subsistence resources for required biological study.
 - c. provide timely and accurate harvest information. The importance of accurate documentation of harvests must be emphasized if subsistence preferences are to be given. For some species and stocks in certain areas this may require collection of harvest data through the implementation of a permit or registration system.
 - d. participate in non-wasteful harvesting and processing.
- 10. The regulation and necessary restriction of subsistence harvesting of certain species and stocks in specific areas is required for the following reasons to prevent overharvesting:
 - a. increased mobility and harvesting efficiency of subsistence users; for example, commercial fishing nets, boats and motors are commonly used in many areas and snow machines are utilized in transporting fishermen to and from winter fishing grounds.
 - b. The evolution away from a nomadic life style has resulted in more continuous intensive use of stocks adjacent to many rural villages.
 - c. concentrations of fish and game seasonally and in certain areas make some stocks vulnerable to overharvesting.
 - d. effects of increased losses of fish and game harvested associated with modern gear; for example, unattended nylon gillnets continue to kill fish while the old natural fiber nets rotted away within a short period of time.
 - e. increased harvesting of fish and game resources; for example, salmon, for sale and export that are also used for subsistence. Often the same individual is dependent upon both commercial and subsistence fishing.
 - f. the need to minimize the illegal sale of subsistence caught fish when both commercial and subsistence fishing occurs simultaneously in the same area.
 - g. permit requirements to obtain timely and accurate subsistence harvest information for intensively used fish and game resources.
- 11. All species of fish captured incidentally in legal subsistence fisheries targeting on other species may be legally taken and possessed (including grayling). Certain important subsistence species taken incidentally by commercial fishermen should not be allowed to be sold.

12. Implement a program to minimize wastage of subsistence taken fish by:
 - a. an I & E program.
 - b. regulatory requirement for retrieving fishing gear (gillnets, traps, etc.) at periodic intervals during the fishing season.
13. Industrial development projects should be planned to minimize their impact on local fish and game resources and their utilization.
Maximum public input should be sought.

APPENDIX VI
CRITERIA FOR DETERMINING SUBSISTENCE USE
ELIGIBILITY AND PREFERENCE

CRITERIA FOR DETERMINING SUBSISTENCE USE ELIGIBILITY AND PREFERENCE

Based on the intent of SL 151, the Task Force recommends that the Boards of Fisheries and Game carefully examine several criteria that may be used to determine subsistence use eligibility and preference. These criteria may be used in the following manner: 1) to distinguish subsistence users from other users; 2) to give preference to those subsistence users most dependent on fish and game resources, especially under conditions of resource depletion or when the demands of all user groups exceed sustained resource yield; and 3) the use of specific criteria in concert with specific subsistence regulations will result in a defacto regional definition of subsistence.

The four major criteria or characteristics are:

1. Customary and traditional use.
2. Customary and direct dependence upon the resource as the mainstay of one's livelihood.
3. Residency.
4. Availability of alternative resources.

It is further recommended that the Boards of Fisheries and Game, after considering public and department input, use a combination of these criteria in their consideration of subsistence eligibility and preference. Also, in recognition of regional differences in subsistence uses and dependencies, the Boards should consider using different combinations of these criteria for different areas.

Each of these four major criteria are divided into several components which are explained below in detail. The chronological listing of major criteria and components is not indicative of their relative importance. However, the Task Force did subjectively rate the relative importance of each component accordingly:

- ***High Consideration
- **Medium Consideration
- *Low Consideration

1. Customary and Traditional Use:

This criterion, which is not directly related to need, takes into account family and individual involvement in subsistence activities. Personal or family consumption is an integral part of customary and traditional use.

a. *** Family involvement relative to time and space:

The fact that a family has been using the resources for personal use for a long period of time and in an area close to where they have lived is the main theme of this criterion. The cultural aspects of subsistence are involved here.

- b. *** Residency in fishing, hunting, and gathering oriented community:

This criterion simply gives added preference to people living in a location or community regardless of size where subsistence living is the general mode of life. For example, North Pole, Ninilchik, and Palmer would be less eligible than Kotlik, Selawik and Huslia.

- c. *** Fish and game utilization for direct consumption or barter:

This criterion considers use of the resource in addition to the harvesting of the resource. People utilizing the resource for direct consumption would be given high preference.

- d. *** Does not use airplane:

The Task Force felt use of airplanes for subsistence activities should not be allowed. There would be just too many abuses, also airplanes are not traditional. Airplanes would place a much greater strain on resources.

Since the intent of the legislature seemed to be that "customary and traditional" included the traveling over the land and water or kinship to the land, then airplanes simply did not fit in.

The committee realized that there may now be a few occasions where an airplane is presently used for subsistence (Dillingham residents, Fairbanks residents using airplane to subsistence fish for their dogs in the Yukon River). It was not resolved as to whether this use should be dissolved.

- e. ** Individual involvement relative to time and space:

This is similar to family involvement but refers to individuals hunting, fishing or trapping in the same area for a long period of time. If only an individual performed the activity it would be given less weight than if the family was involved.

- f. ** Does not use road vehicle to harvest subsistence resource:

This criterion was given less weight than non-use of airplanes, but there also was not full agreement as to its' inclusion. Some felt that if you could afford a \$10,000 4-wheel drive rig you didn't need to be subsistence fishing or hunting.

The group did agree that there was some subsistence fishing or hunting by vehicle (Barrow, Nome, Bristol Bay area, Minto, Northway) occurring now.

- g. ** Community size:

This criterion gives subsistence preference inversely proportional to community size. Single individuals or families living outside a community boundary would also be taken into consideration here.

2. Customary and direct dependence upon the resource as the mainstay of one's livelihood:

This major criterion refers to need.

- a. *** Percent subsistence dependence (household and village):

This criterion was considered very important by all and some members consider it the most important criterion. Past recommendations by the Board of Fish and Game have been to allocate subsistence resources on the basis of need.

Percent subsistence dependence means that:

1. The percent of the diet of the family (household) that is made up of subsistence foods.
2. The percent of the diet of the community that is made up of subsistence foods.

- b. *** Village and/or regional adjusted cash income:

Instead of using family income, this criterion takes into account what the village or region average income is in relationship to its purchasing power. It is a type of a regional cost of living index. The lower the income the greater priority the village or region would get.

- c. *** Household adjusted cash income:

The household income, taking into account what it buys, is used here to determine subsistence preference. The lower the "real income is", the greater the subsistence priority the household would have.

- d. ** Community size characteristics:

This takes into account needs of the entire community, is the entire community dependent upon subsistence, is this a commercial fishing community or a subsistence fishing community, is this a small village with no jobs and great dependence on subsistence or is it community medium size with only moderate independence on subsistence?

Basically small subsistence dependent communities would have more claim to the subsistence resource.

3. Residency:

- a. *** Residency in area:

Simply stated if one lives in the area where the harvesting is to take place they have a greater claim than someone who lives a distance away.

b. **** Duration of residency:**

The longer one has lived in the area the more eligible he is for the subsistence resource. Because of local hire law being struck down the Task Force did not put a time frame on this.

c. *** Distance from residence to resource:**

The closer one lives to the resource the more claim he would have to it during periods of allocation.

4. Alternative Resources:

This major criterion refers to subsistence preference when other resources are not available. If the people could satisfy their subsistence requirements through other available sources (store food, other fish and game resources, cash jobs, etc.) then the critical wildlife resources in question might not have to be allocated.

a. **** Availability of other fish and game resources:**

If a certain wildlife resource (i.e. moose) is in low abundance in an area so that allocation is necessary, but levels of the other resources are high (i.e. salmon and whitefish), then subsistence needs could be met by taking these more abundant resources. This need could be met by barter.

b. **** Availability of processed food:**

If processed food was available and people had means to purchase it, then the subsistence preference would be given to those who did not have processed food available or did not have the means to purchase it.

c. **** Local cash opportunities:**

If local cash opportunities are available then that person would have less subsistence preference than person to whom these opportunities are not available. If a person commercial fished or had a regular job then he would have less preference than a person who only subsistence fished.

d. **** Cost of living index:**

This criterion relates available money (job, welfare, commercial fishing, trapping) to what it will buy or purchasing power. Those eligible people with the lowest purchasing power will have preference.

e. **** Takes fish and game by recreational or commercial pursuits:**

This criterion is another alternative to the resource allocation scheme. A person could fulfill this "personal use" requirement

by taking fish or game with a sport fishing or hunting license. He would also fulfill his requirements by saving some of the fish taken during the commercial fishery, eating some of the walrus meat while hunting for ivory or consuming meat of animals trapped.

Implementation methods

In order to implement a subsistence eligibility - preference system, it will be necessary to determine: 1) when a fish or game resource is depleted to the extent that special methods of allocating harvests are necessary; 2) how the harvest can be equitably distributed to all user groups; and 3) who will administer the program of harvest allocation.

Several options or considerations for implementing a system to determine subsistence eligibility and preference are outlined below:

1. In many instances subsistence uses can be accommodated by using the current regulatory system to alter seasons, bag limits, harvest methods and means, etc. Many species and stocks are sufficiently plentiful so that subsistence uses can be easily accommodated without the need for any special harvest allocation schemes;
2. A "check list" system whereby persons to qualify would simply have to meet all or a majority of the pertinent eligibility criteria;
3. A more elaborate point system, similar to limited entry for commercial fisheries, but based on the aforementioned criteria;
 - a. point system could be applied to individuals, villages or a geographic area.
 - b. persons with greatest number of points could receive larger share of allowable harvest;
4. General permits may be issued to facilitate identification of all eligible subsistence users.
5. Special permits could be issued to subsistence users giving them special preference in designated areas or zones where a particular resource is depleted. These special permits would be issued for the taking of specific stocks and only for the duration of stock depletion.
6. Administration of a system to determine subsistence eligibility and preference could be accomplished by one or more of the following:
 - (1) Boards of Fisheries and Game.
 - (2) Regional councils, advisory committees.
 - (3) Commissioner (staff).
 - (4) Special commission.

(5) Local government unit.

(6) Combination of above.

Once guidelines have been established to determine resource depletion, perhaps the administration of the allocation process could best be handled by the subsistence section of Alaska Department of Fish and Game in cooperation with the local government structure.

Special Considerations and Problems

A system of permit issuance, especially if applied to all eligible subsistence users would be very expensive and time consuming as permits would have to be distributed throughout more than 150 communities, many of which are in remote locations. A limited entry system should be utilized as a last resort for the same reasons.

The current lack of information relating to the status of fish and game resources including population sizes and harvests, limits the options available for giving subsistence preferences. Subsistence preference cannot be adequately addressed until accurate harvest information is obtained for individuals in all user groups. Documentation of subsistence needs and uses is a major role of the new subsistence section, but it will be several years before this information can be obtained for all major species and stocks.

The Task Force felt that the question of who would determine resource depletion was a very important one. However, some system must be established which would take into account the biological facts of the abundance and allowable harvest of the species in question. The fact of resource depletion must be established before the allocation process can take effect.

The Task Force felt that a combination of input from the following would be helpful in determining species depletion: 1) Local residents; 2) Subsistence Section of Alaska Department of Fish and Game; 3) Game Division; 4) Sport Fish Division; 5) Commercial Fish Division.

Specific guidelines to determine resource depletion should be developed. Important aspects of these guidelines will be: 1) Information on present harvest by all user groups; 2) Population status of the species in question; 3) Maximum sustainable harvest of the species in question.

APPENDIX VII

STAFFING, DEPLOYMENT, AND OPERATION OF THE SUBSISTENCE SECTION

MEMORANDUM

TO : Commissioner Ronald O. Skoog
Alaska Department of Fish and Game
Juneau

DATE October 9, 1978

FILE NO

TELEPHONE NO

FROM : Subsistence Task Force:
Ron Regnart, Fritz Kuhlmann,
Dick Bishop, Bob Pegau, Ken Alt,
Jim Raymond

SUBJECT Recommendations for the
organization and implementation
of the Subsistence Section

We are concerned that the integration of the new Subsistence Section below the headquarters level has not received sufficient attention. With a publicly announced October, 1978 implementation date, neither you or your headquarters staff have solicited regional or area staff input on this issue. The main element for our concern is that it should be recognized that the success or failure of the implementation of the Subsistence Section and the preference for legitimate subsistence uses will greatly depend on the "field program".

We have decided to submit our recommendations on this issue now so hopefully our input can be considered for inclusion in the FY 80 budget request (or supplemental FY 79 request).

1. Clerical Positions

Four, or 25 percent, of the 16 positions in the proposed table of organization for the Subsistence Section are located in Juneau and serve an administrative function only. Only two of these 16 positions are clerical in nature and both are located in Juneau. Twelve subsistence positions will be located in field offices and are joining 21 other authorized positions from the Divisions of Commercial Fisheries, Game, and FRED, totalling 33 positions. Only two of these 33 are clerical positions:

<u>Field Office</u>	<u>Comm. Fish.</u>	<u>Game</u>	<u>FRED</u>	<u>Subsis.</u>	<u>Total (Clerical)</u>
Bethel	3	1	0	2	6 (0)
Dillingham	3	1	2	2	8 (1)
Nome	2	5	0	2	9 (1)
Barrow	0	1	0	2	3 (0)
Kotzebue	1	1	0	2	4 (0)
Galena	0	1	0	2	3 (0)
Totals	9	10	2	12	33 (2)

No clerical assistance in field offices, where there is already an acute shortage, is being considered. Apparently this problem is not being addressed in the FY 80 budget request, which includes only the addition of single clerical positions in the Anchorage and Fairbanks offices.

There is ample justification to request these new positions due to the impact of subsistence legislation. Failure to do so in the FY 80 budget request presents the erroneous conclusion that these positions are not needed.

Recommendation: Obtain additional permanent clerical positions through shared costs with other management divisions as follows:

1. Bethel (fulltime, 12 months)
2. Dillingham (part time, 6 months)
3. Nome (full time, 12 months using 6 MM available Commercial Fish funding)
4. Barrow (part time, 6 months)
5. Kotzebue (full time, 12 months)
6. Galena (part time, six months)
7. Clerical assistance may be required for some of the proposed stations listed in II, below.

In order to accomplish securing of these positions several options are presented:

1. Transfer one position (Administrative Assistant I or Clerk Typist III) from Juneau to a field office location; consider creating two part time clerical positions for field offices and through shared costs with other divisions, two full time positions could possibly be obtained.
2. Request clerical positions in the FY 80 budget request or supplemental budget request to the FY 79 allocation.
3. Combination of (1) (2), above.

II. Distribution of Positions

There is a curious disregard for addressing the needs in the other regions of the state, including the upper Kuskokwim River, upper Yukon-Tanana Rivers, Copper River, and Southeastern Alaska. Due to its location, it appears that the Galena office may be responsible for the entire upper Yukon drainage including the Koyukuk, Tanana, Chandalar, and Porcupine Rivers, the upper Kuskokwim drainage, and the Copper River drainage!

Recommendations:

1. Station one position (probably Resource Specialist) in each of the following additional field stations: McGrath, Fort Yukon, Glennallen, and Juneau (regional office).
2. Station regional supervisor and clerical positions in Anchorage and Fairbanks offices (being requested in FY 80 budget).
3. Consider following options for accomplishing the above:
 - a. Redistribute existing positions as it is questionable that two positions are required at each of the field

offices listed in the table of organization. Based on the degree of subsistence dependence and/or close proximity of subsistence positions in adjacent field offices, a reduction in the subsistence staff seems reasonable in the following locations: Dillingham, Kotzebue, Barrow.

- b. Reclassify many of the subsistence positions to a lower pay range and use funds saved to establish additional positions or establish part time or seasonal positions using funds saved for the same purpose.
- c. Request additional positions through the budgetary process.
- d. Combination of (a), (b), and (c) above.

III. Supervision

Creation of a new "service" section involved with resource management and research within an agency that already has overlapping internal jurisdictions requires innovative organizational planning. Direct supervision of subsistence resource specialist positions that will be stationed from Dillingham to Barrow by a Juneau administrator is not in the best interest of the Department or the Subsistence Section. Juneau administrators will not have the time or the unique experience to give the necessary day to day supervision of resource specialist II's, that are being hired at the journeyman level. The senior regional and/or area staffs of the Management Divisions must be given some degree of supervisory authority over these positions.

Recommendations:

1. Existing regional supervisors (Nome, Fairbanks, Anchorage) should assist in the administration of the Subsistence Section Program until parallel regional supervisor positions in the Subsistence Section are budgeted for and obtained.
2. A "matrix" supervisory system must be worked out to insure management division input into subsistence section activities; Senior Management Division personnel in field offices should always exercise some supervisory control and/or technical input.
3. Some subsistence positions due to their location could be designated as primarily "fisheries" or "game" with shared supervision from the appropriate division. Other subsistence positions will have near equal "fish" and "game" responsibilities which would be a greater test of the matrix system.
4. Successful implementation of the Subsistence Section requires that the entire Department staff understand the program objectives and methods in addition to their own area of responsibility. Supervision is an important element, but even more important is the production of a comprehensive operational planning document that is developed through full staff input and is distributed to all "players".

IV. Budget

The Legislature provided \$802,900 for the Subsistence Section funding in FY 79 which was subsequently reduced to \$500,000 by the Governor. The original line item allocation was: Line 100-\$650.1; Line 200-\$19.6; Line 300-\$93.4; Line 400-\$4.5, and Line 500-\$35.3. Inadequate funding can not only limit the immediate effectiveness of the Subsistence Section, but could also eventually affect other Department programs.

Recommendations: A thorough line and subline item analysis of the \$500,000 allocation should be made immediately. Any required additional funding should be requested in the FY 80 budget request (now being prepared) or in a supplemental request to the FY 79 allocation. This analysis must take into account clerical and physical space requirements in addition to operating funds for required harvest surveys and other subsistence "research". There also may be a surplus of funds this fiscal year, since all positions may not be filled (or filled late) and the resultant surplus funding should be considered for acquisition of additional positions, physical space, and equipment.

V. Class Specifications for Subsistence Positions

The following minor changes should be made to the existing Fish and Game Technician series:

1. Experience as subsistence hunter and fisherman can be substituted.
2. Bilingual ability is necessary in only the Bethel area.
3. Another duty should be "assisting the Department staff in dissemination of information to the public regarding Department programs through use of various media, including meetings, radio, television, and newspapers."

Rewrite class specifications to more clearly explain the "duties" and "series definition" sections. Examples of confusing and awkward statements include: 1) what is meant by subsistence "research" versus "studies"; 2) what is meant by "gathering and evaluating government impact"; 3) "conducting research and assists in the assessment--of development projects" is also a Habitat Section responsibility. If this is the intent, then class specifications of the Fishery Biologist and Game Biologist series should be rewritten to also incorporate this language; 4) "Makes recommendations concerning field operations to regional supervisors". Which regional supervisors?

VI. Physical Space Requirements

Most field offices are already crowded and additional space will be required to accommodate the new subsistence positions. Because of the close inter-relationships between the Subsistence Section and the management divisions, it would be desirable that the same office space be utilized, which in many instances will require expansion of existing facilities.

Recommendations:

1. Additional capital construction and rental costs should be shared according to the number of personnel in each section or division.
2. The following capital construction projects have been submitted:
 - a. Bethel-\$20,000 to expand present office to accommodate new subsistence positions. (100% Subsistence Section share.)
 - b. Nome warehouse-\$75,000 for use by entire Department staff. (Subsistence Section share about 20%.)
 - c. Kotzebue-\$262,500 for construction of new office and warehouse. (Subsistence Section share about 20%.)
3. Additional office space is also required for Dillingham, Galena, and Barrow; also McGrath, and Glennallen if subsistence positions can eventually be stationed at these locations.

cc: Rosier, Pennoyer, Middleton, Lechner, Cantillon, Subsistence Task Force, Van Wyhe, Redick, Somerville, Vania, McMullen, D. Stewart, Moberly

John Stewart
Chief Accountant
ADF&G, Juneau

October 20, 1978

RS Ron Regnart, Regional Supervisor
Commercial Fisheries
Anchorage

Subsistence Section Budget
Estimate for FY 80

The enclosed budget estimate was prepared by my staff. Per our discussion, costs are estimated for 2 positions stationed in Bethel only.

Some features of this estimate that should be called to your attention follow.

Line 100 costs are, except for clerical support, related to harvest surveys that will be a function of the new section. The survey area includes the Yukon and Kuskokwim delta area, including the coastal villages, and perhaps Nunivak Island. In addition, surveys will be made in the upper Kuskokwim drainage, but not in the Yukon since that area will be covered by new positions stationed at Galena. Salary costs are based on the Anchorage pay scale.

Line 200 includes the estimated cost of a household move for 1 permanent to Bethel. This may not be applicable if the move is made in FY 79 and a turnover in the position does not occur.

Line 500 also includes equipment that may be purchased in FY 79. Discounting these would decrease the price, but they are included here for contingency purposes.

Needed new office and warehouse space in Bethel is not included as a cost here since our FY 80 CIP submission contains funding request for them.

Line 100

33,620

Yukon & Kuskokwim Subsistence Salmon

Survey Costs 14,468

FT III 3.5 mo x 1307	4574
OT 200 hrs x 12.06	2412
Benefits @ 10.15%	709
	<u>7695</u>

FT II 3.5 mo x 1150	4025
OT 200 hrs @ 10.62	2124
Benefits @ 10.15%	624
	<u>6773</u>

Yukon & Kuskokwim Whitefish & Sheefish Surveys

7,406

FT II 4 mo x 1150	4600
OT 200 hrs. x 10.62	2124
Benefits @ 10.15%	682
	<u>7406</u>

Other Areawide Subsistence Harvest Surveys (Game & Fish)

3,703

FT II 2 mo x 1150	2300
OT 100 hrs x 10.62	1062
Benefits @ 10.15%	341
	<u>3703</u>

Clerk Typist II

8,043

6 mo x 1217/mo	7302
Benefits @ 10.15%	741
	<u>8043</u>

Line 200

16,070

Permanent Moving Expense:

10,000 lbs x .50/lb.	5000
10 days per diem	1050

Permanent Travel

Administrative, Bethel-Juneau

4 trips @ 360	1440

Advisory meetings, Bethel-

Alakanuk, St. Marys, etc.	
10 trips @ 100	1000

Village meetings, Bethel-Coastal & River Villages

10 trips @ 100	1000

Board meetings, Bethel-Anchorage

2 trips @ 150	300

Permanent Per Diem 75 x 50/day	3750

Permanent Subsistence 30 x 21/day	630

Line 200 (continued)

Temporary Travel, Anchorage-	
Bethel 6 rt @ 150	900
To & between villages,	
10 @ 100/trip	1000
	<u>16070</u>

Line 300

20,350

Communication, long distance	
12 mo @ 200/mo	2400
Postage	250
Utilities, 12 mo @ 50/mo	600
Repair/Maintenance, 12 mo @ 25/mo	300
Freight	600
Equipment rental-vehicles	2400
Air charter 100 hrs @ 140/hr	14000
Copying	300
	<u>20850</u>

Line 400

5,000

Clothing, hip boots, rain gear,	
parkas	500
Food, 15 MM @ 220/mo	3300
Outboard fuel	500
Outboard oil	200
Misc. office supplies	500
	<u>5000</u>

Line 500

12,300

1/2 T Pickup	6500
1 riverboat, 24 ft. aluminum	2500
1 75 hp outboard	1600
2 desks @ 300 each	600
3 chairs @ 100 each	300
1 file cabinet	200
Tape recorder	200
Emergency locator beacon	200
Desk calculator	200
	<u>12300</u>

Grand Total All Lines

37,340

APPENDIX VIII
PLANS FOR PUBLISHING SUBSISTENCE REGULATIONS

PLANS FOR PUBLISHING SUBSISTENCE REGULATIONS

The Subsistence Task Force recommends that all regulations pertaining to subsistence be removed from current texts and placed in separate booklets. These regulations should be presented in two forms: one codified and one informal. A codified booklet would satisfy judicial requirements, while a simplified version would aid the public in understanding various regulations.

A general outline has been attached to illustrate potential methods of presenting subsistence regulations. This outline provides for inclusion of applicable finfish, shellfish, and general provision regulations within a compact, logical framework. Using this outline as a guide, an attempt was made to fit a current regulatory scheme to the outline (attached). The Yukon area of the AYK region was chosen for the finfish portion of this exercise due to the complexity of its regulatory structure. In general, most applicable subsistence regulations could be taken almost verbatim from the current Commercial Fisheries codified text and fit within the broad framework of the outline. Difficulties were encountered in presenting subsistence regulations which were dependent upon commercial regulations; e.g. when subsistence fishing was allowed only during open commercial fishing periods.

A copy of an informational handout used on the Yukon River has been attached. This handout presents both commercial and subsistence information; however, it does illustrate a simplified alternative to the codified regulations. Of course, these handouts may be modified to accommodate any particular audience or area.

OUTLINE OF RECOMMENDED CODIFIED REGULATION FORMAT

TITLE 5
FISH AND GAME

PART
SUBSISTENCE FISHERY

CHAPTER
YUKON AREA

ARTICLE 1
DESCRIPTION OF AREA

5 AAC____.____DESCRIPTION OF AREA.

ARTICLE 2
FISHING SUBDISTRICTS AND SECTIONS

5 AAC____.____.FISHING SUBDISTRICTS AND SECTIONS.

ARTICLE 3
FINFISH FISHERY

5 AAC____.____.FISHING SEASONS AND WEEKLY FISHING PERIODS.

() SALMON
() OTHER FINFISH

5 AAC____.____.GEAR

() SALMON
() OTHER FINFISH

5 AAC____.____.GEAR SPECIFICATIONS AND OPERATION

() SALMON
() OTHER FINFISH

5 AAC____.____.IDENTIFICATION OF GEAR

() SALMON
() OTHER FINFISH

5 AAC____.____.PERMITS AND QUOTAS.

() SALMON
() OTHER FINFISH

5 AAC____.____.CLOSED WATERS

() SALMON
() OTHER FINFISH

ARTICLE 4
SHELLFISH FISHERY

- 5 AAC __. __. FISHING SEASONS.
- 5 AAC __. __. GEAR.
- 5 AAC __. __. GEAR SPECIFICATIONS AND OPERATION.
- 5 AAC __. __. IDENTIFICATION OF GEAR.
- 5 AAC __. __. PERMITS AND QUOTAS.
- 5 AAC __. __. SPECIAL RESTRICTIONS.

CHAPTER
GENERAL PROVISIONS (STATE-WIDE)

ARTICLE 1
FINFISH FISHERY

- 5 AAC __. __. FISHING SEASONS.
- 5 AAC __. __. GEAR.
- 5 AAC __. __. GEAR SPECIFICATIONS AND OPERATION.
- 5 AAC __. __. IDENTIFICATION OF GEAR.
- 5 AAC __. __. PERMITS AND QUOTAS.
- 5 AAC __. __. SPECIAL RESTRICTIONS.

ARTICLE 2
SHELLFISH FISHERY

- 5 AAC __. __. FISHING SEASONS.
- 5 AAC __. __. GEAR.
- 5 AAC __. __. GEAR SPECIFICATIONS AND OPERATION.
- 5 AAC __. __. IDENTIFICATION OF GEAR.
- 5 AAC __. __. PERMITS AND QUOTAS.
- 5 AAC __. __. SPECIAL RESTRICTIONS.

EXAMPLE OF RECOMMENDED CODIFIED YUKON AREA
FINFISH SUBSISTENCE REGULATIONS

TITLE 5

FISH AND GAME

PART _____

SUBSISTENCE FISHERY

CHAPTER _____

YUKON AREA

ARTICLE 1

DESCRIPTION OF AREA

5 AAC 03._____. DESCRIPTION OF AREA

(a) All waters including those draining into the Bering Sea between the latitude of Canal Point Light and the latitude of the western most point of the Naskonat Peninsula.

ARTICLE 2

FISHING SUBDISTRICTS AND SECTION

5 AAC 03._____. FISHING SUBDISTRICTS AND SECTIONS

() Yukon district: all waters including those draining into the Bering Sea between the latitude of Canal Point light and the latitude of the westernmost point of the Naskonat Peninsula;

() subdistrict 1: that portion of the Yukon River drainage from its mouth upstream to the mouth of the Anuk River and all waters of Black River including waters within one nautical mile of its mouth;

() subdistrict 2: that portion of the Yukon River drainage from the mouth of the Anuk River upstream to Toklik;

() subdistrict 3: that portion of the Yukon River drainage from Toklik upstream to the mouth of the Bonasila River;

() subdistrict 4: that portion of the Yukon River drainage from the mouth of the Bonasila River upstream to the mouth of Illinois Creek at Kallands.

() Section 4 A: that portion of the drainage from the mouth of the Bonasila River upstream to Cone Point;

() section 4 B: that portion of the drainage from Cone Point upstream to the mouth of Illinois Creek.

() Subdistrict 5: that portion of the Yukon River drainage (excluding the Tanana River drainage) from the mouth of Illinois Creek to the U.S.-Canada border.

() section 5 A: that portion of the drainage from the mouth of Illinois Creek upstream to a marker placed two miles downstream of Waldron Creek:

() section 5 B: that portion of the drainage from a marker placed two miles downstream of Waldron Creek upstream to the U.S.-Canada border:

() Subdistrict 6: the Tanana River drainage

() section 6 A: that portion of the drainage from the mouth of the Tanana River upstream to the mouth of the Kantishna River;

() section 6 B: that portion of the drainage from the mouth of the Kantishna River upstream to the mouth of the Wood River;

() section 6 C: that portion of the drainage from the mouth of the Wood River upstream to the mouth of the Chena River.

ARTICLE 3

FINFISH FISHERY

5 AAC 03.____. FISHING SEASONS AND WEEKLY FISHING PERIODS.

() Salmon

() In the following locations salmon may only be taken during the weekly openings of the commercial salmon fishing season and may not be taken for 24 hours before the opening and following the closure of the commercial salmon fishing season described in sec () and () of this chapter:

() subdistricts 1, 2 and 3

() subdistrict 4, excluding the Koyukuk and Innoko River drainages and excluding that area between the mouths of the Rodo and Nowitna Rivers where the requirements of sec. 980(a) (2) (d) of this chapter are effective;

() subdistrict 5, excluding the Tozitna River drainage and that portion of the Tanana River drainage upstream of the mouth of the Salcha River;

() Commercial Salmon Fishing Season

() in subdistricts 1, 2 and 3 from June 10 through August 31, except that when June 10 falls within a closed weekly period the season will open the next following open weekly period; the early season is closed by emergency order and subsequent seasons are opened and closed by emergency orders;

() in subdistricts 4, 5 and 6 from June 15 through September 30

() the early season is closed by emergency order and subsequent seasons are opened and closed by emergency order;

() section 4 A closes August 1.

() Commercial Salmon Fishing Periods.

() subdistrict 1

() June 10 through July 10, salmon may be taken from 6:00 p.m. Monday until 6:00 p.m. Tuesday and from 6:00 p.m. Thursday until 6:00 a.m. Saturday

() after July 10 salmon may be taken from 6:00 p.m. Monday until 6:00 a.m. Wednesday and from 6:00 p.m. Thursday until 6:00 a.m. Saturday.

() subdistrict 2:

() June 10 through July 10, salmon may be taken from 6:00 p.m. Sunday until 6:00 p.m. Monday and from 6:00 p.m. Wednesday until 6:00 a.m. Friday.

() after July 10, salmon may be taken from 6:00 p.m. Wednesday until 6:00 a.m. Friday;

() subdistrict 4: salmon may be taken from 6:00 p.m. Sunday until 6:00 p.m. Friday;

() subdistrict 5: salmon may be taken from 6:00 p.m. Tuesday until 6:00 p.m. Sunday, except in section 5B where salmon may be taken seven days a week;

() subdistrict 6: salmon may be taken from 6:00 p.m. Monday until 6:00 p.m. Saturday.

() Other Finfish

() Except as provided in secs _____ - _____ of this chapter, finfish other than salmon may be taken seven days per week.

5 AAC 03. _____. GEAR.

() Except as otherwise provided in this chapter, finfish may be taken as follows:

() Salmon

() salmon for subsistence purposes may be taken only by gillnet, beach seine or fishwheel;

() Other Finfish

() finfish other than salmon may be taken by forms of legal gear described in 5 AAC 39.105.

5 AAC 03.____.GEAR SPECIFICATIONS AND OPERATIONS

() Salmon

() in subdistricts 1 and 2, commercial fishermen may not take salmon for subsistence purposes by gill nets larger than six-inch mesh after a date specified by emergency order between June 27 and July 15;

() in subdistricts 4, 5 and 6, salmon may not be taken for subsistence purposes by drift gill net;

() Salmon and other finfish

() during the weekly open periods of the commercial salmon fishing season, a commercial fishermen may not fish for commercial and subsistence purposes simultaneously with more than one type of gear;

() the aggregate length of set gill net in use by an individual may not exceed 150 fathoms and each drift gill net in use by an individual may not exceed 50 fathoms in length;

() in subdistricts 4, 5 and 6, it is unlawful to set subsistence fishing gear within 200 feet of other operating commercial or subsistence fishing gear;

5 AAC 03.____.IDENTIFICATION OF GEAR.

() Salmon and other finfish

() each fishwheel must have the first initial, last name, and address of the operator plainly and legibly inscribed on the side of the fish wheel facing midstream of the river;

() for all gill nets and unattended gear, the first initial, last name and address of the operator must be plainly and legibly inscribed on an attached key or buoy;

() this information must be plainly and legibly inscribed on a stake inserted in the ice that is attached to gear operated under the ice;

() a gill net may obstruct not more than one-half the width of any fish stream; a stationary fishing divide may obstruct not more than one-half the width of any salmon stream. (Authority: AS 16.05.251(2) and (4))

5 AAC 03.____.PERMITS AND QUOTAS.

() Fish may be taken for subsistence purposes without a permit except as provided in sec ____ - ____ of this chapter and except in the following locations where a yearly permit must be secured from the local representative of the department.

() Tanana River drainage above the mouth of the Wood River;

() Yukon River drainage from the mouth of the Hess Creek to the mouth of Dall River;

() Middle Fork drainage of the Koyukuk River system between Dry Gulch and the mouth of Hammond River;

() Fish other than salmon may be taken by permit designating restrictive measures for the protection of salmon in subdistrict 4 between the mouths of the Rodo and Nowitna Rivers during June 15 to July 15;

() If a permit is required by sections ____ - ____ of this chapter the following stipulations apply: Permits shall be obtained from a local representative of the department prior to subsistence fishing. Permits shall be retained in the possession of the permittee and be readily accessible for inspection while taking or transporting the species for which the permit is issued. The permit may designate the time and area of fishing and the type and amount of fishing gear. Each subsistence fisherman should keep accurate records of the catch involved, showing the number of fish taken by species, location and date of the catch, and such other information as the department may require. Subsistence fishing reports shall be completed on forms provided by the department and submitted to the department office from which the permit was issued at a time specified by the department for each particular area and fishery. Only one permit will be issued to each household per year. Authority: AS 16.05.251 (2), (3) and (12)

5 AAC 03.____.CLOSED WATERS.

(Salmon and other finfish)

() the following locations in the upper Yukon River drainage are closed to subsistence fishing (except that whitefish and suckers may be taken under the authority of a permit designating restrictive measures for the protection of other fishes; this permit may be obtained from the Commissioner or his local representative):

() streams and within 500 feet of their stream mouths

() Birch Creek, Beaver Creek, Clearwater Creek (Deita Clearwater Creek at 64° 06' N. lat., 145° 34' W. long), Clear Creek (Richardson Clearwater Creek at 64° 14' N. lat., 146° 16' W long), Goodpaster River, Shaw Creek, Salcha River, Little Salcha River, Chena River, Chatanika River, Big Salt River, Hess Creek, and Blue Creek;

() Dall River; closed June 10 through September 10;

() streams: Ray River;

() Lakes: Deadman, Jan, Boleo, Birch, Lost, Harding, Craig, Fielding, Two-Mile, Quartz, and Little Harding;

() sloughs: Chena (Piledriver);

() the following drainages located north of the main Yukon River are closed to subsistence fishing:

() Kanuti River upstream from a point five miles downstream of the state highway crossing;

() Fish Creek upstream from the mouth of Bonanza Creek;

() Bonanza Creek;

() Jim River including Prospect Creek and Douglas Creek;

() South Fork of the Koyukuk River system upstream from the mouth of Jim River;

() Middle Fork of the Koyukuk River system upstream from the mouth of the North Fork except between Dry Gulch and the mouth of Hammond River where subsistence fishing is allowed by permit only;

() North Fork of the Chandalar River system upstream from the mouth of Quartz Creek;

() The main Tanana River and its adjoining sloughs are closed to subsistence fishing between the mouth of the Salcha River and the mouth of the Gerstle River, except that salmon may be taken in the area upstream of the Richardson Highway bridge to the mouth of Clearwater Creek after November 20;

() The Tanana River drainage is closed to subsistence fishing for pike between the Kantishna River and the Delta River at Black Rapids on the Richardson Highway and Cathedral Rapids on the Alaska Highway;

() in the Yukon River drainage (excluding the Koyukuk River drainage) between the mouth of Rodo River to the mouth of Nowitna River, fish other than salmon may be taken under authority of a permit designating restrictive measures for the protection of salmon during June 15-July 15.

EXAMPLE OF RECOMMENDED CODIFIED GENERAL PROVISIONS
FOR FINFISH SUBSISTENCE REGULATIONS

CHAPTER _____

GENERAL PROVISIONS

ARTICLE 1

FINFISH FISHERY

5 AAC 03._____.SEASONS, GEAR AND AREAS

Shellfish, aquatic plants and fish other than salmon may be taken for subsistence purposes at any time in any area of the state by any method unless restricted by the subsistence fishing regulations in chapters _____ - _____ of this title. (Authority: AS 16.05.251 (2), (3), (4), (11))

5 AAC 03._____.IDENTIFICATION OF GEAR.

() Each subsistence fisherman shall plainly and legibly inscribe his first initial, last name, and address on his fishwheel, or on a key or buoy attached to unattended fishing gear.

5 AAC 03._____.PERMITS AND QUOTAS.

() Salmon may be taken only under terms of a permit issued by the commissioner or his local representative or as otherwise provided in this title. Permits shall be retained in the possession of the permittee and be readily accessible for inspection while taking or transporting the species for which the permit is issued. Gill nets used for subsistence fishing under the terms of a permit for salmon may not exceed 50 fathoms in length, except as provided in _____.

() The number of salmon taken for subsistence purposes shall not exceed the limits set out in permits issued under the authority of this title.

5 AAC 03._____.SPECIAL RESTRICTIONS.

() Salmon and halibut may be taken for subsistence purposes only by residents.

() It is unlawful to buy, sell or barter subsistence-caught fish or parts thereof, except as permitted by the purchase and sale of salmon roe regulations in _____ of this title.

() Fishing for, taking or molesting any fish by any means, or for any purpose, is prohibited within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction.

() The use of explosives and chemicals is prohibited except as provided in sec. _____ of this chapter.

() Subsistence fishing by the use of a line attached to a rod or pole is prohibited except when fishing through the ice in the Bristol Bay and Arctic-Yukon-Kuskokwim areas.

() Each subsistence fisherman shall plainly and legibly inscribe his first initial, last name, and address on his fishwheel, or on a key or buoy attached to unattended fishing gear.

() Salmon taken under authority of a subsistence permit may not be used as bait for commercial fishing purposes.

UPPER YUKON AND TANANA RIVER DRAINAGES
SUBDISTRICTS 4, 5, and 6.

SUBSISTENCE FISHING

1. Legal Gear: Set gill nets, fishwheels and beach seines may be used for the capture of salmon.
2. IT IS UNLAWFUL TO BUY, SELL OR BARTER SUBSISTENCE-CAUGHT FISH OR PARTS THEREOF, INCLUDING SALMON ROE.
3. In subdistricts 4, 5 and 6, subsistence fishing is prohibited for 24 hours before the opening and following the closure of the commercial salmon fishing season.
4. Subsistence fishermen must identify their fishwheels by placing their last name, first initial and address on the side of the fishwheel facing midstream of the river. Set gill nets must be identified by placing a buoy or can to the outer end of the net with the operator's last name, first initial and address marked on it.
5. It is unlawful to set subsistence fishing gear within 200 feet of other operating subsistence or commercial fishing gear.
6. Permits: Subsistence fishermen desiring to fish for salmon in that portion of the Tanana River drainage upstream of the Wood River and in the Yukon River drainage between the mouth of Hess Creek and Dall River are required to obtain a permit by appearing in person or by writing ADF&G in Fairbanks. Numbers of fish may be limited under terms of the permit or contain other restrictions for the conservation of fishery resources.
7. Weekly Fishing Periods: See section on commercial fishing periods. Salmon may not be taken for subsistence purposes during the weekly closures or taken for 24 hours before the opening and following the closure of the commercial fishing seasons.
 - (a) DURING CLOSURES OF THE COMMERCIAL FISHING SEASONS IN SECTION 6-C OF SUBDISTRICT 6 (THAT PORTION OF THE TANANA RIVER DRAINAGE FROM THE MOUTH OF WOOD RIVER UPSTREAM TO THE MOUTH OF THE SALCHA RIVER) SALMON MAY BE TAKEN FOR SUBSISTENCE PURPOSES FROM 6:00 P.M. FRIDAY TO 6:00 P.M. MONDAY OF EACH WEEK.
8. Gill nets may not obstruct more than one-half the width of any waterway.

Final Report

Wednesday
June 17, 1981

Part II

**Department of the
Interior**

Fish and Wildlife Service

**Alaska National Wildlife Refuges; Interim
Management Regulations**

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 36

Alaska National Wildlife Refuges;
Interim Management RegulationsAGENCY: Fish and Wildlife Service,
Interior.

ACTION: Final rule.

SUMMARY: This final rule provides interim management regulations for the sixteen Alaska National Wildlife Refuges. The rule: (1) Relieves those restrictions imposed by the general National Wildlife Refuge System regulations that are generally inappropriate in Alaska, (2) implements and clarifies a number of provisions of the Alaska Lands Act that are of immediate importance to Alaskans and the general public, and (3) clarifies what public activities are authorized in Alaska National Wildlife Refuges. These regulations are the minimum necessary for interim administration of the Alaska refuges.

EFFECTIVE DATE: June 17, 1981.

FOR FURTHER INFORMATION CONTACT: Keith Schreiner, Alaska Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99507 (907-276-3800).

SUPPLEMENTARY INFORMATION:

Background

The Alaska National Interest Lands Conservation Act, 94 Stat. 237, Pub. L. 96-487 (December 2, 1980) established, redesignated, or expanded sixteen National Wildlife Refuges in Alaska: Alaska Maritime, Alaska Peninsula, Arctic, Becharof, Innoko, Izembek, Kaktovik, Kenai, Kodiak, Koyukuk, Nowitna Selawik, Tetlin, Togiak, Yukon Delta and Yukon Flats. Each of these areas is to be managed pursuant to applicable Alaska National Wildlife Refuge statutory law, most notably the National Wildlife Refuge System Administration Act, 16 U.S.C. 688dd *et seq.* and the provisions of the Alaska Lands Act.

On January 19, 1981, the Fish and Wildlife Service proposed rules to provide interim management guidelines for the Alaska National Wildlife Refuges (46 FR 5668 *et seq.*). The proposed rules addressed a limited number of items, many of which had undergone extensive public comment in other rulemakings or proceedings. (See, for example, 43 FR 60255 (December 26, 1978); 44 FR 11247 (February 28, 1979); 44 FR 15500 (March 14, 1979); 44 FR 37754 (June 28, 1979); 45 FR 2616 (January 11, 1980); 45 FR 14192

(March 4, 1980).) The Fish and Wildlife Service has carefully considered comments made during the course of these proceedings, and promulgates today final rules which generally are in accord with the public comments received. The public comment has proved invaluable in helping the Fish and Wildlife Service develop regulations that are workable yet flexible enough to deal with the exigencies of terrain, climate, resources and lifestyles encountered within the Alaska National Wildlife Refuges.

Need for Expeditious Rulemaking

Under the Administrative Procedure Act an agency is authorized to make a final regulation immediately effective when it relieves restrictions, is an interpretive rule, or when good cause exists for expeditious rulemaking. See 5 U.S.C. 553(d). The rules published today are immediately effective for the following reasons:

First, many of the provisions of these regulations relieve restrictions imposed by the general National Wildlife Refuge System regulations that are generally inappropriate in the unique Alaska setting. For example, standard restrictions on access, firearms and abandoned property are relieved by these regulations.

Second, certain portions of these regulations constitute interpretive rules giving the Department's view on existing legal duties. These interpretive rules are found in § 36.23(c).

Third, the Department has found that good cause exists for immediately effective rules. This good cause finding is based on many factors, including: (1) The need to provide definitive public guidance on permissible activities during the peak use season, (2) the need to alleviate confusion arising from directives in the Alaska Lands Act which are (or appear) inconsistent with existing regulations, (3) the need to have in place administrative procedures for obtaining statutory benefits created under the Alaska Lands Act (e.g. access to inholdings, temporary access, cabins) and (4) the substantial public comment received on past rules addressing the same issues, as well as public participation in legislation culminating in enactment of the Alaska Lands Act.

Summary of Comments

The January 19, 1981 proposed rules solicited comments for 45 days on the issues addressed therein (46 FR 5668). The comment period was subsequently extended until March 16, 1981 (46 FR 14021). During this period the Fish and Wildlife Service received 145 written comments on the proposed rule. Written

comments were received from 97 individuals, from 33 states, 2 corporations and businesses, 24 organizations, 17 local government entities, the State of Alaska, the Alaska Congressional Delegation, the Environmental Protection Agency, the Air Force, and the Heritage Conservation and Recreation Service.

Analysis of Comments

Subpart A—Introduction and General Provisions

Applicability and Scope

Several commenters argued that the management regime created by the Alaska Lands Act and these regulations should have no effect on refuges, such as the Kenai Range, established prior to December 2, 1980. Specifically, they argued that neither the Act nor these regulations should be interpreted as amending existing special regulations in effect for these areas. The provisions of the Alaska Lands Act apply to all Alaska refuges; a generic distinction between old and new refuges is not legally supportable. The Service, however, does retain the discretion to adopt special regulations for individual refuges consistent with the provisions of the Alaska Lands Act and other statutory law. Existing special regulations remain in force and effect except as amended by the Alaska Lands Act and/or these regulations.

Several commenters suggested that the rules should apply only to "public lands" rather than "federally owned lands or interests." The Service has not accepted these comments. Sections 103(c) and 906(o) of the Alaska Lands Act generally restrict the applicability of Fish and Wildlife Service regulations to federally owned lands and interests within the boundaries of Alaska National Wildlife Refuges. Consistent with the Act and the explanatory legislative history (126 Cong. Rec. H11115 (daily ed. Nov. 21, 1980) and 126 Cong. Rec. S15150-51 (daily ed Dec. 1, 1980)), § 36.1(b) restricts the applicability of these regulations to "federally owned" lands, which is defined to include all interest held by the Federal government. With the legislative conveyance of 98 million acres of State selections in section 906 of the Act, no un conveyed State selections remain within the Alaskan refuges. Therefore, generally no State selected and conveyed lands within the boundaries of the Alaska National Wildlife Refuges will be subject to the provisions of these rules. Similarly, land interests interimly conveyed or patented to natives under the Alaska Native

Claims Settlement Act, where such interests are located within the boundaries of areas initially added to the National Wildlife Refuge System by the Alaska Lands Act, would not be affected by these regulations. Other private, patented inholdings within the Alaska National Wildlife Refuges would also generally not be subject to these rules.

Definitions

Many comments objected to the definition of "adequate and feasible access" which appeared in the proposed rule on the grounds that it would authorize the Fish and Wildlife Service to determine what is a "reasonable use or development" for an inholding. The definition has been revised to clarify that the inholder determines the desired land use or development of his property, and the Service provides reasonable access to meet the desired land use.

Section 1110(a) of the Alaska Lands Act authorizes the use of snowmachines for traditional activities and travel to and from villages and homesites during periods of adequate snow cover or frozen river conditions. In response to a number of comments, the Service has defined "adequate snow cover" as snow of sufficient depth to protect the underlying vegetation and soil.

Several comments suggested that the definition of "fish and wildlife" should specifically exclude domestic and exotic animals. Although the definition remains unchanged consistent with the specific language of the Alaska Lands Act (Section 102 (17)), the Service recognizes the clearly expressed congressional intent that the term does not include those animals the Service determines to be exotic or domestic (126 Cong. Rec. H10543 (daily ed. Nov. 12, 1980)). See also 46 FR 5669.

A few commenters suggested that the regulations should use and define the term "snowmachine", a term appearing in section 1110(a) of the Alaska Lands Act. The Service has adopted this suggestion by defining "snowmachine" in terms parallel to "snowmobile."

Subpart B—Subsistence Uses

General Comments

The Alaskan Congressional Delegation, the State of Alaska, and a number of sportsmen's groups opposed promulgation of any rules addressing subsistence, especially in the one year period provided by section 805(d) of the Alaska Lands Act for the State to establish an adequate subsistence program. Each commenter expressed concern that federal regulations could

foreclose the State in development of its program.

The Fish and Wildlife Service is sensitive to these concerns and therefore, has retained the narrow approach articulated in the proposed rules, one that addresses only issues of immediate importance or those definitively treated by the Alaska Lands Act. While the National Park Service is compelled by the Alaska Lands Act to distinguish subsistence users who are permitted to hunt within parks from others who are not, the Fish and Wildlife Service is under no such legal obligation. Accordingly, these regulations do not define "local rural resident" or establish an administrative procedure to distinguish such persons from other members of the public. Similarly, the regulations do not create an administrative framework to implement the subsistence priority required by section 804 of the Act. The regulations treat those subsistence issues of immediate importance in a manner calculated not to foreclose the State of Alaska's discretion in implementing its subsistence program. This restrained approach is consistent with the Fish and Wildlife Service's view that the subsistence issue is one best treated by the State. The Service looks forward to Secretarial approval of a State subsistence program implementing the requirements of the Alaska Lands Act.

Several native organizations urged the Fish and Wildlife Service to adopt regulations implementing Alaska Lands Act section 806 on "Federal Monitoring," section 807 on "Judicial Enforcement," and section 812 on "Research." Although the Service appreciates the importance of these statutory provisions, it determined during preparation of the proposed rules that these provisions do not lend themselves to expeditious implementation since they have not previously been the subject of notice and comment. The Alaska Congressional Delegation commented that proposed § 36.37 implementing section 810 of the Alaska Lands Act should be deleted for the same reason; they also pointed out that the proposed regulation did nothing more than repeat section 810 of the Act verbatim. For these reasons, today's final regulations do not contain provisions implementing sections 806, 807, 810 and 812 of the Act. It should be emphasized, however, that all parties must comply with these statutory provisions as long as they remain in effect.

Purpose and Policy

The Fish and Wildlife Service received various recommendations for

acknowledgement in the regulations of the State's role in regulation of fish and wildlife for subsistence uses within Alaska refuges. In response, the Service is promulgating § 30.11(d) which recognizes State regulation of the taking of fish and wildlife in Alaska refuges consistent with applicable Federal law, including the Alaska Lands Act. For example, the Service expects the State to continue to regulate seasons and bag limits in refuge areas. Furthermore, as mentioned above, the Fish and Wildlife Service anticipates that a State subsistence program implementing the Alaska Lands Act's various substantive mandates will be approved.

One commenter requested that the Fish and Wildlife Service define the term "healthy populations" used in several instances in this section. The Service has not accepted this suggestion in the context of these interim rules. Guidance as to the meaning of this term is found in the Alaska Lands Act legislative history, which is quoted in relevant portion in the section-by-section analysis.

Definitions

Most comments on the definition of "subsistence uses" concerned the Fish and Wildlife Service's proposed definition of "customary trade." In general, the comments indicated strong support for the Service's inclusion of fur trading within the term. Three commenters objected, however, that the definition was too limited. For example, one commenter wrote that

[c]ustomary trade in Alaska is involved in more than the exchange of furs for cash. Quite often there is trade for specific items or merchandise including food and fuel.

The definition of "subsistence uses" adequately covers these concerns in its provision for "barter." The "barter" definition, taken verbatim from Section 803 of the Alaska Lands Act, allows local rural residents to trade furs for fish, game, food, or nonedible items other than money for personal or family consumption. The Fish and Wildlife Service's definition of "customary trade" serves to expand the permissible exchange to include, in addition, furs for cash. One rural group, however, pointed out a customary trade practice that the proposed definition of "subsistence uses" did not cover: The customary and traditional making and selling of certain handicraft articles out of plant materials. In response to the comment, the Service specifically defines "customary trade" to include the exchange of furs for cash and authorizes Refuge Managers to specify in special

regulations other activities, if any, that fall within the scope of that term.

Use of Snowmobiles, Motorboats and Other Means of Surface Transportation Traditionally Employed by Local Rural Residents Engaged in Subsistence Uses

Several commenters argued that subsistence access modes should not be limited to those "traditionally employed" by local rural residents. The Service has retained this term, since it parallels the language of the subsistence access section (811(b)) of the Alaska Lands Act.

A number of commenters suggested that the regulations should specify that the use of dogsleds is authorized within Alaska refuges for subsistence uses. This suggestion comports with relevant legislative history and has been adopted.

The allowed use of motorized surface transportation in accordance with the provisions of § 36.12 evoked two objections. One organization commented that "the use of snowmobiles, motorboats and off-road vehicle is * * * abhorrent to the notion of subsistence hunting * * *." Section 811(b) of the Alaska Lands Act, however, mandates the Secretary to allow "appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulation." Section 36.12 implements this statutory mandate, highlights its limitations and provides for appropriate restrictions, closures, and regulation. Another organization recommended that the Fish and Wildlife Service prohibit motorized surface transportation other than snowmachines and motorboats (e.g., ATVs) except by permit upon a demonstration of "traditional use" by the local rural resident. The Service has decided against this recommendation for this rulemaking exercise since (1) the Service wants to avoid another permit requirement, if possible, (2) the restrictions, closure, and other regulatory provisions of § 36.12 should adequately protect refuge values, at least for this interim period, and (3) the Service would not adopt such a new proposal without additional notice and comment.

Subsistence use of Timber and Plant Material

Many comments suggested that the cutting of live standing timber for subsistence uses should require a prior issuance of a permit by the Refuge Manager in the manner proposed by the National Park Service. The Service

agrees that a permit requirement is necessary in some cases to protect refuge resources. However, the cutting of small timber for casual uses does not present a resource problem, and imposition of such a requirement would be onerous to users. Accordingly, the regulations require a permit only for the cutting of live standing timber of diameter greater than three inches at ground height.

Closure

In response to comments asking for increased notice, local consultation, and hearings the Fish and Wildlife Service has made minor changes in § 36.16 that underscore the Service's intent to provide effective and meaningful notice and hearing in the affected vicinity "and other locations as appropriate."

One group objected to the "public safety" standard for closure on the grounds that "normally occurring accidents" should not be the reason for closure. The Service has not deleted this standard. The Alaska Lands Act establishes it as one of three closure standards for subsistence uses of fish and wildlife. In its experience, moreover, the Fish and Wildlife Service has found "public safety" to be a very important reason for closure. For example, in the case of subsistence hunting, allowing hunting in the immediate vicinity of a well-used hiking trail or camping site at certain times of the year might unnecessarily endanger lives. Or, in the case of snowmobiles, allowing snowmobiling in an area endangered by earthquake or avalanche would similarly risk lives. The closure provisions have many procedural and substantive provisions intended to insure that the closure is sufficiently justified and well discussed.

Subpart C—Use of Motorized Vehicles and Access

Snowmachines

Many commenters objected to the use of snowmachines within Alaskan refuges, or suggested that snowmachine use be restricted to that specifically mandated by the Alaska Lands Act. The Service is without legal authority to adopt the restrictive approach suggested by the former comments, since section 1110(a) of the Alaska Lands Act authorizes snowmachine use in all Alaska refuges for "traditional activities" and "travel to and from villages and homesites". The Service has adopted the latter suggestion—that of tracking the section language quoted above. For those activities not within the scope of section 1110(a), the Service must comply with other applicable law,

notably Executive Order 11044. The Service has determined that the findings required by the Executive Order for the general opening of areas to snowmachines use (as proposed in the January 19, 1981 regulations) cannot factually be made at this time. Consequently, as a legal matter snowmachine use may be authorized only during periods of adequate snowcover or frozen river conditions for traditional activities which are still permitted in refuge areas (snowmachine use to locate new mining claims would not be authorized, since that land use is prohibited by section 304 of the Alaska Lands Act) and travel to and from villages and homesites.

Motorboats

A few commenters recommended that the Service require a permit for the use of motorboats on Alaska National Wildlife Refuges. The Service has not adopted that suggestion at this time. If motorboat use problems arise in the future, they may be dealt with on a case-by-case basis through the issuance of a refuge special regulation.

Nonmotorized Surface Transportation

A number of commenters suggested that § 36.21 be expanded to specifically authorize the use of nonmotorized surface transportation on Alaska refuges. This suggestion, which parallels the requirements of section 1110(a) of the Alaska Lands Act, was adopted.

Aircraft

The Fish and Wildlife Service received a large number of comments recommending that helicopter use be authorized only after issuance of a permit by the Refuge Manager. This recommendation has been adopted for helicopter use other than at designated areas because of the direct and indirect effects of that activity on wildlife. The Service will solicit only that information from helicopter users that is necessary to insure the conservation of refuge resources.

One commenter suggested that the downed aircraft subsection should be modified to require only that such aircraft "may be required to be removed." The Service is not adopting this recommendation since it would eviscerate the waiver requirement of the subsection—the Refuge Manager may waive the requirements of the section upon a determination that the removal of downed aircraft would constitute an unacceptable risk to human life, result in extensive resource damage, or is otherwise impractical or impossible.

Off-Road Vehicles

Several organizations recommended that the regulations authorizing ORV use on existing trails. The Service is without legal authority to authorize such uses across the board because of a number of statutory and executive requirements, such as Executive Order 11644 (Use of Off-Road Vehicles on Public Lands) and the Wilderness Act. However, the Service has adopted an ORV permit procedure which offers the maximum ORV use allowable under current law. Under this procedure, individuals can obtain permits for ORV use on existing trails in nonwilderness refuge areas after the Refuge Manager's finding of compatibility with refuge purposes. The Service also notes that persons desiring the opening of specific ORV trails may petition the Department to initiate this process under 43 CFR 14.6. Until such trail and/or area openings occur, off-road use is prohibited except by permit or pursuant to § 36.27.

Many commenters recommended that this section be modified to authorize the Service to designate only "routes" for ORV use, and not "areas." Several expressed concern that the inclusion of the latter term would leave the Refuge Manager vulnerable to suggestions that vast portions of Alaska refuges be open to ORV use. The Service has not adopted this suggestion; the designation of "areas" tracks the language of Executive Order 11644.

Access to Inholdings

Several comments indicated confusion over the scope of this section. The section has been revised to make clear that an access permit is required only when the inholder desires an access method that is not authorized by other provisions of these regulations. Consequently, the modes of access authorized by §§ 36.21 and 36.22 should greatly reduce the number of access permits that are required.

One commenter suggested the deletion of the reference in section 36.23(a) to alienating Federal property. This suggestion has been adopted solely for editorial reasons since it is unnecessary.

Many commenters argued that the proposed access permit information requirements were unduly onerous. The Service, in response to these comments, has significantly pared down the amount of information to be solicited from applicants. The application requirements published today are geared to obtaining information on whether the applicant has a valid property or occupancy interest as required by Alaska Lands Act section

1110(b), the location of that interest, the applicant's desired route and method of access and, when deemed necessary by the Refuge Manager, information on access alternatives and environmental impacts.

Several commenters objected to the requirement that the access permit be renewed in cases where no change in circumstances had occurred. This suggestion has been effectively accepted. Permit holders are required, however, to notify the Refuge Manager of any significant change in the method or level of access from that occurring at the time of issuance. The Service may modify the terms and conditions of the access permit in these cases, subject to the requirement that the modified permit must also assure "adequate feasible access."

A number of comments objected to the special information requirements for mineral assessment or development that appeared in the proposed rules.

This comment has been accepted. The information requirements of § 36.23(b) are sufficiently flexible to permit the Service to solicit that information relevant to authorize adequate and feasible access.

Many commenters argued that the distinction made in the proposed rules between ordinary access to inholdings and permanent access is not supported by applicable law. The revised § 36.23(c) responds to these comments, addresses access requiring permanent improvements on refuge lands (e.g. road or bridge construction) and is an interpretive rule on the relationship between Alaska Lands Act section 1110(b) access to inholdings and section 1101-1107 "transportation or utility system". The proposed rules had intimated that permanent improvements could not be a part of the Alaska Lands Act section 1110(b) access guarantee and had inappropriately referenced 50 CFR Chapter I, Subchapter C, Part 29 as the controlling rules for applying for permanent rights-of-way. The revised section also requires that an application for a "transportation or utility system" (a term defined in section 1102 of the Alaska Lands Act, the legislative history, and this subsection) be submitted on a consolidated application form, as required by section 1104 of the Alaska Lands Act. If a permanent improvement is required for adequate and feasible access to an inholding (e.g. a landing strip or road construction) within the meaning of Alaska Lands Act section 1110(b), then the recovery rights for the permanent improvement will be granted following *procedural* compliance with Alaska Lands Act section 1101—a relatively simple form

must be completed and submitted. Conversely, if this permanent improvement is not necessary for section 1110(b) access to inholdings (e.g. requests for powerlines and pipelines, or a request for a 4 lane highway to a recreational cabin), then both the procedural and substantive elements of Alaska Lands Act section 1104-1107 will be applicable in determining whether to authorize the permanent improvement.

Temporary Access

Many commenters favored reducing the application information requirements for temporary access. As in the case of § 36.23, this suggestion has been accepted, and no special information is requested from mineral exploration and development applicants.

Several commenters questioned the definition of "temporary access" in the proposed rules. The final rules respond to these comments by defining temporary access as limited, short term (up to one year) access, which does not require permanent facilities for access to undeveloped non-federal lands. Unlike access to inholdings under § 36.23, temporary access can be denied or conditioned where there would be permanent harm to refuge resources.

Subpart D—Other Refuge Uses

Recreational Activities

Several commenters suggested that this section should be modified to specifically authorize gold panning. The final rules adopt the substance of this suggestion by authorizing recreational gold panning that does not involve surface disturbance. Accordingly, the use of hand held gold pans is authorized; the use of sluice boxes, shovels, pick axes and dredges is prohibited.

Cabins and Other Structures

A few commenters objected to the prohibition on the construction of new cabins on federally owned land within Alaska refuges except as authorized pursuant to a non-transferable, five year special use permit. This requirement has not been changed since it is mandated by section 1303 of the Alaska Lands Act.

Several commenters objected to the § 36.33(b)(1) requirement of listing immediate family members residing in the cabin. This requirement has been retained since the Service believes this information is essential for accurate permit renewals to family members, and is necessary to protect the occupying interest of the immediate family. As individuals are added to the immediate family, they will be added to this listing.

Unattended Property

Comments on this issue addressed the length of time one should generally be authorized to leave unattended property within Alaska refuges, suggestions ranging from 7 days to 24 months. The Service has retained the 1 year standard of the proposed rules. The Service notes that it has authority to close areas to this use in appropriate circumstances.

Subsistence and Land Use Decision

Several comments suggested that this provision be deleted since it merely restates the requirements of section 810 of the Alaska Lands Act; other comments suggested that the provision be moved to subpart A to clarify its legislatively intended scope. The Service decided to delete this section for reasons addressed in the subsistence section above, but recognizes its relation to Service activities.

Subpart E—Permits and Public Participation and Closure Procedures

Permits

A number of comments requested that permit decisions be made as expeditiously as possible. In response to the sentiment expressed by these comments, the final rules require the Refuge Manager to approve or deny the permit, or request additional information within 45 days unless good cause exists for not meeting this target date.

Several commenters suggested that the Refuge Manager's decision should be supported by a written document setting forth the basis of his decision in order to facilitate later review. This comment has been accepted. The Service has also established a requirement that if a permit application is denied, the Refuge Manager is to notify the applicant in writing of the reasons for this denial.

A few comments recommended that the rules authorize appeals from the Refuge Manager's decision within 180 days of permit denial rather than the 60 day period established in the proposed regulations. This recommendation has been accepted since the shorter appeal time benefits neither the applicant or the government.

Several commenters argued that applicants should be afforded an informal meeting with the Regional Directors as a matter of right. The proposed rules authorized such a meeting only if certain standards were met. The Service has accepted the recommendation in an effort to allow the applicant another forum to present whatever information is available that is relevant to the decision.

Public Participation and Closure Procedures

Several commenters suggested that the Service be more specific in delineating closure criteria. The Service cannot forecast the complete range of criteria that would be applicable to protect Alaska refuges. Accordingly, while the Service expects the vast majority of closure decisions to be based on delineated factors like public safety and resource protection, the Service does not believe it prudent to specify a binding limited list of criteria.

The Fish and Wildlife Service received many comments arguing that the proposed rule limiting the public hearings requirements to the affected vicinity precluded, in some cases, public participation by urban uses who would also be affected. In response to this comment, the Service has adopted regulatory language that mandates such hearings in other locations, if appropriate.

Several commenters suggested that the Service adopt a temporary closure procedure similar to that proposed by the Park Service. This recommendation has been adopted. The temporary closure procedure allows the Service improved flexibility in responding to management problems. Although temporary closures may extend up to 12 months in appropriate cases, they need not if the problem requiring temporary closure is alleviated in less time.

Many commenters suggested that permanent closures be accompanied with a Federal Register notice. This suggestion has been adopted to more fully inform the general public of Service actions.

Many commenters suggested that areas be opened to uses previously prohibited only after prior notice in the Federal Register. This suggestion has also been accepted, again to more fully inform the general public of Service actions.

Section-by-Section Analysis

Subpart A—Introduction and General Provisions

Applicability and Scope—Section 36.1

The regulations published today establish interim management rules for the Alaska National Wildlife Refuges. The Alaska refuges are also subject to the general National Wildlife Refuge System regulations (*see* 50 CFR Chapter I, Subchapter C), as supplemented and modified by these rules. Existing special regulations now in force and effect will also apply to applicable Alaska National Wildlife Refuge lands, except where inconsistent with these rules or

the provisions of the Alaska Lands Act. These regulations generally apply only to "federally owned" land within the Alaska National Wildlife Refuges. *See* the discussion of federally-owned land in the Analysis of Comments section above.

Definitions—Section 36.2

This section sets out the definitions of key terms used in these regulations. The definitions specified in these rules generally follow the language of the Alaska Lands Act where available or adopt generally accepted definitions used in prior regulations promulgated by the Fish and Wildlife Service for fish and wildlife conservation areas. The term "fish and wildlife," for instance, tracks the language of the statute although as noted above the Fish and Wildlife Service recognizes the clearly expressed Congressional intent that this term does not include those animals the Service determines to be exotic or domestic. Other definitions, such as those for "adequate and feasible access" and "subsistence uses", are discussed in connection with the substantive access and subsistence provisions and are not repeated here.

Subpart B—Subsistence Uses

Subpart B of these regulations implements the policies and procedures governing subsistence uses contained in Title III and VIII of the Alaska Lands Act.

The regulations for subsistence are necessary for several reasons. First, they relieve restrictions in the otherwise applicable general National Wildlife Refuge System regulations for uses and activities integral to the subsistence lifestyle. In certain cases, the Alaska Lands Act does not specifically relieve these restrictions; in other cases, the Act allows the uses, but the general refuge regulations appear to prohibit them under threat of criminal penalty. Second, the regulations implement certain critical provisions of the Alaska Lands Act concerning subsistence (*e.g.*, the closure standards and procedures for subsistence uses of fish and wildlife), and extend the approach of certain of these provisions to subjects not specifically mentioned by the Act (*e.g.*, closure standards and procedures for subsistence use of plants).

The subsistence regulations are not comprehensive. They do not provide for implementing certain provisions of Title VIII of the Alaska Lands Act that, in the Service's judgment, do not lend themselves to expeditious promulgation since they have not previously been the subject of notice and comment. Notable

among these statutory provisions are the State regulation opportunity of section 805(d), the Federal monitoring requirement of section 806, the judicial enforcement mechanism of section 807, the subsistence and land use procedure of section 810, and the subsistence research provision of section 812. It should be emphasized that all parties must comply with these statutory provisions as long as they remain in effect.

Purpose and Policy—Section 36.11

Section 36.11(a) provides that, consistent with proper management of fish and wildlife and the purposes for which the Alaska National Wildlife Refuges were established, the purpose of Subpart B of the regulations is to provide the opportunity for local rural residents engaged in a subsistence way of life to do so pursuant to applicable State and Federal law.

Alaska Lands Act, sections 101(c) and 802(l). The Subpart B regulations are designed to accommodate and protect the unique subsistence relationship of certain local rural people in Alaska with their natural environment.

Alaska Native people have been living a subsistence way of life for thousands of years, and certain non-Native rural residents have developed a subsistence way of life in more recent times. Many of these local rural residents have customarily and traditionally taken the renewable resources which are now within the boundaries of refuge areas.

The resources satisfy both the physical needs of these local rural residents for food, shelter, fuel, clothing, tools, and transportation and their societal needs for cultural identity through skills, lore, and traditions. In light of the cultural and societal importance of the subsistence lifestyle in rural Alaska and its dependence on the renewable resources, therefore, Subpart B implements the Congressional directive to continue the opportunity for subsistence uses within Alaska National Wildlife Refuges by local rural residents.

Section 36.11(b)–(c) sets forth basic policies which the Alaska Lands Act adopted to guide the activities of the administering agencies. Alaska Lands Act, sections 802 (1), (2) and 804. First, consistent with sound resource management principles and the conservation of healthy population of fish and wildlife, the utilization of refuge areas is to cause the least adverse impact possible on local rural residents who depend upon subsistence uses of the resources of the public lands in Alaska for their economic and physical well-being and cultural vitality. This

statutory policy is implemented throughout the regulations, particularly in the subsistence priority recognized by § 36.11(c), and the limitations on closure, §§ 36.12, 36.15, and 36.16.

Section 36.11(c), establishes the nonwasteful subsistence uses of fish, wildlife, and other renewable resources by local rural residents as the priority consumptive use over any other consumptive uses permitted within refuge areas. The Fish and Wildlife Service anticipates State regulations implementing the subsistence priority.

Section 36.11(d) authorizes the State of Alaska to regulate the taking of fish and wildlife for subsistence uses within Alaska National Wildlife Refuges to the extent such regulation is consistent with applicable Federal law, including but not limited to the Alaska Lands Act.

In addition to establishing the purpose and policies of the Subpart B regulations, § 36.11(e) also establishes the limitations of the purpose and policies. According to § 36.11(a), the subsistence opportunity may only be provided in a manner and degree consistent with the management of fish and wildlife in accordance with recognized scientific principles and with the purposes for which each refuge area was established, designated, or expanded by the Alaska Lands Act. According to § 36.11(b), the utilization of the public lands is to cause the least adverse impact possible on local rural residents, but this policy is limited by the requirements that it be consistent with sound management principles and the conservation of healthy populations of fish and wildlife. Section 36.11(c) establishes the basic limitations of all the provisions of the Subpart B regulations: subsistence uses of fish and wildlife populations must be appropriately regulated so as to assure conservation of healthy populations within Alaska National Wildlife Refuges. Congress provided the following guidelines on the implementation of this concept:

The Committee intends the phrase "the conservation of healthy populations of fish and wildlife" to mean the maintenance of fish and wildlife resources and their habitats in a condition which assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystems, including recognition that local rural residents engaged in subsistence uses may be a natural part of that ecosystem; minimizes the likelihood of irreversible or long-term adverse effects upon such populations and species; and ensures maximum practicable diversity of options for the future.

The greater the ignorance of the resource parameters, particularly of the ability and capacity of a population or species to

respond to changes in its ecosystem, the greater the safety factor must be. Thus, in order to insure that subsistence uses are compatible with the maintenance of healthy populations of fish and wildlife, it must be recognized that the likelihood of irreversible or long-term adverse effects to a population or species must be proportional to the magnitude of the risks caused by a proposed use of such population or species.

The Committee recognizes that the management policies and legal authorities of the National Park System and the National Wildlife Refuge System may require different interpretations and application of the "healthy population" concept consistent with the management objectives of each system. Accordingly, the Committee recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population dynamics, and the manipulation of the components of the ecosystem. S. Rep. No. 96-413, 96th Cong. 1st Sess., 233 (April 16, 1979).

Subsistence Definitions

Local Rural Resident. Throughout the regulations the Fish and Wildlife Service categorizes those people who may engage in subsistence uses as "local rural residents." This term derives from the term "local residents" in Title III of the Alaska Lands Act and the term "rural Alaska residents" in the definition of "subsistence uses" in Title VIII. Title III authorizes the opportunity for continued subsistence uses by local residents. Alaska Lands Act, sections 302 and 303. The definition of "subsistence uses" refers to "rural Alaska residents" Alaska Lands Act, Section 803. The relationship between this language in Title III and Title VIII was described as follows in the Congressional Record:

Since the definition of "subsistence uses" in section 803 limit such uses to "rural Alaska residents," a reading of Title VIII and Title III . . . together make it clear that the policy throughout is that only local rural residents are by statute provided the opportunity to engage in subsistence uses in areas of the . . . National Wildlife Refuge System. 126 Cong. Rec. S15129 (daily ed. Dec. 1, 1980).

Subsistence Uses. The definition of "subsistence uses" found in § 36.2 tracks the language of section 803 of the Alaska Lands Act with one modification: Today's definition offers some guidance on the meaning of the term "customary trade," which the statute leaves undefined.

The term "subsistence uses" means the customary and traditional uses by rural Alaska residents of fish, wildlife, and other 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 from the 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. The definition uses several terms which require further explanation. To begin with, the definition uses the phrase "customary and traditional" to modify the term "uses" in order to emphasize that Native and non-Native subsistence uses "have played a long established and important role in the economy and culture of the community and . . . (that) such uses incorporate beliefs and customs which have been handed down by word of mouth or example from generation to generation." S. Rep. No. 96-413, *supra*, 269; H. Rep. No. 96-97, 96th Congress, 1st Sess. 280 (1979).

Next, the definition limits subsistence uses to those "by rural Alaska residents." Clearly, this limitation excludes residents of Ketchikan, Juneau, Anchorage, and Fairbanks from engaging in authorized "subsistence uses." See S. Rep. No. 96-413, *supra*, 233. Residents of "rural" Alaska—including communities such as Dillingham, Bethel, Nome, Kotzebue, Barrow, and other villages throughout the State (as long as such communities remain rural)—may engage in "subsistence uses." It is important to emphasize, however, that in refuge areas only local "rural residents" are accorded the subsistence priority. Thus, while the statutory definition of "subsistence uses" focuses more broadly on "rural Alaska residents" wherever they may live, the legislative history to Titles III and VIII clearly shows that it is only for the category of rural residents who are also local to the vicinity of a particular wildlife refuge that the subsistence priority is intended to apply. See 126 Cong. Rec. S15129 (daily ed., Dec. 1, 1960).

The term "family" is defined to include any person living within a local rural resident's household on a permanent basis as well as those persons living outside the household who are related by blood, marriage, or adoption (legal or equitable). The definition of "family" recognizes extended family patterns common in the subsistence culture of Alaska.

The definition of "subsistence uses" includes the making and selling of handicraft articles from the nonedible byproducts only of fish and wildlife resources taken for personal or family consumption. Accordingly, the definition covers such commercial activities only if the edible portions of the resource have

been used for personal or family consumption. The "subsistence uses" definition also includes "barter" for personal or family consumption in recognition that a genuine subsistence lifestyle includes certain foodstuffs and other items which may not be available through a non-cash exchange. Thus, barter of subsistence resources of a limited and noncommercial nature falls within the meaning of "subsistence uses."

Finally, the definition of "customary trade" recognizes that a subsistence lifestyle may also include limited involvement in the cash economy. Trapping of furbearers, for instance, is an integral and longstanding part of the subsistence lifestyle in many regions in Alaska. While some of the furs are utilized for personal or family use, it is recognized that a portion of the furs ultimately become items for sale on the commercial market. The cash remuneration, in turn, helps to provide the basic tools and supplies associated with trapping and the subsistence lifestyle of which trapping is a part. For example, local rural residents may engage in trapping to obtain the cash required for necessary store-bought supplies such as gasoline and ammunition. The allowance of cash interchange related to trappings is intended to provide continuity to the traditional and customary harvest of furbearers by those who engage in subsistence uses within refuge areas. Because the Service may find that other forms of customary trade for subsistence purpose may have occurred, the rules also provide the Refuge Manager the authority to designate these activities in refuge special rules.

It should be recognized, however that the definition of "customary trade" was intended to be narrow:

"The Committee does not intend 'customary trade' to be construed to permit the establishment of significant commercial enterprise under the guise of 'subsistence uses.' The Committee expects the Secretary and the State to closely monitor the 'customary trade' component of the definition and promulgate regulations consistent with the intent of the subsistence title." S. Rep. No. 96-413, *supra*, 234.

Access for Subsistence Purposes—Section 36.12

In furtherance of Section 811 of the Alaska Lands Act, this section provides local rural residents engaged in subsistence uses reasonable access to the subsistence resources on which they depend. This section liberalizes the provisions of subpart C on snowmobiles, motorboats, and certain off-road vehicles in the case of local rural

residents who are engaged in subsistence hunting, fishing, and gathering activities within the refuge areas. All routes and areas are open to use of these vehicles for subsistence purposes except as specifically restricted or closed. The Refuge Manager will implement such closures or restrictions on the basis of criteria which are more limited than the criteria for closure to general recreation use. Basically, in order to impose a restriction, the Refuge Manager must determine that the use in question is causing or is likely to cause an adverse impact on public health and safety, resource protection, protection of historic or scientific values, subsistence uses, conservation of endangered or threatened species or the purposes and values for which the refuge area was established. The Refuge Manager will arrange notice and public participation concerning closure proposals in order to involve those affected to the fullest extent possible in the decision making. It should be noted that the types of access vehicles covered by § 36.12 include "other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses." The regulations define this term to include use of dog teams. The limitations of the quoted phrase, if any, will be addressed as appropriate in future rulemaking efforts.

Under the regulations any person operating motorboats, snowmobiles, and other means of surface transportation must comply with applicable State and Federal laws governing such operation and must avoid causing waste or damage to fish, wildlife, terrain, or other values of the refuge area. In addition, consistent with State law, the vehicle operator may not use a motorized vehicle so as to herd, harass, haze, or drive wildlife for hunting or any other purpose.

At all times when not engaged in subsistence uses, local rural residents would be able to use snowmobiles, motorboats, and other means of surface transportation in accordance with the appropriate Subpart C regulations.

For example, local rural residents engaged in recreational uses of snowmobiles, motorboats, and other means of surface transportation would comply with the provisions of §§ 36.21 and 36.22 and local rural residents seeking otherwise closed access to inland or temporary access would comply with the provisions of §§ 36.23 and 36.24 respectively.

Subsistence Fishing—Section 36.13

This section authorizes local rural residents to engage in fishing in Alaska National Wildlife Refuges in compliance with applicable State and Federal law. Section 36.16, explained below, governs closures to fishing for subsistence purposes.

Subsistence Hunting and Trapping—Section 36.14

This section authorizes local rural residents to hunt or trap wildlife for subsistence uses in compliance with applicable State and Federal law. Closure of areas to subsistence hunting and trapping is treated in § 36.16.

Subsistence use of Timber and Plant Material—Section 36.15

This section addresses subsistence uses of timber and plant material. Section 36.15(a) authorizes subject to the terms of a permit the noncommercial cutting of live standing timber of diameter greater than 3 inches by local rural residents for appropriate subsistence uses. The cutting of smaller timber, as well as the noncommercial gathering of fruits, berries, mushrooms and other plant material by local rural residents for subsistence uses, is allowed unless otherwise restricted by the Refuge Manager.

Section 36.15(b) sets forth the standards and procedures for closing a refuge area to the subsistence uses of a particular plant population. Although not expressly required by the Alaska Lands Act, today's regulations apply similar closure provisions for subsistence uses of plants as the Act requires for subsistence uses of fish and wildlife. As discussed below in the latter context, the closure standards are narrow, and the closure procedures involve significant public participation in order to protect the affected local rural residents who depend on the resources.

Closure to Subsistence Use of Fish and Wildlife—Section 36.18

Pursuant to Section 816 of the Alaska Lands Act and this section, the Refuge Manager has the authority to close or restrict any part or all of an Alaska National Wildlife Refuge to subsistence uses of a particular fish or wildlife population only temporarily and only if necessary "for reasons of public safety, administration, or to assure the continued viability of such population." To implement Congress' intent, section 36.16 provides protection standards, time limitations, and notice requirements for closures to subsistence taking of fish and wildlife.

With respect to the standards for closure, the Act lists only three: Public safety, administration, and for assurance of the continued viability of a fish and wildlife population. No closure for purposes of administration, moreover, may be made prior to notice and hearing in the vicinity of the closure. The public safety standard clearly allows the Refuge Manager to act in situations which threaten public health and welfare. For example, the Refuge Manager may prohibit subsistence hunting and trapping for reasons of public safety in specified areas surrounding a public campground, roadway or hiking trail. The "fish or wildlife viability" standard allows the Refuge Manager to act for purposes of maintaining resource populations upon which local rural residents rely at levels adequately above the threatened level. As Congress stated, "it is not the intent that actual depletion of a population or an emergency exist before a closure under this section may be justified." S. Rep. No. 96-413, *supra*, 278; H. Rep. No. 96-97, *supra*, 289.

Moreover, as stated in Section 815 of the Alaska Lands Act and § 36.11(d) of these regulations and explained previously, the subsistence provisions are not to be construed as permitting a level of subsistence use of fish and wildlife within Alaska National Wildlife Refuges determined to be inconsistent with the conservation of healthy populations of fish and wildlife. The "administration" standard is potentially the broadest of the three closure standards, though "recognition of the importance of subsistence activities to most (local) rural residents requires that this authority be utilized narrowly and with consistent restraint." S. Rep. No. 96-413, *supra*, 278; H. Rep. No. 96-97, *supra*, 289. Guided by this intent, the Refuge Manager can invoke the administration standard to protect the purposes and values of the refuge areas and to otherwise manage the refuge prudently. The limitation of Section 815 of the Act and § 36.11(d) of the regulations would also be relevant to this closure standard.

Closures shall last only so long as reasonably necessary to achieve the purposes of the closures. In the case of closing an area around a hiking trail for reasons of public safety, for example, the closure "should remain in effect only so long as reasonably necessary provide for the public safety during normal periods of consistent public use, and only apply to the minimum portion of the public lands reasonably necessary to achieve this purpose." S. Rep. No. 96-413, *supra*, 277-78; H. Rep.

No. 96-97, *supra*, 289. Thus, closures may be seasonal in nature, for example, if warranted by the situation.

In the normal case, a closure would be preceded by consultation with the State and adequate notice and informal public hearing in the vicinity of the closure. In an emergency situation, the Refuge Manager would immediately close the area for a period not to exceed sixty days. The Refuge Manager may extend an emergency closure only if he establishes, after notice and in formal public hearings in the vicinity, that the extension is justified under the applicable closure standards.

Finally, § 36.16(c) is designed to inform as many local rural residents as possible about any closures which may affect them.

Subpart C—Use of Motorized Vehicles and Access

Sections 36.21-36.24 of these regulations implement sections 1110 and 1111 of the Alaska Lands Act concerning access by the public across Alaska National Wildlife Refuges for nonsubsistence purposes. These proposed regulations generally relax restrictions on access that are applicable to National Wildlife Refuge units outside of Alaska, consistent with the requirements of the Alaska Lands Act. These sections are designed to and are presented in an order which will funnel the vast majority of access needs away from a system of individual access permits. Section 36.21 opens all refuges to access by snowmobile, aircraft, motorboat, and nonmotorized surface transportation for most purposes. (Additional access for subsistence uses is set forth in § 36.12). Section 36.22 provides a mechanism for establishing common corridors and areas for off-road vehicle use. In the less common situation where §§ 36.11 and 36.22 do not accommodate a refuge "inholder's" need for access, § 36.23 provides for individual permits that insure adequate and feasible access while minimizing damage to refuge resources. Finally, where §§ 36.21-36.23 do not otherwise provide temporary access, § 36.24 creates another means for obtaining desired access.

Snowmachines, Motorboats, Aircraft, and Nonmotorized Surface Transportation—Section 36.21

This section treats the use of snowmachines, motorboats, aircraft and nonmotorized surface transportation for other than subsistence purposes.

Motorboat, fixed wing aircraft and nonmotorized surface transportation use for all purposes are authorized on

Alaska Refuges. Snowmachine use on Alaska refuges is open to the maximum extent possible consistent with existing law. See the analysis of comments discussion above. Helicopter use is also authorized subject to the terms and conditions of a special use permit issued by the Refuge Manager.

This section also sets out procedures for removal of aircraft downed after December 2, 1980 on Alaska National Wildlife Refuges. The regulations require that downed aircraft must be removed pursuant to the terms of a special use permit unless the Refuge Manager determines, on a case-by-case basis, that the removal of the aircraft would constitute an unacceptable risk to human life, would result in extensive resource damage, or would otherwise be impracticable or impossible. In evaluating this final criterion, the Service would not require removal of a downed aircraft in any situations when the removal of the aircraft would cause such a severe and significant hardship to the owner as to be economically prohibitive.

Off-Road Vehicles—Section 36.22

This section authorizes the use of off-road vehicles on roads and routes and areas designated by the Refuge Manager, and establishes a procedure for further designation of such routes and areas. Today's rules open refuges to ORV use in a manner designed to authorize such access to the extent possible consistent with refuge values.

Access to Inholdings—Section 36.23

This section provides further procedures to insure "adequate and feasible access" to inholdings. As noted above in the Analysis of Comments, this term is defined to make clear that the inholder determines the desired land use or development, and the Service provides reasonable access to meet the desired land use. In addition, instead of defining the term circularly in terms of access, the § 36.2 definition provides that only "personal and vehicular travel" (e.g., routes, trails, and landing strips, but not transmission lines and pipelines) fits within the statutory access guarantee, in accordance with the legislative history of section 1110(b) appearing in *S. Rep. No. 96-413*, 96th Cong. 1st Sess., 246 (Nov. 14, 1979) and in *H. Rep. No. 96-97*, Part I, 96th Cong., 1st Sess., 239-240 (April 18, 1979). Finally, the definition makes it clear that the access permitted must be economically practicable, but not necessarily the least costly access alternative.

Consistent with the statutory obligation (section 1110(b) of the Alaska

Lands Act) to provide adequate and feasible access, § 36.23(b) of the regulations strives to give the applicant his preferred access, unless there would be significant resource conflicts and alternative adequate and feasible access exists. This regulatory provision also attempts to fulfill the congressional directive in a manner calculated to ease public reporting burdens while insuring the conservation of refuge values.

Section 36.23(c) is an interpretive rule designed to clarify the relationship of sections 1101-1107 and 1110 of the Alaska Lands Act. See the discussion in the Analysis of Comments.

Temporary Access—Section 36.24

This section implements section 1111 of the Alaska Lands Act by establishing a permit mechanism for obtaining temporary access across an Alaska National Wildlife Refuge for purposes of survey, geophysical, exploratory, or other temporary uses of non-Federal lands located outside refuge boundaries. Section 36.24 requires an access permit only where §§ 36.21 and 36.22 do not provide the desired access, and where § 36.23 is not applicable (e.g., if a refuge "inholder" or a person effectively surrounded by Federal lands requires temporary access across a refuge, section 1110(b) of the Alaska Lands Act and § 36.23 of these regulations grant greater access privileges).

Subpart D—Other Refuge Uses

Recreational Activities—Section 36.31

This section authorizes public recreational activities such as boating, camping, hiking, and picnicking within an Alaska National Wildlife Refuge as long as these activities are conducted in a manner compatible with the purpose of the particular refuge. In reaching this regulatory decision, the Service has reviewed the extensive data accumulated through studies, environmental analyses and hearings preceding enactment of the Alaska Lands Act, as well as other information arising from the Federal Land Policy and Management Act, sections 204(c) and 204(e) withdrawals studies. On the basis of this extensive record, the historic use of these areas, and its professional expertise, the Service presently believes that all such activities are compatible with the purpose for which the refuges were established. The Refuge Manager retains authority to close or restrict these uses of refuge lands when he determines they are incompatible with refuge purposes.

Taking of Fish and Wildlife—Section 36.32

This section authorizes the taking of fish and wildlife on Alaska National Wildlife Refuges in accordance with applicable State and Federal law. (Additional provisions on subsistence hunting, trapping, and fishing are provided in §§ 36.13 and 36.14). A permit for these activities need not be obtained from the Refuge Manager, except that the presently existing requirement to obtain a permit before trapping on the Kenai, Izembek and Kodiak Refuges and the Aleutian Island's unit of Alaska Maritime Refuge is retained. The taking of fish and wildlife may be prohibited or restricted only in conjunction with notice and hearing pursuant to the requirements of § 36.42.

This section also treats commercial fishing in a manner that tracks the language of section 304 of the Alaska Lands Act. As expressly recognized by section 304, the Secretary retains the discretion to regulate commercial fishing activities in appropriate cases.

Cabins and other Structures—Section 36.33

This section provides procedures and guidance for those occupying and using existing cabins and those wishing to construct new cabins within Alaska National Wildlife Refuges. The regulations implement section 1303 of the Alaska Lands Act by addressing construction of new cabins, use of existing cabins by occupants who may not have a legal interest in them, and use of existing cabins by those with valid existing rights in cabins as of December 2, 1980.

Under the Alaska Lands Act new cabins are authorized in Alaska National Wildlife Refuges only pursuant to a non-transferable, five-year special use permit issued by the Refuge Manager. Section 36.33, tracking the language of the statute, authorizes issuance of such a permit only upon a determination that (1) the proposed use, construction, and maintenance of a cabin is compatible with the purposes for which the refuge was established and (2) that the use of the cabin is either directly related to the administration of the refuge or is necessary to provide for a continuation of an ongoing activity or use otherwise allowed within the refuge where the permit applicant has no reasonable alternative site for constructing a cabin outside the refuge. As prescribed by the Act, no special use permit may be issued to authorize the

construction of a cabin for private recreational use.

Subsection (b)(1) addresses the use of existing cabins by occupants who may not have a legal right to the cabin. The traditional and customary use of these existing cabins within an Alaska National Wildlife Refuge is authorized in accordance with a five-year, special use permit issued upon a determination by the Refuge Manager that the traditional and customary uses are compatible with the purposes of the refuge. As with new cabins, special use permits may not be issued to authorize the use of an existing cabin for private recreational uses.

Subsection (b)(2) addresses use of existing cabins by occupants who have a valid permit or lease in effect on December 2, 1980 for those structures. Such an occupant is entitled, as a matter of right, to continuation of such permit or lease unless the Refuge Manager determines, following notice and an opportunity for response, that such a continuation would directly threaten or significantly impair the purposes for which the refuge was established.

All permits authorized under this section must be renewed every five years until the death of the last immediate member of the claimant residing in the cabin. Permits need not be renewed, however, if the Refuge Manager determines, after a formal adjudicatory hearing, that the use of the cabin under the permit is causing or may cause significant detriment to the principal purposes for which the refuge was established.

Firearms—Section 36.34

This section authorizes, in accordance with State and Federal law, the possession, use and transporting of firearms on Alaska National Wildlife Refuges for purposes of hunting or personal protection. Such uses may be prohibited or restricted only in accordance with the public participation provision of § 36.42.

Unattended Property—Section 36.35

The general National Wildlife Refuge System regulations authorize the leaving of unattended personal property on a refuge for only short periods of time. Recognizing unique Alaska circumstances, such as the need to allow for trapping caches, this section generally extends the period to 12 months. In order to assure protection of refuge resources, the Refuge Manager may (1) designate areas where personal property may not be left unattended for any time period, (2) establish limits on the amount and type of personal property that may be left unattended, (3)

prescribe the manner in which personal property may be left unattended, and (4) establish limits on the length of time personal property may be left unattended.

Sled Dogs and House Pets—Section 36.36

This section relaxes the general trespass provisions of the general National Wildlife Refuge system regulations (50 CFR 28.11) for household pets and sled or pack dogs under the direct control of their owners or handlers.

Subpart E—Permits and Public Participation and Closure Procedures

Permits—Section 36.41

This section provides consolidated procedures regarding the issuance and denial of permits required by the general National Wildlife Refuge System regulations and these regulations. The procedures specify to whom an application for a permit must be submitted, and direct the Refuge Manager to approve or deny an application, or request additional information, within 45 days of receipt of the request unless good cause is shown. This section also adopts an appeal procedure for applicants aggrieved by a decision of the Refuge Manager. Aggrieved parties must appeal within 180 days of the Refuge Manager's decision. Appellants are also guaranteed the opportunity for an informal meeting with the Regional Director to present their cases.

Public Participation and Closure Procedures—Section 36.42

Section 36.42 authorizes the Refuge Manager to close an area or restrict an activity on an emergency, temporary or permanent basis. A determination to close an area or restrict an activity will be based on factors such as public health and safety, resource protection, and subsistence uses. No closures are provided for by this regulation. The section provides for notice and hearing for temporary and permanent closure, and also includes a provision for notice and informal hearing prior to all closure for snowmobile, aircraft or motorboat use, consistent with section 1110(b) of the Act. This rule establishes time limits for emergency closures (30 days) and temporary closures (12 months) which cannot be extended. This section also provides that areas may be opened to a public activity or use otherwise prohibited only after notice in the Federal Register and providing an opportunity for an informal public hearing.

Compliance with Other Laws

The Service has prepared an Environmental Assessment on this rulemaking and has made a Finding of No Significant Impact pursuant to regulations implementing the National Environmental Policy Act (42 U.S.C. 4332). Copies of the Environmental Assessment and the finding of No Significant Impact are available for public review in the Service's Alaska Regional Office.

The Service has also determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193, Feb. 19, 1981) and that the rulemaking would not have a "significant economic effect on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act (Pub. L. 96-354) and 43 CFR Part 14 (45 FR 85376, Dec. 24, 1980). Finally, the Service has received approval from the Office of Management and Budget for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (Pub. L. 96-511).

Drafting Information

The primary authors of these regulations are Lou Swenson and Owen Vivion, Fish and Wildlife Service Alaska Regional Office and Ronald Fowler, Division of Refuge Management, Washington, D.C.

Dated: May 27, 1981.

G. Ray Arnett,

Assistant Secretary, Fish and Wildlife and Parks.

In consideration of the foregoing, Title 50 of the Code of Federal Regulations is amended by establishment of a new Part 36 in Chapter I, Subchapter C, as follows:

PART 36—ALASKA NATIONAL WILDLIFE REFUGES

Subpart A—Introduction and General Provisions

Sec.

- 36.1 Applicability and scope.
- 36.2 Definitions.
- 36.3 Information collection.

Subpart B—Subsistence Uses

- 36.11 Purpose and policy.
- 36.12 Use of snowmobiles, motorboats, dog teams and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses.
- 36.13 Subsistence fishing.
- 36.14 Subsistence hunting and trapping.
- 36.15 Subsistence uses of timber and plant material.
- 36.16 Closure to subsistence uses.

Subpart C—Use of Motorized Vehicles and Access**Sec.**

- 36.21 Use of snowmachines, motorbobs, aircraft, and nonmotorized surface transportation.
- 36.22 Use of off-road vehicles.
- 36.23 Access to inholdings.
- 36.24 Temporary access.

Subpart D—Other Refuge Uses

- 36.31 Recreational activities.
- 36.32 Taking of fish and wildlife.
- 36.33 Cabins and other structures.
- 36.34 Firearms.
- 36.35 Unattended property.
- 36.36 Sled dogs and household pets.

Subpart E—Permits and Public Participation and Closure Procedures

- 36.41 Permits.
- 36.42 Public participation and closure procedures.

Table 1—Summary Listing the National Wildlife Refuges in Alaska as Established by the Alaska Lands Act

Authority: The Alaska National Interest Lands Conservation Act, Pub. L. No. 96-487 (December 2, 1980); the National Wildlife Refuge System Administration Act, as amended, 16 U.S.C. 668dd *et seq.*; Fish and Wildlife Act of 1956, 16 U.S.C. 742(a) *et seq.*; Refuge Recreation Act, 16 U.S.C. 460k *et seq.*; Paperwork Reduction Act of 1980, 94 Stat. 2812, Pub. L. 96-511.

Subpart A—Introduction and General Provisions**§ 36.1 Applicability and scope.**

(a) The regulations contained in this part are prescribed for the proper use and management of all Alaska National Wildlife Refuges and supplement the general National Wildlife Refuge System regulations found in Title 50, Code of Federal Regulations, Chapter I, Subchapter C. The general National Wildlife Refuge System regulations are automatically applicable in their entirety to the Alaska National Wildlife Refuges except as supplemented or modified by these regulations or amended by ANILCA.

(b) The regulations contained in this part are applicable only on federally owned lands within the boundaries of any Alaska National Wildlife Refuge. For purposes of this part "federally owned lands" means land interests held or retained by the United States, but does not include those land interests: (1) Tentatively approved, legislatively conveyed, or patented to the State of Alaska, or (2) interim conveyed or patented to a Native Corporation or person.

§ 36.2 Definitions.

The following definitions shall apply to the regulations contained in this part.

(a) "Adequate and feasible access" means a reasonable method and route of

pedestrian or vehicular transportation which is economically practicable for achieving the use or development desired by the applicant on his/her non-federal land or occupancy interest, but does not necessarily mean the least costly alternative.

(b) "Adequate snow cover" means snow of sufficient depth to protect the underlying vegetation and soil.

(c) "ANILCA" means the Alaska National Interest Lands Conservation Act, 94 Stat. 237, Pub. L. 96-487 (December 2, 1980).

(d) "Aircraft" means a machine or device that is used or intended to be used to carry persons or objects in flight through the air, including but not limited to, airplanes, helicopters and gliders.

(e) "Alaska National Wildlife Refuges" means all lands, waters and interests therein administered by the United States Fish and Wildlife Service within the following National Wildlife Refuges in Alaska: Alaska Maritime, Arctic, Alaska Peninsula, Becharof, Innoko, Kanuti, Kenai, Kodiak, Koyukuk, Nowitna, Selawik, Tetlin, Izembek, Togiak, Yukon Delta and Yukon Flats.

(f) "Downed aircraft" means an aircraft that as a result of mechanical failure or accident cannot take off.

(g) "Fish and wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, non-migratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or dead body or part thereof.

(h) "Off-road vehicle" means any motor vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, wetland, or other natural terrain, except snowmobiles as defined in this section.

(i) "Person" means any individual, firm, corporation, society, association, partnership, or other private or public body.

(j) "Public lands" means lands situated in Alaska which are federally owned lands, except:

(1) Land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act (72 Stat. 339) and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(2) Land selections of a Native Corporation made under the Alaska Native Claims Settlement Act (85 Stat. 688) which have not been conveyed to a

Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(3) Lands referred to in section 19(b) of the Alaska Native Claims Settlement Act.

(k) "Refuge Manager" means any Fish and Wildlife Service official in charge of an Alaska National Wildlife Refuge, the Alaska Regional Director of the Fish and Wildlife Service, or an authorized representative of either.

(l) "Snowmachine" or "snowmobile" means a self-propelled vehicle intended for off-road travel primarily on snow having a curb weight of not more than 1,000 pounds (450 kg), driven by track or tracks in contact with the snow and steered by a ski or skis in contact with the snow.

(m) "Subsistence uses" means 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. For purpose of this paragraph, the term—

(1) "Family" means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(2) "Barter" means the exchange of fish or wildlife or their parts taken for subsistence uses—

(i) For other fish or game of their parts; or

(ii) For other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature; and

(3) "Customary trade" shall be limited to the exchange of furs for cash, and such other activities, if any, as may be designated in special rules for Alaska National Wildlife Refuges.

(n) "Take" or "taking", as used with respect to fish and wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm or attempt to engage in any such conduct.

(o) "Temporary" means a continuous period of time not to exceed 12 months, except as specifically provided otherwise.

§ 36.3 Information collection.

The information collection requirements contained in §§ 36.15, 36.21, 36.22, 36.23, 36.24, 36.33 and 36.41 of these regulations have been approved by the Office of Management and

Budget under 44 U.S.C. 3507 and assigned clearance number 1018-0035. The information is being collected to solicit information necessary for the Refuge Manager to issue permits and other benefits. The information will be used to grant statutory or administrative benefits. In all sections except § 36.21(f), the obligation to respond is required to obtain a benefit. In § 36.21(f), the obligation to respond is mandatory.

Subpart B—Subsistence uses

§ 36.11 Purpose and policy.

(a) Consistent with the management of fish and wildlife in accordance with recognized scientific principles and the purposes for which each Alaska National Wildlife refuge was established, designated, or expanded by ANILCA, the purpose of this subpart is to provide the opportunity for local rural residents engaged in a subsistence way of life to do so pursuant to applicable State and Federal law.

(b) Consistent with sound management principles and the conservation of healthy populations of fish and wildlife, the utilization of Alaska National Wildlife Refuges is to cause the least adverse impact possible on local rural residents who depend upon subsistence uses of the resources of the public lands in Alaska.

(c) Nonwasteful subsistence uses of fish, wildlife and other renewable resources by local rural residents shall be the priority consumptive uses of such resources over any other consumptive uses permitted within Alaska National Wildlife Refuge areas.

(d) The State of Alaska is authorized to regulate the taking of fish and wildlife for subsistence uses within Alaska National Wildlife Refuges to the extent such regulation is consistent with applicable Federal Law, including but not limited to ANILCA.

(e) Nothing in this subpart shall be construed as permitting the level of subsistence uses of fish and wildlife within Alaska National Wildlife Refuges to be inconsistent with the conservation of healthy populations of fish and wildlife.

§ 36.12 Use of snowmobiles, motorboats, dog teams and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses.

(a) Notwithstanding any other provision of Subchapter C of Title 50, Code of Federal Regulations, the use of snowmobiles, motorboats, dog teams and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses is permitted within

Alaska National Wildlife Refuges except at those times and in those areas restricted or closed by the Refuge Manager.

(b) The Refuge Manager may restrict or close a route or area to the use of snowmobiles, motorboats, dog teams or other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses if the Refuge Manager determines that such use is causing or is likely to cause an adverse impact on public health and safety, resource protection, protection of historic or scientific values, subsistence uses, conservation of endangered or threatened species, or other purposes and values for which the refuge was established.

(c) No restrictions or closures shall be imposed without notice and a public hearing in the affected vicinity and other locations as appropriate. In the case of emergency situations, restrictions or closures shall not exceed sixty (60) days and shall not be extended unless the Refuge Manager establishes, after notice and public hearing in the affected vicinity and other locations as appropriate, that such extension is justified according to the factors set forth in paragraph (b) of this section. Notice of the proposed or emergency restrictions or closures and the reasons therefor shall be published in at least one newspaper of general circulation within the State and in at least one local newspaper if available, and information about such proposed or emergency actions shall also be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All restrictions and closures shall be designated on a map which shall be available for public inspection at the office of the Refuge Manager of the affected refuge and the post office or postal authority of every affected community within or near the refuge area, or by the posting of signs in the vicinity of the restrictions or closures, or both.

(d) Snowmobiles, motorboats, dog teams and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses shall be operated (1) in compliance with applicable State and Federal law, (2) in such a manner as to prevent waste or damage to the refuge, and (3) in such a manner as to prevent the herding, harassment, hazing or driving of wildlife for hunting or other purposes.

(e) At all times when not engaged in subsistence uses, local rural residents may use snowmobiles, motorboats, dog teams and other means of surface

transportation in accordance with Subpart C of this part.

§ 36.13 Subsistence fishing.

Fish may be taken by local rural residents for subsistence uses in compliance with applicable State and Federal law. To the extent consistent with the provisions of this part and other Federal law, applicable State laws and regulations governing the taking of fish which are now or will hereafter be in effect are hereby incorporated by reference as a part of these regulations.

§ 36.14 Subsistence hunting and trapping.

Local rural residents may hunt and trap wildlife for subsistence uses in Alaska National Wildlife Refuges in compliance with applicable State and Federal laws. To the extent consistent with the provisions of this part and other Federal law, applicable State laws and regulations governing the taking of wildlife which are now or will hereafter be in effect are hereby incorporated by reference as a part of these regulations.

§ 36.15 Subsistence uses of timber and plant material.

(a) Notwithstanding any other provision of this part, the noncommercial cutting of live standing timber by local rural residents for appropriate subsistence uses, such as firewood or house logs, may be permitted in Alaska National Wildlife Refuges as follows:

(1) For live standing timber of diameter greater than three inches at ground height, the Refuge Manager may permit cutting in accordance with the specifications of a permit if such cutting is determined to be compatible with the purposes for which the refuge was established;

(2) For live standing timber of diameter less than three inches at ground height, cutting is permitted unless restricted by the Refuge Manager.

(b) The noncommercial gathering by local rural residents of fruits, berries, mushrooms, and other plant materials for subsistence uses, and the noncommercial gathering of dead or downed timber for firewood, shall be allowed without a permit.

(c)(1) Notwithstanding any other provision of this part, the Refuge Manager, after notice and public hearing in the affected vicinity and other locations as appropriate, may temporarily close all or any portion of an Alaska National Wildlife Refuge to subsistence uses of a particular plant population only if necessary for reasons of public safety, administration, or to assure the continued viability of such

population. For purposes of this section, the term "temporary" shall mean only as long as reasonably necessary to achieve the purpose of the closure.

(2) If the Refuge Manager determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular plant population, the Refuge Manager may immediately close all or any portion of an Alaska National Wildlife Refuge to the subsistence uses of such population. Such emergency closure shall be effective when made, shall be for a period not to exceed sixty (60) days, and may not subsequently be extended unless the Refuge Manager establishes, after notice and public hearing in the affected vicinity and other locations as appropriate, that such closure should be extended.

(3) Notice of administrative actions taken pursuant to this section, and the reasons justifying such actions, shall be published in at least one newspaper of general circulation within the State and in at least one local newspaper if available, and information about such actions and reasons therefor also shall be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All closures shall be designated on a map which shall be available for public inspection at the office of the Refuge Manager of the affected refuge and the post office or postal authority of every affected community within or near the refuge, or by the posting of signs in the vicinity of the restrictions, or both.

§ 36.16 Closure to subsistence uses of fish and wildlife.

(a) Notwithstanding any other provision of this part, the Refuge Manager, after consultation with the State and adequate notice and public hearing in the affected vicinity and other locations as appropriate, may temporarily close all or any portion of an Alaska National Wildlife Refuge to subsistence uses of a particular fish or wildlife population only if necessary for reasons of public safety, administration, or to assure the continued viability of such population. For the purposes of this section, the term "temporarily" shall mean only so long as reasonably necessary to achieve the purpose of the closure.

(b) If the Refuge Manager determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular fish or wildlife population, he may immediately close all or any portion of a refuge to the

subsistence uses of such population. Such emergency closure shall be effective when made, shall not exceed sixty (60) days, and may not subsequently be extended unless the Refuge Manager establishes, after notice and public hearing in the affected vicinity and other locations as appropriate, that such closure should be extended.

(c) Notice of administrative actions taken pursuant to this section and the reasons justifying such actions shall be published in at least one newspaper of general circulation within the State and in at least one local newspaper if available, and information about such actions and justifying reasons shall be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All closures shall be designated on a map which shall be available for public inspection at the office of the Refuge Manager of the affected refuge area and the post office or postal authority of every affected community within or near the refuge area, or by the posting of signs in the vicinity of the closures, or both.

Subpart C—Use of Motorized Vehicles and Access

§ 36.21 Use of snowmachines, motorboats, aircraft, and non-motorized surface transportation.

(a) The use of snowmachines (during periods of adequate snow cover or frozen river conditions) for traditional activities (where such activities are permitted by ANILCA or other law) and for travel to and from villages and homesites, is authorized within Alaska National Wildlife Refuges, except where such use is prohibited or otherwise restricted by the Refuge Manager in accordance with the provisions of § 36.42. Nothing in this section affects the use of snowmobiles by local rural residents engaged in subsistence uses as authorized by § 36.12.

(b) The use of motorboats, fixed-wing aircraft, and non-motorized surface transportation methods such as domestic dogs, horses and other pack or saddle animals is authorized in Alaska National Wildlife Refuges except where such use is prohibited or otherwise restricted by the Refuge Manager in accordance with the provisions of § 36.42. Nothing in this section affects the use by local rural residents engaged in subsistence uses of those modes of transportation authorized by § 36.12.

(c) The use of helicopters in Alaska National Wildlife Refuges, other than at landing areas designated in special regulations or pursuant to the terms and

conditions of a permit issued by the Refuge Manager, is prohibited.

(d) In imposing any prohibitions or restrictions on fixed-wing aircraft use the Refuge Manager shall: (1) Comply with the procedures set forth in § 36.42; (2) publish notice of prohibitions or restrictions as "Notices to Airmen" issued by the Department of Transportation; and (3) publish permanent prohibitions or restrictions as a regulatory notice in the United States Government Flight Information Service "Supplement Alaska".

(e) The operation of aircraft, at altitudes and in flight paths resulting in the herding, harassment, hazing, or driving of wildlife is prohibited.

(f) Except as provided in paragraph (g) of this section, the owners of any aircraft downed after December 2, 1980, shall remove the aircraft and all component parts thereof in accordance with procedures established by the Refuge Manager. In establishing a removal procedure, the Refuge Manager is authorized to: (1) Establish a reasonable date by which aircraft removal operations must be complete; and (2) determine times and means of access to and from the downed aircraft.

(g) The Refuge Manager may waive the requirements of § 36.21(f) when it is determined that: (1) The removal of downed aircraft would constitute an unacceptable risk to human life; or (2) the removal of a downed aircraft would result in extensive resource damage; or (3) the removal of a downed aircraft is otherwise impracticable or impossible.

(h) Salvaging, removing, possessing or attempting to salvage, remove or possess any downed aircraft or component parts thereof is prohibited, except in accordance with a removal procedure established under paragraph (f) of this section; *Provided, however,* That the owner or an authorized representative thereof may remove valuable component parts from a downed aircraft at the time of rescue without a permit.

§ 36.22 Use of off-road vehicles.

(a) The use of off-road vehicles in locations other than established roads and parking areas is prohibited, except on routes or in areas designated by the Refuge Manager or pursuant to a valid permit as prescribed in paragraph (b) or in §§ 36.23 and 36.24. Such designations shall be made in accordance with the procedures of this section. Nothing in this section affects the use of off-road vehicles by local rural residents engaged in subsistence uses as authorized by § 36.12.

(1) The Refuge Manager's determination of whether to designate a

route or area for off-road vehicle use shall be governed by Executive Order 11644, as amended.

(2) Route or area designations shall be published in the Federal Register.

(3) Notice of routes or areas on which off-road travel is permitted shall be in accordance with the provisions of § 36.42(d).

(4) The closure or restrictions on use of designated routes or areas to off-road vehicles use shall be in accordance with the provisions of § 36.42.

(b) The Refuge Manager is authorized to issue permits for the use of off-road vehicles in existing off-road vehicle trails located in refuge areas (other than areas designated as part of the National Wilderness Preservation System) upon a finding that such off-road vehicles use would be compatible with refuge purposes and values. The Refuge Manager shall include in any permit such stipulations and conditions as are necessary for the protection of refuge resources and values.

§ 36.23 Access to inholdings.

(a) *Purpose.* A permit for access to inholdings pursuant to this section is required only where adequate and feasible access is not affirmatively provided without a permit under §§ 36.21 and 36.22 of these regulations. Thus, it is the purpose of this section to ensure adequate and feasible access across refuge areas for any person who has a valid property or occupancy interest in lands within or effectively surrounded by a refuge area or other lands listed in section 1110(b) of ANILCA.

(b) *Application and administration.*

(1) Applications for a permit designating methods and routes of access across any Alaska National Wildlife Refuge not affirmatively provided for in this part shall be submitted to the Refuge Manager having jurisdiction over the affected refuge area as specified under § 36.41.

(2) Except as provided in paragraph (c) of this section, the access permit application shall contain the name and address of the applicant, documentation of the relevant property or occupancy interest held by the applicant (including for 1872 Mining Law claimants a copy of the location notice and recordings required under the 1872 Mining Law and 43 U.S.C. 1744), a map or physical description of the relevant property or occupancy interest sufficiently clear to locate the interest on the ground, a map or physical description of the desired route of access, a description of the desired method of access, and any other information necessary to determine the adequacy and feasibility of the route or

method of access and its impact on the natural and other values of the refuge area.

(3) The Refuge Manager shall specify in a nontransferable permit adequate and feasible routes and methods of access across refuge lands for any person who meets the criteria of paragraph (a) of this section. The Refuge Manager shall designate the routes and methods desired by the applicant unless it is determined that:

(i) The route or method of access would cause significant adverse impacts on natural or other values of the refuge, and adequate and feasible access otherwise exists; or

(ii) The route or method of access would jeopardize public health and safety, and adequate and feasible access otherwise exists.

(4) If the Refuge Manager makes one of the findings described in paragraph (b)(3) of this section, he shall specify such other alternate methods and routes of access as will provide the applicant adequate and feasible access, while minimizing damage to natural and other values of the refuge.

(5) Any person holding an access permit shall notify the refuge manager of any significant change in the method or level of access from that occurring at the time of issuance. In such cases, the Refuge Manager may modify the terms and conditions of the permit, provided that the modified permit also assures adequate and feasible access under the standards of paragraph (b)(3) of this section.

(6) Routes and methods of access permitted pursuant to this section shall be available for use by guests and invitees of the permittee.

(c) *Access requiring permanent improvements.* (1) Application form and procedure. Any application for access under this section which proposes the construction or modification of an improved road (e.g. construction or modification of a permanent, year-round nature and which involves substantial alteration of the terrain or vegetation, such as grading, graveling of surfaces, concrete bridges, or other such construction or modification), or any other permanent improvement on refuge lands qualifying as a "transportation or utility system" under section 1102 of ANILCA, shall be submitted on the consolidated application form specified in section 1194(b) of ANILCA and processed in accordance with the procedures of Title XI of ANILCA.

(2) Decisionmaking standard:

(i) If a permanent improvement is required for adequate and feasible access under this section (e.g. improved right of way or landing strip), the permit

granting standards of paragraph (b) of this section shall apply.

(ii) If the permanent improvement is not required as part of the applicant's right to adequate and feasible access to an inholding (e.g. pipeline, transmission line the permit granting standards of sections 1104-1107 of ANILCA shall apply.

§ 36.24 Temporary access.

(a) *Applicability.* This section is applicable to State and private landowners who desire temporary access across an Alaska National Wildlife Refuge for the purposes of survey, geophysical, exploratory and other temporary uses of nonfederal lands, and where such temporary access is not affirmatively provided for an §§ 36.21-36.23. State and private landowners meeting the criteria of § 36.23(a) are directed to utilize the procedures of § 36.23 to obtain temporary access.

(b) *Application.* A landowner requiring temporary access across a refuge area for mineral survey, geophysical, exploratory or similar temporary activities shall apply to the Refuge Manager for an access permit and shall provide the relevant information described in § 36.23(b)(2) concerning the proposed access.

(c) *Permit Standards, Stipulations and Conditions.* The Refuge Manager shall grant the desired temporary access whenever he determines that such access will not result in permanent harm to refuge area resources. The Refuge Manager shall include in any permit granted such stipulations and conditions on temporary access as are necessary to ensure that the access granted would not be inconsistent with the purpose for which the refuge was established and to ensure that no permanent harm will result in refuge resources.

(d) *Definition.* For the purposes of this section, "temporary access" shall mean limited, short-term, (i.e. up to one year from issuance of the permit) access, which does not require permanent facilities for access to undeveloped State or private lands.

Subpart D—Other Refuge Uses

§ 36.31 Recreational activities.

(a) Public recreational activities within the Alaska National Wildlife Refuges are authorized as long as such activities are conducted in a manner compatible with the purposes for which the areas were established. Such recreational activities include, but are not limited to, sightseeing, nature observation and photography, sport

hunting, sport fishing, boating, camping, hiking, picnicking and other related activities. Any existing special regulations now in force and effect shall continue to apply to the applicable refuge lands in Alaska National Wildlife Refuges.

(b) Surface collection, by hand (including handheld gold pans) and for personal recreational use only, of rocks and minerals is authorized: *Provided however*, That (1) collection of silver, platinum, gemstones and fossils is prohibited, and (2) collection methods which may result in disturbance of ground surface, such as the use of shovels, pickaxes, sluice boxes and dredges, are prohibited. The recreation activities specified in paragraphs (a) and (b) of this section may be prohibited or otherwise restricted in accordance with the provisions of § 36.42.

§ 36.32 Taking of fish and wildlife.

(a) The taking of fish and wildlife for sport hunting, trapping and sport fishing is authorized in accordance with applicable State and Federal law and such laws are hereby adopted and made a part of these regulations; *Provided however*, That the Refuge Manager, pursuant to § 36.42, may designate areas where, and establish periods when, no taking of a particular population of fish or wildlife shall be permitted.

(b) The exercise of valid commercial fishing rights or privileges obtained pursuant to existing law, including any use of refuge areas for campsites, cabins, motorized vehicles and aircraft landing directly incident to the exercise of such rights or privileges, is authorized; *Provided however*, That the Refuge Manager may restrict or prohibit the exercise of these rights or privileges or uses of federally owned lands directly incident to such exercise if he determines, after conducting a public hearing in the affected locality, that they are inconsistent with the purposes of the refuge and that they constitute a significant expansion of commercial fishing activities within such refuge beyond the level of such activities in 1979.

(c) The following provisions shall apply to any person while engaged in the taking of fish and wildlife within an Alaska National Wildlife Refuge:

(1) Trapping and Sport Hunting

(i) Each person shall secure and possess all required State licenses and shall comply with the applicable provisions of State law unless further restricted by Federal law;

(ii) Each person shall comply with the applicable provisions of Federal law;

(iii) In addition to the requirements of paragraphs (a) and (b) of this section,

each person shall continue to secure a trapping permit from the appropriate Refuge Manager prior to trapping on the Kenai, Izembek and Kodiak Refuges and the Aleutian Islands Unit of the Alaska Maritime Refuge.

(2) Sport and Commercial Fishing

(i) Each person shall secure and possess all required licenses and shall comply with the applicable provisions of State law unless further restricted by Federal law;

(ii) Each person shall comply with the applicable provisions of Federal law.

(d) Nothing in this section shall apply to the taking of fish and wildlife for subsistence uses.

(e) Nothing in these rules shall be interpreted as waiving the requirements of other fish and wildlife conservation statutes such as the Airborne Hunting Act or those provisions of Subchapter C of Title 50, Code of Federal Regulations, regarding the taking of depredating wildlife. Animal control programs shall only be conducted in accordance with a special use permit issued by the Refuge Manager.

§ 36.33 Cabins and other structures.

(a) *New Cabins.* (1) The construction of new cabins on federally owned lands within an Alaska National Wildlife Refuge is prohibited except as may be authorized pursuant to a nontransferable, five-year special use permit issued by the Refuge Manager.

(2) Such special use permit shall only be issued upon a determination that the proposed use, construction, and maintenance of a cabin is compatible with the purposes for which the refuge was established and that the use of the cabin is either directly related to the administration of the refuge or is necessary to provide for a continuation of an ongoing activity or use otherwise allowed within the refuge where the permit applicant has no reasonable alternative site for constructing a cabin outside of the Refuge. In determining whether to permit the use, occupancy, construction, reconstruction or maintenance of cabins or other structures, the Refuge Manager shall be guided by factors such as other public uses, public health and safety, environmental and resource protection, research activities, protection of historic or scientific values, subsistence uses, endangered or threatened species conservation and other management considerations necessary to ensure that the activities authorized pursuant to this section are compatible with the purpose for which the refuge was established. No special use permit shall be issued to authorize the construction of a cabin for private recreational use.

(b) *Existing Cabins.* (1) Traditional and customary uses of existing cabins and related structures on federally owned lands within a refuge may be allowed to continue in accordance with a nontransferable, renewable five-year special use permit issued by the Refuge Manager. Such special use permit shall be issued only upon a determination that the traditional and customary uses are compatible with the purposes for which the refuge was established. No special use permits shall be issued to authorize the use of an existing cabin for private recreational use.

(2) Where a valid permit or lease was in effect on December 2, 1980, for cabins, homesites or similar structures on federally owned lands within a refuge, the Refuge Manager shall provide for the continuation of the permit or lease, unless a finding is made, following notice and an opportunity for the leaseholder or permittee to respond, that the continuation of the lease or permit will directly threaten or significantly impair the purposes for which the refuge was established.

(c) No special use permit shall be issued under paragraphs (a) or (b)(1) of this section unless the permit applicant:

(i) In the case of existing cabins or structures, reasonably demonstrates by affidavit, bill of sale or other documentation, proof of possessory interests or right of occupancy in the cabin or structure;

(2) Submits an accurate sketch or photograph of the existing or proposed cabin or structure and a map showing its geographic location;

(3) Agrees to vacate the cabin or structure and remove all personal property from it upon nonrenewal or revocation of the permit;

(4) Acknowledges in the permit application that the applicant has no interest in the real property on which the cabin or structure is located or will be constructed; and

(5) Submits a list of the names of all immediate family members residing in the cabin or structure.

(d) Permits authorized under the provisions of this section shall be renewed every five years until the death of the last immediate family member of the claimant residing in the cabin or structure under permit. Renewal will occur unless the Refuge Manager determines after notice and hearing, on the basis of substantial evidence in the administrative record as a whole, that the use under the permit has caused or may cause significant detriment to the principal purposes for which the refuge area was established. The Refuge Manager's decision may be appealed

pursuant to the provisions of 43 CFR 4.700.

§ 36.34 Firearms.

The possession, use and transporting of firearms is authorized for hunting and personal protection in accordance with State and Federal laws unless prohibited or otherwise restricted by the Refuge Manager in accordance with the provisions of § 36.42.

§ 36.35 Unattended Property.

(a) Leaving any snowmachine, vessel, off-road vehicle or other personal property unattended for longer than 12 months without the prior permission of the Refuge Manager is prohibited, and any property so left may be impounded by the Refuge Manager.

(b) The Refuge Manager may (1) designate areas where personal property may not be left unattended for any time period, (2) establish limits on the amount and type of personal property that may be left unattended, (3) prescribe the manner in which personal property may be left unattended or (4) establish limits on the length of time personal property may be left unattended.

(c) Such designations and restrictions arising under paragraph (b) of this section shall be (1) published in at least one newspaper of general circulation within the State, posted at community post offices within the affected vicinity, made available for broadcast on local radio stations in a manner reasonably calculated to inform residents in the affected community, and designated in a map which shall be available for public inspection at the office of the Refuge Manager, or (2) designated by the posting of appropriate signs or (3) both.

(d) In the event unattended property interferes with the safe and orderly management of a refuge area or causes damage to refuge resources, it may be impounded by the Refuge Manager at any time.

§ 36.36 Sled dogs and Household pets

The general trespass provisions of 50 CFR 26.21 shall not apply to household pets and sled, work or pack dogs under the direct control of their owners or handlers, but such activities may be prohibited or otherwise restricted pursuant to the provisions of § 36.42. Refuge Manager has the right to have the application reconsidered by the

Regional Director by contacting him within 180 days of the issuance of the denial. For purposes of reconsideration, the permit applicant shall present the following information:

(a) Any statement of documentation, in addition to that included in the initial application, which demonstrates that the applicant satisfies the criteria set forth in the section under which the permit application is made;

(b) The basis for the permit applicant's disagreement with the prior findings and conclusions; and

(c) Whether or not the permit applicant requests an informal hearing before the Regional Director.

(d) The Regional Director shall provide a hearing if requested by the applicant. After consideration of the written materials and oral hearing, if any, and within a reasonable period of time, the Regional Director shall affirm, reverse or modify the denial of the Refuge Manager and shall set forth in writing the basis for the decision. A copy of the decision shall be forwarded promptly to the applicant and shall constitute final agency action.

§ 36.42 Public participation and closure procedures.

(a) *Authority.* The Refuge Manager may close an area or restrict an activity on an emergency, temporary, or permanent basis.

(b) *Criteria.* In determining whether to close an area or restrict an activity otherwise allowed, the Refuge Manager shall be guided by factors such as public health and safety, resource protection, protection of cultural or scientific values, subsistence uses, endangered or threatened species conservation, and other management considerations necessary to ensure that the activity or area is being managed in a manner compatible with the purposes for which the Alaska National Wildlife Refuge area was established.

(c) *Emergency closures or restrictions.* (1) Emergency closures or restrictions relating to the use of aircraft, snowmachines, motorboats, or nonmotorized surface transportation shall be made after notice and hearing; (2) emergency closures or restrictions relating to the taking of fish and wildlife shall be accompanied by notice with a subsequent hearing; (3) other emergency

closures or restrictions shall become effective upon notice as prescribed in § 36.42(f); and (4) no emergency closure or restriction shall be for a period exceeding 30 days.

(d) *Temporary closures or restrictions.* (1) Temporary closures or restrictions relating to the use of aircraft, snowmachines, motorboats or nonmotorized surface transportation, or to the taking of fish and wildlife, shall not be effective prior to notice and hearing in the vicinity of the area(s) affected by such closures or restriction, and other locations as appropriate; (2) Other temporary closures shall be effective upon notice as prescribed in § 36.42(f); (3) temporary closures or restrictions shall extend only for so long as necessary to achieve their purposes, and in no case may exceed 12 months or be extended beyond that time.

(e) *Permanent closures or restrictions.* Permanent closures or restrictions shall be made only after notice and public hearings in the affected vicinity and other locations as appropriate, and after publication in the Federal Register.

(f) *Notice.* Emergency, temporary or permanent closures or restrictions shall be (1) published in at least one newspaper of general circulation in the State and in at least one local newspaper if available, posted at community post offices within the vicinity affected, made available for broadcast on local radio stations in a manner reasonably calculated to inform residents in the affected vicinity, and designated on a map which shall be available for public inspection at the office of the Refuge Manager and other places convenient to the public; or (2) designated by the posting of appropriate signs; or (3) both.

(g) *Openings.* In determining whether to open an area to public use or activity otherwise prohibited, the Refuge Manager shall provide notice in the Federal Register and shall, upon request, hold a hearing in the affected vicinity and other location, as appropriate prior to making a final determination.

(h) Except as otherwise specifically permitted under the provision of this part, entry into closed areas or failure to abide by restrictions established under this section is prohibited.

Table I—Summary Listing of the National Wildlife Refuges in Alaska as established by the Alaska Lands Act, Pub. L. 96-487, December 2, 1980

1. Alaska Maritime, including:
 - Aleutian Islands*
 - Bering Sea*
 - Bogoslof*
 - Chumisso*
 - Forrester Island*
 - Hazy Islands*
 - Pribilof*
 - Saint Lazaria*
 - Semidi*
 - Simeonof*
 - Tuxedni*
2. Alaska Peninsula
3. Arctic, including: William O. Douglas*
4. Becharof**
5. Innoko
6. Izembek*
7. Kanuti
8. Kenai*
9. Kodiak*
10. Koyukuk
11. Nowitna
12. Selawik
13. Tetlin
14. Togiak, including: Cape Newenham*
15. Yukon Delta, including:
 - Clarence Rhode*
 - Hazen Bay*
 - Nunivak*
16. Yukon Flats**

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*These indicated units were previously existing refuges before the Alaska Lands Act of December 2, 1980, and are now part of the 16 National Wildlife Refuges established by the Alaska Lands Act.



GENE KENNEDY
DIRECTOR

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Forest Practice

Wednesday
June 17, 1981

Part III

**Department of the
Interior**

Fish and Wildlife Service

**National Park System Units in
Alaska; Public Uses**

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

National Park System Units in Alaska

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: These final rules provide interim guidance on public uses of National Park System units in Alaska, including units established by the Alaska National Interest Lands Conservation Act (ANILCA) (Pub. L. 96-487 (December 2, 1980)). This rulemaking has a three-fold purpose. First, it relieves otherwise applicable regulatory provisions of 36 CFR Parts 1-9 which are generally inappropriate in the unique Alaska setting (e.g., restrictions on firearms, camping, picnicking, access, use of natural features). Second, it establishes administrative procedures necessary to implement or clarify various provisions of ANILCA (e.g., access, use of cabins). Third, with the new management direction provided by ANILCA, this rulemaking seeks to remove public confusion on what public use activities are now authorized for National Park System units in Alaska. This final interim rulemaking adopts many suggestions offered in the public comment period on the January 19, 1981, proposed rules (see 46 FR 5642). These regulations are being made immediately effective to provide public guidance in time for peak park use seasons. These regulations are the minimum necessary for interim administration of Alaska park areas.

EFFECTIVE DATE: June 17, 1981.

FOR FURTHER INFORMATION CONTACT: John Cook, Alaska Regional Director, National Park Service, 540 West 5th Avenue, Anchorage, Alaska 99501, Telephone: (907) 271-4196.

SUPPLEMENTARY INFORMATION:

Background

The Alaska National Interest Lands Conservation Act (ANILCA) is a broad-ranging act which established new National Park System units in Alaska and provided special management direction for Federal park areas in Alaska. The areas administered by the National Park Service in Alaska consist of the following 16 units: Alagaak National Wild River, Aniakchak National Monument and Preserve, Bering Land Bridge National Preserve, Cape Krusenstern National Monument, Denali National Park and Preserve, Gates of the Arctic National Park and Preserve, Glacier Bay National Park and

Preserve, Katmai National Park and Preserve, Kenai Fjords National Park, Klondike Gold Rush National Historical Park, Kobuk Valley National Park, Lake Clark National Park and Preserve, Noatak National Preserve, Sitka National Historical Park, Wrangell-St. Elias National Park and Preserve, and Yukon-Charley Rivers National Preserve.

On January 19, 1981, the National Park Service proposed rules (46 FR 5642) to provide interim guidance on public uses of these park areas. The proposed rules addressed limited items which had been covered for the most part by prior public notice and comment and which were necessary to provide public guidance. The items addressed in this rulemaking include access, use of cabins, camping and picnicking, carrying of firearms, preservation of natural features, subsistence and application procedures. Further rulemaking efforts will involve more expansive public guidance on the implementation and interpretation of ANILCA.

Need for Expeditious Rulemaking and Immediately Effective Date

Under 5 U.S.C. 553(c), an agency is authorized to make final regulations immediately effective when the regulation relieves restrictions, is an interpretive rule, or when good cause exists for expeditious rulemaking. The National Park Service (NPS) desires to utilize the immediately effective date for the following reasons.

First, many of the provisions relieve the otherwise applicable restrictions of 36 CFR Parts 1-9, which are inappropriate in the unique Alaska setting. For example, standard restrictions on access, firearms, preservation of natural features, abandoned property and camping and picnicking are relieved by these regulations.

Second, certain portions of these regulations constitute interpretive rules giving the Department's views on existing legal duties. These interpretive rules are found in § 13.15 (c) and (d).

Third, and most importantly, the Department has found that good cause exists for immediately effective regulations. This good cause finding is based on many factors, including: (1) The need to provide definitive public guidance on allowed activities for the peak park use seasons, (2) the need to alleviate public fears and confusion arising from directives in ANILCA which are inconsistent with existing NPS regulations (e.g., aircraft and snowmobile access), and (3) the need to have in place administrative procedures for obtaining statutory benefits under

ANILCA (e.g., access to inholdings, temporary access, cabins, subsistence). Additionally, the substantial public comments received on past proposed rules (see 44 FR 11242, February 28, 1979, and 44 FR 37732, June 28, 1979) covering the same topics, as well as public participation in the Alaska Lands legislative effort, support the good cause finding for expeditious rulemaking.

Summary of Comments

These rules were published in proposed form for public comment on January 19, 1981 (see 46 FR 5642), with the comment period extended to March 16, 1981. See 46 FR 14021 (February 25, 1981). The National Park Service received 391 timely written comments regarding the proposed interim regulations. Comments were received from 340 individuals, 13 corporations and businesses, 27 organizations, four community governments, the State of Alaska, the Environmental Protection Agency, and the Alaska Congressional Delegation. In addition, four petitions with a total of 622 signatures were received.

Analysis of Comments

Subpart A—Public Use and Recreation.

Definitions—The definition of "adequate and feasible access" in § 13.1(e) has been revised in response to public comments and to clarify what forms of access are entitled to the statutory benefits of § 1110(b) of the Alaska Lands Act. Several commenters objected to the intimation that the National Park Service would determine what is a "reasonable use or development" of an inholding. The § 13.1(a) definition has been revised to clarify that the inholder determines the desired land use or development, and the Service provides reasonable access to meet the desired land use.

Two commenters suggested that the definition of "fish and wildlife" should specifically exclude domestic and exotic animals. The term "fish and wildlife" tracks the language of the statute.

A few individuals expressed confusion over the use of the term "park areas." The term park areas is defined as lands and waters administered by the National Park Service within the State of Alaska and includes parks, preserves, monuments, historical parks and wild and scenic rivers.

Several commenters suggested the use and a definition for the Alaska Lands Act section 1110(a) term "snowmachine." Section 13.1(q) adopts this suggestion by defining a

"snowmachine" in parallel terms to a "snowmobile."

Applicability and Scope

A substantial number of comments (203) objected to making these regulations applicable to all park areas in Alaska (see §§ 13.1(m), 13.2), including pre-ANILCA areas like the former Mt. McKinley National Park and Katmai and Glacier Bay National Monuments. The proposed regulations were viewed by these commenters as an unwarranted lessening of protective measure for these "old" park areas.

On some issues such as access, the ANILCA definition of "conservation system units" compels equal treatment for old and new park areas (see sections 102(4), 1102(4), 1110, 1111 of ANILCA), and these regulations carry out that statutory mandate. However, for other topics, where NPS possesses policy discretion (e.g., firearms, use of natural features), the Service has taken into account public desires to continue the preexisting management scheme for old park areas. The applicability of these regulations to specific park areas is discussed below.

Snowmachines—A few commenters registered opposition to the use of snowmachines within park areas, or suggested their use be restricted only to subsistence purposes or to new park areas. The National Park Service is mandated to comply with the provisions of section 1110(a) of ANILCA which authorizes snowmachine use in park areas for "traditional activities" and "travel to and from villages and homesites." These final regulations track that statutory language, as suggested by many individuals.

A definition of adequate snow cover as snow of sufficient depth to protect underlying vegetation and soil from damage was added in response to public comments.

Motorboats—One commenter objected to § 13.11's retention of the 36 CFR § 7.23(c) cruise ship provisions for Glacier Bay on the basis that section 1307 of ANILCA precluded such regulation. The purpose of § 13.11 is to implement section 1110(a) of ANILCA concerning small motorboats. The retention of 36 CFR 7.23(c) merely preserves the status quo until the Department completes its regulatory review of this provision and does not violate the provisions of section 1307 of ANILCA. For these reasons, the Service did not adopt the suggestion to delete 36 CFR 7.23(c).

Nonmotorized Surface

Transportation—In response to public comment, § 13.12 was added to authorize the general use of

nonmotorized surface transportation (e.g., dog sleds, horses) in park areas. This addition also reflects the mandate in section 1110(a) of ANILCA.

Aircraft—Many comments (103) were received on the issue of fixed-wing aircraft vis-a-vis helicopters. In response to comments, the National Park Service, in these final regulations, has differentiated between fixed-wing aircraft and helicopters. Helicopter use, other than at designated landing areas, shall be in accordance with the reasonable terms and conditions of a permit issued by the Superintendent.

One commenter suggested that in the subsection on removal of downed aircraft the phrase "shall remove" should be changed to "may be required to remove." The Service is not adopting this recommendation because this subsection further provides that this requirement may be waived by the Superintendent upon a determination that the removal of downed aircraft would constitute an unacceptable risk to human life; result in extensive resource damage; or is otherwise impracticable or impossible.

The public comment on § 13.13(d) focused primarily on the economic test for salvage operations. The Service intends to be reasonable in applying the significant economic hardship test for waiving removal requirements.

Off-Road Vehicles—Several commenters suggested that NPS allow ORV use along established trails and routes that have been subject to significant ORV use in the past. The National Park Service has partly responded to this recommendation in this final rulemaking. The Park Service was not able to respond completely, however, because the designation of ORV trails in wilderness areas is prohibited by Executive Order 11644 (Use of Off-Road Vehicles on Public Lands) and the Wilderness Act. The Service has opted to provide the Superintendent with general authority to issue ORV use permits for existing trails in non-wilderness park areas where such use would not be detrimental to park resources. It should be noted that there is no statutory directive to provide for general ORV use in park areas. This rewritten rule will enable ORV use by permit as appropriate.

Many individuals suggested that NPS designate only "routes" for ORV use, and not "areas." The Service has not deleted the word "areas" from this regulation because the phrase "routes or areas" tracks the language of E.O. 11644 and 36 CFR 4.19 (general NPS regulations on ORVs).

Access to Inholdings—Section 13.15 of these regulations, which implements the

ANILCA section 1110(b) guarantee of adequate and feasible access to inholdings, has been revised to make clear that an access permit is required only when the inholder desires an access method that is not authorized by other provisions of these regulations. Also, in response to public comment, the revised § 13.15(a) deletes as unnecessary a reference to alienating Federal property that was contained in proposed regulations.

Section 13.15(b) has been revised to state uniform, minimally burdensome information requirements for obtaining access permits. Several commenters had objected to the special information requirements for mineral access in the proposed regulations. These have been deleted in the final regulations.

Several commenters suggested an access notification system instead of a permit system. These suggestions were not adopted because a permit system was contemplated by Congress in section 1110(b) of ANILCA and because a permit system appears to be required to minimize park resource damage in accordance with 16 U.S.C. 1, 1a-1.

Many comments were received stating that the implied distinction between ordinary access to inholdings and permanent access is not supported by statute. The revised section 13.15(c) responds to these comments on access requiring permanent improvements on park area lands (e.g., road or bridge construction). Section 13.15(c) is an interpretive rule on the relationship between ANILCA section 1110(b) access to inholdings and sections 1101-1107 "transportation or utility systems."

Temporary Access—Many commenters favored reducing the application information burdens for temporary access. This change has been made here, as it has in the above provision on access to inholdings. Mineral and non-mineral temporary access have been combined into one provision, in response to public comment. The final regulation also responds to comments by defining temporary access as limited, short term (up to one year) access, which does not require permanent facilities for access, to undeveloped non-federal lands.

Cabins and Other Structures—The regulation on use of cabins is largely unchanged from the proposed regulations. While some commenters objected to the § 13.17(b)(2)(v) requirement of listing immediate family members residing in the cabin, the Service believes this information is essential for accurate permit renewals to family members, and is necessary to protect the occupancy interest of the

immediate family. ANILCA, section 1303(c). This is a dynamic, and not a one-time process. As individuals are added to the immediate family, they can be added to this listing.

A few commenters expressed concern that the ultimate intention of the NPS was to phase out cabin use within park areas in Alaska. It is neither the Service's intent, nor is it allowed by ANILCA, that such use be eliminated.

Camping and Picnicking—The public comments on § 13.18 primarily favored the general opening of Alaska park areas to camping and picnicking. Though some public concerns were expressed over consequences for subsistence uses or sensitive areas, the Service feels it can adequately protect these interests through the closure authority of § 13.30.

Weapons, Traps and Nets—The public comment on this section was varied, with some commenters supporting the carrying of firearms for self-protection and some commenters raising concerns over wildlife protection. The revised § 13.19 distinguishes between the pre-ANILCA park areas (where the carrying of weapons is still generally banned by 36 CFR 2.11) and the park areas established by ANILCA (where § 13.19 is controlling). Although the potential for harm from wildlife exists throughout Alaska, the Service feels that it can make this distinction. The "old park" areas have the staffs and materials necessary to provide individuals with information on personal safety. That capacity does not exist in the recently established areas.

Preservation of Natural Features—Section 13.20, on protection of natural resources, has been revised in two ways in response to public comment. First, in response to commenters suggesting a higher standard of protection for pre-ANILCA park areas, § 13.20(a) retains the 36 CFR 2.20 standards (e.g., no cutting of dead standing trees, restrictions on collecting rocks and minerals) for non-subsistence uses in Klondike Gold Rush National Historical Park, and the former Mt. McKinley National Park, Glacier Bay National Monument and Katmai National Monument areas. Second, for all other Alaska park areas, § 13.20(c) adopts commenter suggestions to authorize recreational gold panning not involving surface disturbance (e.g., the use of hand-held gold pans is authorized, but the use of sluice boxes, shovels, pickaxes, or dredges is prohibited).

A few individuals objected to allowing any collection of natural features or suggested that such collection only be allowed by permit. At

this time, the Service does not believe that the liberalized collection of natural features will result in adverse environmental consequences, due to protection against surface disturbance, low visitation rates and, ultimately, closure authority.

Taking of Fish and Wildlife—Many public comments suggested either allowing sport hunting in all park areas, or conversely, not allowing sport hunting in preserves. These comments were not adopted due to the legislative direction of sections 1313 and 1314 of ANILCA.

In response to public comment, § 13.21 deletes a reference to trapping as an "agent" of another person, in order to authorize family or other trapping arrangements not involving payment within national preserves.

Unattended and Abandoned Property—The public comment generally was in favor of liberalizing the general NPS regulations' time periods for leaving unattended property as a means of implementing a good neighbor policy in Alaska. Suggested times ranged from 7 days to 3 years, and the Service opted to retain the proposed 1 year period. This period of time is not inflexible—it can be less, and with the permission of the Superintendent, it could be more.

Some commenters objected to the impoundment authority of § 13.22(d). However, the Service believes that this problem can be avoided by checking with the Superintendent prior to leaving unattended property.

Other individuals and organizations suggested that unattended property be sheltered from public view or that the Service was allowing the inappropriate use of park areas for private profit. The Service has not adopted the suggested restrictions. Shielding unattended property from public view is difficult to do in tundra areas and may have more visual impact than the property itself. Finally, the Superintendent does have impoundment authority.

Closures—Some commenters suggested that the Service be more specific in delineating the range of the § 13.30(b) closure criteria, such as by eliminating "other management considerations." However, the NPS cannot forecast in advance the complete range of criteria that would be applied to closure decisions to meet the park protection standard of 16 U.S.C. 1, 1a-1. Thus, while the Service expects that the vast majority of closure decisions will be based on delineated factors like public safety and resource protection, the Service does not feel it appropriate to specify a definitive list of criteria.

A few individuals also objected to "public health and safety" as a criteria for closure since many "bush" activities are inherently unsafe. The Service recognizes that many activities conducted within park areas are inherently dangerous. In this instance, however, the NPS is focusing on significant public health and safety (i.e. polluted water supply, a large fire where speed and direction of burning is unpredictable).

In response to a public comment the Service has added the generic term "cultural values" for "historic values" for determining criteria for closures. This term "cultural" is used by the NPS and includes "historic" values.

Several commenters recommended that hearings be held in the area affected by a permanent closure. The Service has adopted this recommendation. In response to comments the NPS has also limited emergency closures to a maximum of 30 days.

The NPS has not adopted two suggestions. The first is that temporary closures be restricted to a maximum of 6-9 months. The Service believes that it needs the flexibility to temporarily close for periods up to 12 months (i.e., fire hazard). This does not mean that all temporary closures will be for this length of time: They could be shorter. The other suggestion was a recommendation that the public comment period be 90 days for permanent closure. This is already included in the regulation as written. The public comment period on permanent closures must be a *minimum* of 60 days; it could be longer.

Permits—Section 13.31 consolidates procedures regarding the issuance and denial of permits. The Superintendent is directed to acknowledge the application promptly, and to approve the permit, deny the permit, or request additional information within 45 days unless he/she notifies the applicant of a good cause extension. The normal 45-day response time and a statement of reasons for any permit denial were added in response to public comments. Additionally, in response to comments, the Service has incorporated into this section a provision which allows an applicant to submit his or her application orally.

Any person whose permit application has been denied by the Superintendent has a right to appeal that denial to the Regional Director within 180 days of permit denial. The longer appeal time (from 60 days in proposed regulations) reflects public comments that a shorter appeal time could be detrimental to the

applicant, whereas a longer appeal time will not hurt the government. Section 13.31(b)(2) has been revised to grant the applicant the opportunity for a hearing upon request, as suggested in public comments.

Subpart B—Subsistence

General Comments. The issue of subsistence continues to be the most difficult of all the issues affecting the new National Park Service areas in Alaska.

The State of Alaska, the State Congressional Delegation, and certain sportsmen's groups opposed any federal regulation of subsistence, especially in the one year period provided by section 805(d) of ANILCA for the State to establish an adequate subsistence program. The National Park Service is sensitive to the State's concerns and looks forward to a State subsistence program implementing ANILCA's requirements. In the meantime, the Service has pared its program to the minimum required by ANILCA. For example, the Service has deleted the system of resident zones and subsistence permits for park preserves. Nevertheless, the one-year "grace" period for the State does not relieve the Park Service of certain basic responsibilities under Titles II and VIII of ANILCA. Unlike the other conservation system units in Alaska, parks and monuments are closed to hunting except for subsistence hunting by "local rural residents" where specifically authorized by ANILCA. ANILCA, sections 201–203, 816(a), 1313, 1314. Consequently, the Park Service must immediately implement a system for identifying "local rural residents" in order to allow them, but not others, to engage in subsistence hunting in national parks and monuments. In addition, section 808(c) of ANILCA specifically requires the Secretary to permit subsistence uses by local rural residents pending implementation of park and park monument subsistence resource commissions. The Park Service has tried to adopt the type of identification system that Congress intended. See S. Rep. No. 96–413, 96th Cong., 1st Sess. 168–171 (1979); 126 Cong. Rec. II 10540–41 (daily ed. Nov. 12, 1980). It bears repeating, however, that the Park Service is anxious to incorporate a State program which implements the various subsistence mandates. By December 2, 1981, the Secretary of the Interior must review the State program to determine whether it meets ANILCA's requirements for the subsistence definition, priority, and participation (sections 803, 804, 805). The Secretary has not yet undertaken this review. In

the meantime, and until such time as a State program is determined to supersede the various aspects of the federal program, the Park Service regulations seek to carry out the subsistence duties which ANILCA imposes on the Secretary.

Commenters from rural Alaska stressed the need for consultation with local rural residents as part of any decisionmaking that could affect subsistence uses. The National Park Service believes such consultation is prudent and essential. Several provisions of the regulations institutionalize public hearings in the local vicinity affected by an action. See sections 13.43(b), 13.45(b)(ii) and (iii), 13.46(c), 13.49(c), 13.50(a) and (b). Pending creation and operation of the local advisory committees and regional advisory councils of section 805 of ANILCA and the park and park monument commissions of section 808, the Park Service will try to involve local rural residents in decisionmaking that may affect them to the fullest extent possible.

Several native organizations urged the National Park Service to adopt regulations implementing section 806 of ANILCA on "Federal Monitoring," section 807 on "Judicial Enforcement," and section 812 on "Research." Although the Park Service appreciates the importance of these statutory provisions, it determined when it published the proposed regulations that these provisions do not lend themselves to expeditious implementation since they have not previously been the subject of notice and comment. The Alaska State Congressional Delegation commented that proposed regulation § 13.22 implementing section 810 of ANILCA should be deleted according to the same logic; furthermore, they pointed out, the proposed regulation did nothing more than repeat section 810 of the Act verbatim. For these reasons, today's final regulations do not contain provisions implementing sections 806, 807, 810, and 812. It should be emphasized, however, that all parties must comply with these statutory provisions as long as they remain in effect.

Purpose and Policy. Some commenters requested the Park Service to expand by regulation the purposes for which the park areas were established to include "subsistence uses by local residents" or "the protection and enhancement of subsistence hunting and fishing by local rural residents." Congress clearly authorized subsistence uses by local rural residents in all park preserves and in specifically designated

parks and monuments. ANILCA, sections 201–203. Congress did not, however, make subsistence a "purpose" of these units. Consequently, the National Park Service believes it would be inappropriate, especially in the context of this interim rulemaking exercise, to expand the Congressionally designated purposes of the park areas to include subsistence uses. Moreover, the Park Service does not have the authority to expand the authorization for subsistence hunting beyond the specific Congressional authorization. See, e.g., section 816(a) of ANILCA. Nevertheless, consistent with its policy throughout the legislative process and during the national monument period, the National Park Service fully supports the continuation of the opportunity for subsistence uses by local rural residents where authorized. The Park Service believes that subsistence uses are an important value of these new park areas, and the Service intends to protect these uses through regulations and policies.

One group requested that the Park Service amplify the "least adverse impact" policy statement to require consideration of "potential and actual deleterious impacts of visitation upon local rural residents". The Park Service has decided not to amplify this policy statement or modify its statutory language to cover one of many possible conflict situations in legitimate park uses, especially in the context of this interim rulemaking. For the present, the Park Service will consider such conflict situations on a case-by-case basis.

Some commenters requested the Park Service to include "national monuments and preserves" in addition to "park areas" in the subsistence priority provisions of § 13.40 (c) and (d) and other regulations. These commenters have misunderstood the phrase "park areas". By definition in § 13.1(m), the term "park areas" means "lands and waters administered by the National Park Service within the State of Alaska"; accordingly, the term "park areas" includes parks, monuments, and preserves. A regulation will specify "national parks and monuments" or "preserves" whenever its applicability is more specific than "park areas". The subsistence priority set forth in § 13.40 (c) and (d) clearly applies to all park areas.

The Alaska Federation of Natives (AFN), NANA Regional Corporation (NANA), and Alaska Legal Services (ALS) on behalf of the residents on Anaktuvuk Pass, suggested a technical rewrite of § 13.40(d) which the Park Service has in large part adopted in the

final regulations. The rewrite clarifies that the three criteria of the subsistence priority system apply only to persons already engaged in subsistence uses. Consequently, if consumptive uses of a fish or wildlife population must be restricted, § 13.40(c) assures that consumptive uses would first be limited to local rural residents engaged in subsistence uses. Then, if further restrictions become necessary, § 13.40(d) establishes the criteria for allocation among the local rural residents.

The Park Service received various recommendations for acknowledgement in the regulations of the State of Alaska's role in regulation of fish and wildlife for subsistence uses within park areas. See ANILCA, section 1314. In response, the Park Service is promulgating § 13.40(e) which recognizes State regulation of the taking of fish and wildlife in park areas consistent with applicable Federal law, including ANILCA. For example, the Park Service expects the State to continue to regulate seasons and bag limits in the park areas. Furthermore, as mentioned previously, the Park Service anticipates that a State subsistence program, implementing ANILCA's various subsistence mandates, will eventually supersede most Federal regulation of subsistence.

ALS requested that the Park Service define the terms "healthy" and "healthy and natural" now in § 13.40(f) of the regulations. The Service has not defined these new terms in the context of this interim rulemaking. However, the Service has quoted at length from Congress' explanation of these concepts in the Section-by-Section Analysis of this preamble in order to guide park officials in their implementation of them.

Applicability. Two organizations recommended that the National Park Service authorize subsistence fishing—i.e., fishing with a net, seine, trap or spear for subsistence uses—in all national parks and monuments. The Park Service has decided against this recommendation for the following reasons. As mentioned above, ANILCA is specific as to where subsistence uses, including fishing, are authorized in national parks or monuments. See ANILCA, sections 203, 1314(c). Expansion of this specific authorization, particularly in the context of this interim rulemaking, would be inappropriate. Furthermore, expansion without consideration of impacts could jeopardize park values. Section 2.13 of the Park Service's general regulations constitutes the Service's determination that fishing methods should be restricted

in most cases to protect park values. This general regulation prohibits the use of any fishing method other than hook or line with the rod or line being held in the hand. 38 CFR 2.13(j)(2).

With respect to ANILCA's mandate incorporated in § 13.41(c), Matmeluk Association commented that historic harvest levels, patterns, and methods should be examined to determine where subsistence uses are "traditional" in Aniakchak National Monument, Gates of the Arctic National Park, Lake Clark National Park, Wrangell-St. Elias National Park, and the Denali National Park addition. ALS, on behalf of the residents of Anaktuvuk Pass, cited studies to support its belief that subsistence uses are traditional in the entire area of Gates of the Arctic Park. Since local input like the above is essential to developing the "subsistence hunting zones" for the five park areas, the Park Service has not designated these zones in this rulemaking exercise. The local committees, regional councils, and park and monument commissions should facilitate such local input into these designations.

Definitions. Certain Native organizations recommended that additional evidence be required to determine an individual's qualification as a "local rural resident". Their recommendations included a one-year residency requirement, recognition by the local government, and affidavits.

The [Anaktuvuk Pass] village people are worried about possible abuses of outside people quickly establishing addresses for mail and other matters within the village, when their primary goal is to obtain the benefits of being included within the "resident zone" for hunting within the area.

To some extent, proper implementation of the definition of "local rural resident" in § 13.42(a) should prevent most such abuses. An individual's address is only one of many evidentiary factors which should be used to determine an individual's "primary, permanent home". Nevertheless, the rural people's concern and their recommendations for further evidence of local rural residency deserve thoughtful consideration. Their recommendations have intuitive appeal, but also present legal and equitable problems. The Park Service believes that the local committees, regional councils, and park and monument commissions are more appropriate forums than this interim rulemaking for deciding whether and how to implement such recommendations.

The State of Alaska strongly opposed the creation of "resident zones" for park preserves. In response, for purposes of

this interim rulemaking, the National Park Service has decided to eliminate the system of resident zones and subsistence permits for identifying "local rural residents" in park preserves. The Park Service agrees that the need to identify "local rural residents" in preserves is not as pressing as in parks and monuments since sport hunting is allowed in preserves. The Park Service believes that the remaining reasons for identifying "local rural residents" in preserves—namely, to control subsistence fishing and log cutting—can be handled through other regulatory mechanisms, such as enforcement of State subsistence law with regard to fishing and retention of the permit requirement for cutting of live standing timber.

Most comments on the definition of "subsistence uses" concerned the Park Service's definition of "customary trade". In general, the comments indicated strong support for the Service's inclusion of fur trading within the term. Three commenters objected, however, that the definition was too limited. For example, one commenter wrote that

[C]ustomary trade in Alaska is involved in more than the exchange of furs for cash. Quite often there is trade for specific items or merchandise including food and fuel.

The definition of "subsistence uses" adequately covers these concerns in its provision for "barter". The "barter" definition, taken verbatim from section 803 of ANILCA, allows local rural residents to trade furs for fish, game, food, or nonedible items other than money for personal or family consumption. The Park Service's definition of "customary trade" serves to expand the permissible exchange to include, in addition, furs for cash. One rural group, however, pointed out a customary trade practice that the proposed definition of "subsistence uses" did not cover: the customary and traditional making and selling of certain handicraft articles out of plant materials. The Park Service has included special provisions in the final regulations to allow for these activities (e.g., the making and selling of birch bark baskets) in the two park areas where they are known to occur, Kobuk Valley National Park and the southwestern preserve area of Gates of the Arctic National Park and Preserve.

Determination of Resident Zones. The National Park Service received diverse comments on resident zones. As already discussed, the State and State Congressional Delegation opposed Federal designation at this time of any

resident zones, and particularly resident zones for park preserves. In response, the Park Service has deleted from these final interim regulations resident zones for preserves, but the Service has interpreted ANILCA and other authorities as requiring resident zones for parks and monuments. The Alaska Center for the Environment suggested eventual replacement of resident zones with subsistence permits. According to ANILCA's legislative history, however, Congress intended the Park Service (1) to devise a system of resident zones as the primary mechanism for identifying local rural residents in park areas, and (2) to avoid a subsistence permit system to the extent possible. See S. Rep. No. 96-413, *supra*, 170-71; 126 Cong. Rec. at H 10541. Congress recognized that subsistence permits may be necessary in certain situations as an adjunct to the system of resident zones. *Id.* The Park Service agrees, however, with the Center for the Environment's underlying thought that implementation of the subsistence program will benefit from experience and, in all likelihood, undergo changes in the future.

In response to most comments on the subject, the Park Service has already made a significant change in the final regulations from the proposed regulations by adopting a more liberal designation of communities for inclusion in resident zones. See Subpart C regulations. This liberal designation is consistent with the intent of Congress described above. It should be noted, however, that the Park Service has retained other regulatory mechanisms to prevent abuse of the subsistence program, such as the general prohibition of aircraft use for subsistence purposes and the possibility of removing a community from a resident zone if the character of the community changes.

The policy of more liberally designating resident zones is reflected in certain technical changes in the language of § 13.43. As the State, AFN, and others suggested, the Park Service has deleted the phrase "available information and research" from the regulation in order to clarify that the Service will consider all relevant evidence concerning a community's qualification, including expert opinion from reliable local and State sources. The Park Service has also substituted the word "significant" for the word "preponderant" in the phrase "communities and areas * * * which contain significant concentrations of rural residents who, without using aircraft * * * have customarily and traditionally engaged in subsistence uses within a national park and

monument". The word "preponderant" implied more numerical precision than is possible without an extensive standardized study of rural villages in Alaska, certainly an impossible task in the context of this interim rulemaking. The Park Service adopted the word "significant" to clarify that the subsistence experts must exercise some discretion in examining the nature and needs of each community. Of course, the availability of subsistence permits assures that subsistence users whose communities are not included in a resident zone for whatever reason may nevertheless have the opportunity to engage in subsistence uses in a national park or monument.

Finally, in response to a suggestion from AFN, the Park Service has modified § 13.43 to assure that children of local rural residents living in the family household on a permanent basis will be considered in determining whether a community has the necessary "significant concentrations".

Subsistence Permits. The Alaska State Congressional Delegation objected to "any actions regarding federal permits under these regulations," pointing out that "[t]here is no authorization for a federal hunting permit". The National Park Service has no intention of instituting a federal hunting permit. The subsistence permit described in § 13.44 of the regulations is not a federal hunting permit; rather, it is part of the system contemplated by ANILCA for identifying the "local rural residents" who are authorized to engage in subsistence uses in national parks and monuments. The subsistence permit system is necessary to ensure the fairness of a regulatory system which seeks primarily—by means of resident zones—to avoid the necessity of permits in allowing subsistence uses by local rural residents. Thus, the subsistence permit system is an integral part of the resident zone system. As a corollary, the Park Service's decision to retain the resident zone system but limit it to national parks and monuments necessitated a similar change in the scope of the subsistence permit system: the system of resident zones and subsistence permits no longer applies to park preserves. As another corollary, the Service's decision to expand resident zone designations, thereby encompassing more subsistence users within the zones, should reduce the number of subsistence users who must apply for a permit.

Some commenters expressed concern over the Park Service's ability to institute a permit system on an expedited basis. The Park Service has

changed the effective date for the permit requirement from July 15, 1981 to August 1, 1981. The Service believes this date is reasonable because (1) the permit application process is relatively simple and straightforward and (2) the number of permit applicants should be fewer as a result of the liberalization of resident zones. Of course, persons who will need a subsistence permit should begin the application process immediately.

One group commented that the regulations should define the terms "customarily and traditionally". The Service has decided not to define these terms for purposes of this interim rulemaking, since their definition requires extensive prior comment and research as well as the advice of the local committees, regional councils, and park and monument commissions. Nevertheless, the Section-by-Section Analysis provides explanation of the legislative and regulatory intent behind the terms and the provisions in which they are used.

The final regulation on subsistence permits contains two technical changes. At the suggestion of AFN, NANA, and the State, the Park Service has deleted the phrase "available information and research" in § 13.44(a)(2) to allow the applicant greater flexibility in the type of evidence that may be presented. In addition, at AFN's and NANA's suggestion, the Park Service changed the tone of § 13.44(a) from negative to positive, i.e., "the Superintendent *shall* grant the permit *if* * * *" (emphasis added); this change of tone, however, does not reduce the applicant's burden of proof to make the demonstration required by § 13.44(a).

Prohibition of Aircraft Use. The aircraft prohibition of § 13.45(a) is a key provision for protecting park values, including subsistence. Two groups had very strong, but diametrically opposed, views on the subsistence aircraft regulation. Residents of Glennallen, Slana, and Tok submitted several comments that argued for allowance of aircraft as "the most feasible and ecologically sound access means in many cases". Friends of Animals, on the other hand, opposed *any* allowance of aircraft for subsistence uses as a "total perversion of the concept of subsistence hunting, trapping, and fishing * * *". The National Park Service has retained the subsistence aircraft regulation as proposed without change. It implements the intent of Congress that aircraft use for subsistence purposes is the rare exception, not the rule. S. Rep. No. 96-413, *supra*, 169; 126 Cong. Rec. H. 10541. It nevertheless provides for exceptions to the aircraft prohibition in individual

hardship situations. A local rural resident who believes he/she meets the exception criteria of § 13.45(b)(2) should pursue the simple application procedures of § 13.51.

The subsistence aircraft regulation also provides for exceptions for entire communities in special cases. Anaktuvuk Pass and Yukutat are the only "exempted communities" listed in this interim rulemaking. The comments received on these provisions supported them. North Slope Borough, for example, supported the inclusion of Anaktuvuk Pass, pointing out that

[T]his exemption would not have to flow to all members of the North Slope community * * *. Others accessing the Gates of the Arctic area from North Slope villages tend to rely upon modes of transportation such as snowmobiles or gain access by foot.

North Slope Borough asked for clarification of whether every resident of an exempted community like Anaktuvuk Pass must apply for an individual permit pursuant to the procedures of § 13.51 before using aircraft. The answer is no. Each individual must obtain a permit from the Superintendent, however, which shows his/her signature and any special terms or conditions applicable to the individual. The Park Service will attempt to streamline this permit process by developing a relatively standard permit for the entire community, subject only to special individual terms, conditions, and signature. Finally, two rural groups sought assurance that local consultation would precede additions or deletions of exempted communities. Sec. 13.45(b)(ii) and (iii) requires such consultation.

Use of Snowmobiles, Etc. Several commenters suggested that § 13.46 specifically reference dog teams as a mode of transportation traditionally employed by local rural residents engaged in subsistence uses. The Park Service has included this reference in the final regulations. Tanana Chiefs Conference further pointed out the traditional use of pack and work dogs. The phrase "other modes of surface transportation" in § 13.46 allows for traditional use of pack and work animals (e.g., dogs and horses) by local rural residents engaged in subsistence uses. Tanana Chiefs Conference and an individual added that dogs should be kept under the immediate control of users. The Park Service's general regulations require that dogs be kept "under physical restrictive control at all times". 36 CFR § 2.8(a).

The allowed use of motorized surface transportation in accordance with the provisions of § 13.46 evoked two objections. One environmental

organization commented that "the use of snowmobiles, motorboats and off-road vehicles is * * * abhorrent to the notion of subsistence hunting * * *". Section 811(b) of ANILCA, however, mandates the Secretary to allow "appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulation". Section 13.46 implements this statutory mandate (§ 13.46(a)), highlights its limitations (§ 13.46(e)), and provides for appropriate restrictions, closures, and regulation (§ 13.46(b)-(d)). Another environmental organization recommended that the Park Service prohibit motorized surface transportation other than snowmachines and motorboats (e.g., ATV's) except by permit upon a demonstration of "traditional use" by the local rural resident. The Park Service has decided against this recommendation in this rulemaking exercise since (1) the Service wants to avoid another permit requirement, if possible, (2) the restriction, closure, and other regulatory provisions of § 13.46 should adequately protect park values, at least for this interim period, (3) the Service would not adopt such a new proposal without additional notice and comment.

Comments on the closure criteria of § 13.46(b) suggested both tightening and expansion of the criteria. The Park Service has retained the proposed closure criteria with only minor, technical changes. In the Service's judgment, the closure and restriction provisions represent the proper balance between protection of park values and allowance of subsistence activities. The Park Service has incorporated minor changes in § 13.46 that underscore the Park Service's intent to provide effective and meaningful notice and hearing in the affected vicinity "and other locations as appropriate."

Subsistence Fishing, Hunting, and Trapping. The Park Service received very few comments on §§ 13.47 and 13.48. AFN and NANA recommended a modification in both sections to clarify that only State laws and regulations consistent with applicable Federal law are incorporated by reference. The Park Service considered this modification unnecessary since the Supremacy Clause of the Constitution (Art. VI) requires consistency with Federal law, and §§ 13.47 and 13.48 require consistency with the provisions of the National Park Service regulations, including Part 13 on National Park System Units in Alaska.

One Alaskan family commented that no new fish camps should be allowed in park areas. This family was concerned, in particular, with the destruction of "a beautiful little bay * * * being destroyed by a type of drift fishing that uses stationary nets * * * (which are set) * * * in front of spawning creeks." The Park Service needs to know more about these situations in order to protect park resources. If subsistence fishing is involved, for example, the Park Service can invoke the closure provisions of § 13.50 in appropriate situations. If recreational fishing is involved, the provisions of §§ 13.21 and 13.30 are applicable.

One Eagle, Alaska resident requested the National Park Service to develop a management system for traplines to freeze "ownership" according to pre-1978 or present patterns. He said that the old trapline system—"where a person live[d] on and look[ed] after his own little pocket of fur"—worked well, but he fears that the Park Service regulations will encourage people beyond park boundaries to enter, take, and leave. For the interim period, the Park Service is hopeful that such factors as the local rural residency test, the prohibition on aircraft use, the applicability of state law, and the pressure of local socio-economic realities will adequately prevent or discourage the rush of opportunistic trappers which this resident fears. For the longer term, if the problem materializes, the local committees, regional councils, park and monument commissions, and State will be able to consider solutions.

Subsistence Use of Timber and Plant Material. One environmental organization commented that the National Park Service should prohibit all cutting of live standing timber in park areas. The Park Service, however, recognizes the cutting of live standing timber for appropriate subsistence uses as part of the subsistence lifestyle which ANILCA protects. See, e.g., ANILCA, section 803. In addition, the Park Service considers subsistence uses by local rural residents an important value of the new park areas. Finally, § 13.49 of the regulations, which provides for the cutting of live standing timber for appropriate subsistence uses, also contains provisions which assure the protection of park purposes.

One such provision is the permit requirement of § 13.49(a)(1). The final regulation makes clear that this permit requirement applies only to cutting of live standing timber of diameter greater than three inches at ground height. For smaller diameter timber, no permit is

required. § 13.49(a)(2). The Park Service made this distinction to allow for customary use of alder and willow, for example, in construction and repair of baskets and fish traps without the necessity of a permit. Several organizations objected to the inclusion of the compatibility test in the permit provision of § 13.49(a)(1). The Park Service has decided to retain the compatibility test, however, in order to protect park area purposes, particularly in areas of intense use, fragile timber resources, or other special circumstances, where the impact can be significant. ANILCA does not prohibit the application of the compatibility test to the cutting of live standing timber. Indeed, the listing of park area purposes in sections 201 and 202 of ANILCA substantiates that the park areas were established for several reasons, and subsistence uses are but one of the values of certain of them. Nevertheless, the Park Service is sensitive to the needs of local rural residents for house logs and firewood. For example, although ANILCA does not specifically limit the closure standards which may be applied to subsistence harvest of plants, the Park Service has decided to apply the same limited closure standards to plant harvest as ANILCA requires for subsistence taking of fish and wildlife (i.e., public safety, administration, continued viability of the resource). See ANILCA, section 816(b).

In answer to a question raised by Tanana Chiefs Conference, the word "noncommercial" in § 13.49(b) should not prohibit elderly or ill residents from paying another local rural resident to gather the listed subsistence items for use by such incapacitated persons. Such gathering would be for permissible personal or family use, not for sale or "commercial" use prohibited by § 13.49(b).

One group objected to the definition of "temporarily" contained in § 13.49(c)(1). This definition, which also appears in § 13.50(a), is derived directly from the legislative history on closure to subsistence uses of fish and wildlife. See, S. Rep. No. 96-413, *supra*, 277-78; H. Rep. No. 96-97, *supra*, 269. The purpose of the definition is to restrict the length of closures by prohibiting closures of arbitrary duration.

Closure. In response to comments asking for increased notice, local consultation, and hearings elsewhere, the National Park Service has made minor changes in § 13.50 that underscore the Park Service's intent to provide effective and meaningful notice and hearing in the affected vicinity "and other locations as appropriate."

One rural group objected to the "public safety" standard for closure in this section as well as in §§ 13.46 and 13.49 on the grounds that "normally occurring accidents" should not be the reason for closure. The Park Service has not deleted this standard. ANILCA establishes as one of three closure standards for subsistence uses of fish and wildlife. In its experience, moreover, the Park Service has found "public safety" to be a very important reason for closure. For example, in the case of subsistence hunting, allowing hunting in the immediate vicinity of a well-used hiking trail or camping site at certain times of the year might unnecessarily endanger lives. Or, in the case of snowmobiles, allowing snowmobiling in an area endangered by earthquake or avalanche would similarly risk lives. The closure provisions of §§ 13.46, 13.49, and 13.50 have many procedural and substantive protections intended to insure that the closure is sufficiently justified and well discussed. Local input into these decisions will be further facilitated with the creation and operation of the local committees, regional councils, and park and monument commissions.

Application Procedures. The changes which the National Park Service has made in § 13.51 are similar to the changes made in § 13.31. The Superintendent shall act on an application in most cases within 45 days rather than 60 days as proposed. In response to comments from native organizations, the Park Service extended the time for appealing a denial from 60 to 180 days. Finally, the Park Service has decided to grant a hearing at the Regional Director's level if the applicant requests one.

Section-by-Section Analysis

Subpart A—Public Use and Recreation

Applicability and Scope

The regulations set forth herein apply to all persons using, entering or visiting within the boundaries of park areas in Alaska. These regulations supplement the regulations of Parts 1 through 9 of Title 36 of the Code of Federal Regulations. These Part 1-9 regulations remain applicable except as they are modified herein.

These regulations are divided into three parts as described in § 13.2. Subpart A, Public Use and Recreation, contains regulations that govern activities such as use of aircraft, snowmobiles, and motorboats, carrying of weapons, camping, cabin occupancy and other activities related to access or general public use and recreation. These regulations apply to all of the park areas

in Alaska, except as indicated in the regulations. They amend the provisions of the general regulations found in 36 CFR, Parts 1 through 9, and are necessary to implement or clarify various provisions of ANILCA.

Subpart B contains regulations that govern subsistence activities within the park areas in Alaska. These regulations apply to all park areas except Kenai Fjords National Park, Katmai National Park, Glacier Bay National Park, Klondike Gold Rush National Historical Park, Sitka National Historical Park, and parts of Denali National Park (the former Mt. McKinley National Park area). The regulations in Subpart B amend the regulations contained in Parts 2 through 9 of 36 CFR and Subpart A of Part 13.

Subpart C contains regulations for individual park areas. These regulations apply to a specific area and may amend the provisions of the general regulations found in 36 CFR, Parts 2 through 9, or Subpart A or B of this Part.

Sections 103(c) and 906(o) of ANILCA generally restrict the applicability of National Park Service regulations to federally owned lands within park area boundaries. Consistent with the statute and the explanatory legislative history, 126 Cong. Rec. H11115 (November 21, 1980) and S15130-15131 (December 1, 1980), § 13.2(e) restricts the applicability of these regulations to "federally owned" lands (defined to mean all land interests held by the Federal government including unconveyed Native selections) within park area boundaries. With the legislative conveyance of 98 million acres of State selections in section 906 of the Act, no unconveyed State selections remain within park areas. These regulations would not apply to activities occurring on State lands. Similarly, these regulations would not apply to activities occurring on Native or any other non-federally owned land interests located inside park area boundaries.

A new § 13.4 has been added stating the approval of information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 96-511; 94 Stat. 2812).

Access Related Provisions

Definitions.—The definition of "adequate and feasible access" in § 13.1(a) has been revised to clarify that the inholder determines the desired land use or development (removing the suggestion that the Service determines "reasonable" land uses), and the Service approves reasonable access to meet the desired land use. In addition, instead of defining "adequate and feasible access"

circularly in terms of "access," the § 13.1(a) definition provides that only "personal and vehicular travel" (e.g., roads, trails and landing strips, but not transmission lines and pipelines) fits within the statutory access guarantee, in accordance with the legislative history of § 1110(b). S. Rep. No. 96-413, *supra* 248 (1979); H.R. Rep. No. 96-97, Part I, 96th Cong., 1st Sess. 239-240 (1979). Finally, the § 13.1(a) definition makes it clear that the access provided must be economically practicable, but not necessarily the least costly access alternative.

The term "snowmachine" used in section 1110(a) of ANILCA and § 13.10 of these regulations has been defined in parallel terms to a "snowmobile." No separate definition for the § 13.11 term "motorboat" is included here, since the 36 CFR 3.1 definition is already applicable and comports with legislative intent.

Snowmachines—Section 13.10 of these regulations tracks the ANILCA section 1110(a) language authorizing snowmachine use in park areas for "traditional activities" and "travel to and from villages and homesites," as suggested by several commenters. Upon review, it was determined that the findings required under Executive Order 11644 for the general opening to snowmachine use proposed in draft regulations could not be made at this stage. Consequently, snowmachine use is authorized during periods of adequate snow cover or frozen river conditions only for traditional activities which are still permitted in park areas (e.g., snowmachine use to locate new mining claims or for sport hunting in national parks would not be authorized, because the land use is not permitted), travel to and from villages and homesites, pursuant to an access permit, and as authorized by § 13.46. A definition of adequate snow cover as snow of sufficient depth to protect underlying vegetation and soil from damage has been added.

The Service may broaden snowmachine use privileges in a future rulemaking in compliance with E.O. 11644. Prospective snowmachine users should note that the legislative history of section 1110(a) defines a traditional activity in terms of a use generally occurring in a park area prior to its designation. See S. Rep. No. 96-413, *supra* at 248; H. Rep. No. 96-97, Part I, *supra* at 239. The Service may attempt to define area-specific traditional activities in subsequent rulemakings.

Motorboats—No changes have been made in § 13.11, which authorizes general motorboat use in park areas. This motorboat section, as well as

§ 13.12 and § 13.13, expand on the access provided by section 1110(a) of ANILCA.

Nonmotorized surface transportation—In response to public comment, § 13.12 was added to authorize the general use of nonmotorized surface transportation (e.g., dog sleds, horses) in park areas.

Aircraft—Section 13.13 authorizes general fixed wing aircraft use in park areas. Public comments urging that helicopter use be by permit only were adopted.

Off-road vehicles—Section 13.14 establishes the procedures for designating routes and areas for off-road vehicle (ORV) use. While several commenters had urged NPS to open existing ORV trails to ORV use, the Service does not have the resource impact information needed for the ORV determinations under Executive Order 11644. In recognition of public desires for the use of ORVs on existing trails, § 13.14(c) adds a permit procedure for such use in non-wilderness park areas. ORVs by permit are exempted from E.O. 11644 and, thus, this procedure offers the maximum ORV use allowable under current law. Cf., E.O. 11644, (16 U.S.C. § 1131 *et seq.*), 16 U.S.C. 1, 1a-1. Under this procedure, individuals could apply for and receive permits for ORV use on existing trails in non-wilderness park areas after the Superintendent's finding of compatibility with park purposes. Persons desiring the opening of specific ORV trails may petition the Department to initiate rulemaking under 43 CFR 14.6. Until such trail and area openings occur, off-road vehicle use is prohibited except by permit or pursuant to § 13.46.

Access to inholdings—Section 13.15 of these regulations, which implements the ANILCA section 1110(b) guarantee of adequate and feasible access to inholdings, has been revised to make clear that an access permit is required only when the inholder desires an access method that is not authorized by other provisions of these regulations (e.g., an access permit is not required for airplane, motorboat or snowmachine access unless an area has been closed to such uses). The access openings of §§ 13.10-13.13 of these regulations should greatly reduce the number of people requiring access permits.

Section 13.15(b) has been revised to state uniform, minimally burdensome requirements geared to obtaining information on whether the applicant has a valid property or occupancy interest, the location of that interest, the applicant's desired route and method of access, and, as deemed necessary by the Superintendent, information on access alternatives and environmental impacts.

Section 13.15(b) continues to guarantee adequate and feasible access, and strives to give the applicant his desired access, unless there would be significant resource conflicts and alternative adequate and feasible access exists. Section 13.15(b) has also been revised to minimize the need for permit renewals in response to public comments.

Section 13.15(c) responds to comments on access requiring permanent improvements on park area lands (e.g., road or bridge construction). It is an interpretive rule on the relationship between ANILCA section 1110(b) access to inholdings and sections 1101-1107 "transportation or utility systems." The revised § 13.15(c) requires that any application for a "transportation or utility system," a term defined in § 1102 of ANILCA, be submitted on a consolidated application form, as required by section 1104 of ANILCA. If the permanent improvement is required for adequate and feasible access to an inholding (e.g., a landing strip or road construction) within the meaning of ANILCA section 1110(b), then the necessary rights for the permanent improvement will be granted following procedural compliance with ANILCA section 1104. This procedure requires completion and submission of a relatively simple form.

Following submission, the permanent improvement shall be approved. Conversely, if the permanent improvement is not necessary for section 1110(b) access to inholdings (e.g., requests for powerlines and pipelines, or a request for a four lane highway to a recreational cabin), then both the procedural and substantive provisions of ANILCA sections 1104-1107 will be applicable in determining whether to authorize the permanent improvement.

Section 13.15(d) of these regulations is another interpretive rule to inform the public of the Department's views on the applicability of existing regulations concerning mineral development in park areas. Section 13.15(d)(1) concerns the applicability of 36 CFR Part 9A regulations on 1872 Mining Law Claims, which regulations were promulgated under the Mining in the Parks Act (16 U.S.C. 1901 *et seq.*). The guarantee of adequate and feasible access to valid mining claims under section 1110(b) of ANILCA notwithstanding any other law appears to preempt the 36 CFR 9.3 prerequisite of an approved plan of mining operations prior to receiving access. Consequently, the Department is of the view that 36 CFR 9.3 is no longer applicable in Alaska park areas. However, where the holder of a valid

patented or unpatented mining claim under the 1872 Mining Law within a park area proposes to undertake mining operations, the independent requirements of 36 CFR 9.9, 9.10 still require that a plan of operations be approved before undertaking any operations on the claim, as in all other National Park System units (except for patented mining claims where there is no access across federally owned parklands). Thus, prior to undertaking any mining operations within the meaning of 36 CFR 9.2, 1872 Mining Law claimants must obtain an approved plan of operations.

Section 13.15(d)(2) is an interpretive rule stating the Department's view that the regulations of 36 CFR Part 9B are no longer applicable in Alaska park areas. These regulations concerning the development of non-federal oil and gas rights in parks were premised on the land manager's discretion to restrict access. Section 1110(b) of ANILCA effectively removes this discretion from the land manager. Therefore, 36 CFR Part 9B does not apply to Alaska park areas.

Temporary access—Section 13.16 implements section 1111 of ANILCA on temporary access. The revised § 13.16 adopts commenter suggestions to reduce application information burdens: the final § 13.16 requires the same minimal information required by § 13.15(b). In addition, the revised § 13.16 adopts commenter suggestions to collapse mineral and non-mineral temporary access into one provision. Temporary access is defined as limited, short-term (up to one year) access, which does not require permanent facilities for access, to undeveloped non-federal lands for the purposes of survey, geophysical, exploratory and other temporary uses. Unlike access to inholdings under § 13.15, temporary access can be denied where there would be permanent harm to park area resources.

Cabins and Other Structures—Section 13.17 provides procedures and guidance for those occupying and using existing cabins and those wishing to construct new cabins within park areas in Alaska. Section 1303 of ANILCA provides the National Park Service with the authority to permit the continued use of cabins in Alaska even though the occupants may not hold legal title to these cabins and the lands on which they are located. The degree of privilege afforded an occupant is determined by the date of cabin occupancy.

The first category is comprised of those persons who built or occupied cabins or other structures on unpatented Federal lands prior to December 18, 1973. The occupants may apply for a five

(5) year renewable permit pursuant to § 13.17(e)(i). These permits shall be renewed every five (5) years until the death of the last immediate family member of the claimant residing in the cabin or structure under permit. Renewal will occur unless the Superintendent determines, after notice and hearing and on the basis of substantial evidence, that the use under the permit is causing or may cause significant detriment to the principal purposes for which the park area was established. The Superintendent's decision may be appealed to the Director of the National Park Service, and ultimately to the Director, Office of Hearings and Appeals in the Department of the Interior.

The second category consists of those persons who built or occupied cabins or other structures between December 18, 1973, and December 1, 1978. These occupants may apply for a nontransferable, nonrenewable permit. The permit would be issued for a maximum term of one year. Permits issued under this provision may be extended by the Superintendent for periods up to 1 year when required for equitable and just reason, *i.e.*, where extraordinary circumstances prevent vacating the cabin or structure and removal of all personal property within the original term of the permit.

Section 13.17(d) authorizes the Superintendent to issue a permit for the construction, reconstruction, temporary use, occupancy, and maintenance of new cabins or other structures when it is determined that the use is necessary to reasonably accommodate subsistence uses, or is otherwise authorized by law. This determination will be based on factors such as other public uses, public health and safety, and environmental and resource protection. The provision would implement sections 1315(d) (public use cabins in wilderness areas) and 1316 (e.g., temporary shelters for sport hunting in preserves) of ANILCA as well as providing for the reconstruction of cabins permitted under section 1303 of the Act.

The final provision of this regulation provides for the renewal or continuation of valid leases or permits in effect as of December 2, 1980, for cabins, homesites, or similar structures on federally owned lands. These permits or leases shall be renewed unless a direct threat or a significant impairment to park values will occur. Any such findings must be issued by the Superintendent, following notice and an opportunity for the leaseholder or permittee to respond.

Camping and Picnicking—Section 13.18 allows camping and picnicking within park areas except at those times

or locations temporarily or permanently closed or otherwise restricted by the Superintendent. The National Park Service would close an area to camping or picnicking when the Superintendent determines that use of the area has resulted in resource damage or that other management considerations require closure as set forth in Section 13.30.

Weapons, Traps and Nets—Section 13.19 permits the carrying of firearms within park areas in Alaska (except Klondike Gold Rush National Historical Park, Sitka National Historical Park and the former Mt. McKinley National Park, Glacier Bay National Monument and Katmai National Monument, where 36 CFR 2.11 is controlling), except as restricted by the Superintendent pursuant to Section 13.30. The Superintendent would retain the authority to prohibit or restrict the carrying of firearms in those areas and at those times when the potential for injury or loss of life inflicted by dangerous animals is negligible or where necessary to insure public safety. For example, the Superintendent may prohibit the carrying of loaded firearms in areas of concentrated public use.

The regulations distinguish between the carrying of firearms for purposes of personal protection and the carrying of other weapons. Only firearms may be carried by recreational users in park areas. The carrying of nets, traps and other weapons such as spear guns, slingshots and other implements designed to discharge missiles would be prohibited. However, local rural residents authorized to engage in subsistence uses would be permitted to use, possess and carry weapons, traps and nets in accordance with applicable State and Federal law.

In order to provide transient relief for persons crossing park areas, the possession of weapons, traps and nets within or upon a device or animal used for transportation is permitted provided such implements are unloaded and cased or otherwise packed in such a way as to prevent their ready use while in park areas.

Preservation of Natural Features—As revised for the new Alaska park areas, § 13.20 authorizes the use of dead and downed wood for fires within identified park areas, and the personal recreational collection of rocks and minerals (including gold; but not including silver, platinum, gemstones and fossils) by hand methods which do not involve surface disturbance.

Taking of Fish and Wildlife—ANILCA provides for the continuation of sport fishing on all lands

administered by the National Park Service and for the continuation of sport hunting within the national preserves. Consistent with the Act, § 13.21 permits the taking of fish and wildlife in accordance with applicable State and Federal laws, including 36 CFR 2.13, 7.23, 7.44(c) and 7.46(a). (Additional provisions on subsistence hunting, trapping, and fishing are provided in §§ 13.47 and 13.48.) By assimilating State law the National Park Service applies the same approach towards enforcement of fish and game laws that it uses everywhere else in the National Park System where sport hunting is allowed.

Congress was specific in its concern that "[t]he intent is to allow individual Alaskans to continue to operate their own traplines within the preserves . . . [I]t is clearly not the intent of this Act that preserves would be a place where more extensive forms of commercial trapping would be allowed where, for example, the trapping itself becomes a business with employees paid to support the trapping operation." 126 Cong. Rec. H10542 (November 12, 1980). Section 13.21 satisfies that intent by prohibiting trapping operations in which trappers are employees of a commercial trapping enterprise, while allowing individual Alaskans to continue to operate their traplines within national preserves.

Section 13.21(b) also complies with Section 205 of ANILCA which allows the continuation of valid commercial fishing rights and privileges within Cape Krusenstern National Monument, the Malaspina Glacier Forelands area of Wrangell-St. Elias National Preserve, and the Dry Bay area of Glacier Bay National Preserve.

Unattended and Abandoned Property—Section 13.22 allows personal property to be left unattended up to 12 months before it would be deemed abandoned and subject to impoundment. In effect, this accords personal property within park areas a 12-month presumption that it is only temporarily unattended. Personal property may be left for periods of time in excess of twelve months with the prior permission of the Superintendent.

The section provides that the Superintendent may establish limits on the amount and type of personal property that may be left unattended. In addition, the Superintendent is authorized to designate locations where personal property may be left unattended for periods of time to be designated by the posting of appropriate signs or by designating on a map which shall be available for public inspection at the office of the Superintendent.

Additionally, § 13.13 provides that aircraft downed after December 2, 1980, must be removed pursuant to the conditions of a permit issued by the Superintendent unless he/she specifically waives this requirement. This regulation is necessary to provide relief from 36 CFR 2.1, which prohibits leaving any vehicle or other property unattended for longer than 24 hours, and to preserve the values and experience of the park areas.

The National Park Service intends that each instance of a downed aircraft be treated on a case-by-case basis. Where the removal operation would present a significant risk to human life, result in extensive resource damage, or is otherwise impractical or impossible (including any situation in which removal of the aircraft would cause such a severe and significant hardship to the owner as to be economically prohibitive), waiver of removal requirements is appropriate. Factors such as the condition and size of the downed aircraft as well as the relief, elevation and vegetation of the surrounding terrain will be controlling in this analysis. In determining the times and means of removal to be specified in a permit when removal is required, these factors will be equally controlling.

Finally, this section would prohibit an attempt to salvage, remove, or possess a downed aircraft without a permit from the Superintendent. The intent here is to protect the aircraft and, most importantly its valuable and easily removed component parts, from being appropriated without authorization by the owner.

Closure Procedures—Section 13.30 authorizes the Superintendent to close an area or restrict an activity on an emergency, temporary or permanent basis. A determination to close an area or restrict an activity will be based on factors such as public health and safety, resource protection, and subsistence uses.

No closures are provided for by this regulation. It provides for notice and hearing for temporary and permanent closure, and also includes a provision for notice and hearing prior to all closures for snowmobile, aircraft or motorboat use, consistent with section 1110(a) of the Act.

This rulemaking establishes time limits for emergency closures (30 days) and temporary closures (12 months) which cannot be extended.

A final provision of this regulation requires the Superintendent to provide public notice prior to determining whether to open an area to a public use or activity. Upon request, a hearing in the affected vicinity will also be held.

Section 13.30(e) adopts commenter suggestions for a hearing in the area affected by a permanent closure. This may include hearings in urban areas in situations in which closures (such as closures to sport hunting) may affect urban residents.

Permits—Section 13.31 consolidates procedures regarding the issuance and denial of permits. The procedures specify to whom an application for a permit must be submitted. The Superintendent is directed to acknowledge the application promptly, and to approve the permit, deny the permit, or request additional information within 45 days unless the Superintendent notifies the applicant of a good cause extension.

The regulations further establish and set forth an administrative appeals system to the NPS Alaska Regional Director. The appeals system was established with a view toward minimizing the requirements imposed upon the applicant during the appeal process, yet establishing a procedure that would fairly meet the concerns of the applicant. Any person whose permit application has been denied by the Superintendent has a right to appeal that denial to the Regional Director within 180 days of permit denial. Section 13.31(b)(2) has been revised to guarantee an applicant the opportunity for a hearing, as suggested in public comments.

Section-by-Section Analysis: Subpart B—Subsistence

Subpart B of the final interim regulations implements the authorization for subsistence uses in specified park areas contained in Title II of ANILCA and the policies and procedures governing subsistence uses contained in Title VIII of the Act.

These final interim regulations for subsistence are necessary for several reasons. First, they relieve restrictions in the otherwise applicable general park regulations for uses and activities integral to the subsistence lifestyle. In certain cases, ANILCA does not specifically relieve these restrictions (e.g., use of nets, seines, traps, and spears in subsistence fishing; cutting of live standing timber for firewood and house logs; carrying of firearms); in other cases, ANILCA allows the uses, but the Park Service's general regulations appear to prohibit them on pain of criminal penalty. Second, the final interim regulations implement certain critical provisions of ANILCA concerning subsistence (e.g., the closure standards and procedures for subsistence uses of fish and wildlife).

and extend the principle of certain of these provisions to subjects not specifically mentioned by ANILCA (e.g., closure standards and procedures for subsistence use of plants). In several cases, these final interim regulations set up the administrative mechanisms for implementing the statutory provisions (e.g., notice provision for closures). Third, the final interim regulations are necessary in order to establish methods for identifying subsistence users (known as "local rural residents" in the regulations) who are authorized to hunt and trap in specified national parks and monuments, and for separating them from sport users who are prohibited from hunting and trapping in all parks and monuments. Section 816 of ANILCA prohibits the taking of wildlife in parks and monuments except as specifically authorized. In ANILCA, the authorization is limited to local residents engaged in subsistence uses in certain park areas. The Act does not, by its terms, prescribe the methods that the Park Service is to use to distinguish subsistence from sport users, though the legislative history for Title II of the Act indicates Congress' intent that methods like those in these final interim regulations be established. S. Rep. No. 96-413, *supra*, 168-171; 126 Cong. Rec. H10540-41 (daily ed. Nov. 12, 1980). As described in detail below, the National Park Service has adopted the following two methods suggested by Congress to ensure that only "local rural residents" engage in subsistence uses in parks and monuments: (1) A system of "resident zones" and "subsistence permits" to identify local rural residents, and (2) a general prohibition on aircraft use for subsistence hunting, trapping, and fishing to separate the sport user from the subsistence user.

The final interim regulations on subsistence are not comprehensive. They do not provide for implementing certain provisions of Title VIII of ANILCA that, in the Park Service's judgment, do not lend themselves to expeditious promulgation. In most cases, these provisions have not previously been the subject of notice and comment. Notable among these statutory provisions are the State regulation opportunity of section 805(d), the Federal monitoring requirement of section 806, the judicial enforcement mechanism of section 807, the subsistence and land use procedures of section 810, and the subsistence research provision of § 812. The National Park Service will consider specific regulations and policies as appropriate for implementing these provisions in the future. It should be

emphasized, however, that all parties must comply with these statutory provisions as long as they remain in effect.

Purpose and Policy

Purpose: Section 13.40(a) establishes that, consistent with proper management of fish and wildlife and the purposes for which the park areas were established, the purpose of Subpart B of the regulations is to provide the opportunity for local rural residents engaged in a subsistence way of life to do so pursuant to applicable State and Federal law. ANILCA, sections 101(c); 802(1). The Subpart B regulations are designed to accommodate and protect the unique subsistence relationship of certain local rural people in Alaska with their natural environment. Alaska Native people have been living a subsistence way of life for thousands of years, and certain non-Native rural residents have developed a subsistence way of life in more recent times. Many of these local rural residents have customarily and traditionally taken the renewable resources which are now within the boundaries of park areas. The resources satisfy both the physical needs of these local rural residents for food, shelter, fuel, clothing, tools, and transportation and their societal needs for cultural identity through skills, lore, and traditions. In light for the cultural and societal importance of the subsistence lifestyle in rural Alaska and its dependence on the renewable resources, therefore, Subpart B implements the Congressional directive to continue the opportunity for subsistence uses within all national preserves and certain national parks and monuments by local rural residents who have (or are a member of a family which has) an established or historical pattern of subsistence uses within such units. As noted in both the Senate and House of Representatives, "[L]ocal rural residents who maintain their primary, permanent residence within such units should have the opportunity to decide for themselves the course, pace, and extent, if any, of their own lifestyle and community evolution." S. Rep. No. 96-413, 96th Cong., 1st Sess. 169 (1979); 126 Cong. Rec. H 10,541 (daily ed. November 12, 1980).

Section 13.40 (b)-(d) sets forth basic policies which ANILCA adopted to guide the activities of the administering agencies. ANILCA, sections 802 (1), (2); 804. First, consistent with sound management principles and the conservation of healthy populations of fish and wildlife, the utilization of park areas is to cause the least adverse impact possible on local rural residents

who depend upon subsistence uses of the resources of the public lands in Alaska for their economic and physical well-being and cultural vitality. This statutory policy is implemented throughout the regulations, particularly in the subsistence priority established by § 13.40 (c)-(d) and the limitations on closure of §§ 13.46, 13.49, and 13.50.

Subsistence Priority. The second policy, articulated in § 13.40 (c) and (d), establishes the subsistence priority. Section 13.40(c) makes clear that nonwasteful subsistence uses of fish, wildlife, and other renewable resources by local rural residents are the priority consumptive uses over any other consumptive uses permitted within park areas. ANILCA, section 802(2). If consumptive uses of a fish and wildlife population must be restricted, § 13.40(c) assures that consumptive uses must first be limited to local rural residents engaged in subsistence uses. Section 13.40(d) establishes the three criteria for implementing the subsistence priority among persons already engaged in subsistence uses. *Id.* Section 804. Thus, if restrictions of consumptive uses among local rural residents becomes necessary, § 13.40(d) sets forth the allocation criteria: Customary and direct dependence upon the resource as the mainstay of one's livelihood, local residency, and availability of alternative resources.

Accordingly, the subsistence priority system dictates the following scenario in situations in which a park area's fish and wildlife resources are not sufficiently plentiful for taking by all consumptive users. If consumptive uses must be restricted to assure the continued viability of the resource populations (including the conservation of healthy populations in preserves, and healthy and natural populations in parks and monuments), for example, or to assure local rural residents the continued opportunity to engage in subsistence uses, consumptive uses must first be restricted to local rural residents engaged in subsistence uses. Then, if further restrictions become necessary, the resources must be allocated among the local rural residents. Ultimately, subsistence uses must be limited to local rural residents who have the most customary and direct dependence on the resources as the mainstay of their livelihoods and who have the least access to alternative resources.

For several reasons, today's final interim regulations merely repeat the three criteria of the subsistence priority set forth in § 804 of ANILCA. The National Park Service anticipates State

regulation implementing the subsistence priority criteria and looks forward to local input on the criteria from the local advisory committees and regional advisory councils of section 805 of ANILCA and the park and park monument commissions of Section 808.

State Regulation. Section 13.40(e) of the regulations recognizes the State of Alaska's authority to regulate the taking of fish and wildlife in park areas as long as such regulation is consistent with applicable Federal law, including the provisions of ANILCA. For example, the Park Service expects the State to continue to regulate seasons and bag limits in the park area. Furthermore, the Park Service anticipates that a State subsistence program, implementing ANILCA's various subsistence mandates, will eventually supersede most Federal regulation of subsistence.

Limitations. In addition to establishing the purpose and policies of the Subpart B regulations, § 13.40 also establishes the limitations of the purpose and policies. According to § 13.40(a), the subsistence opportunity may only be provided in a manner and degree consistent with the management of fish and wildlife in accordance with recognized scientific principles and with the purposes for which each park area was established, designated, or expanded by ANILCA. According to § 13.40(b), the utilization of the public lands is to cause the least adverse impact possible on local rural residents, but this policy is limited by the requirement that it be consistent with sound management principles and the conservation of healthy populations of fish and wildlife. And § 13.40(c) establishes the basic limitation of all the provisions of the Subpart B regulations: Subsistence uses of fish and wildlife populations must be appropriately regulated so as to assure conservation of healthy populations within national preserves, and conservation of natural and healthy populations within national parks and monuments. Congress provided the following guidelines on the implementation of this concept:

The Committee intends the phrase "the conservation of healthy populations of fish and wildlife" to mean the maintenance of fish and wildlife resources and their habitats in a condition which assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystems, including recognition that local rural residents engaged in subsistence uses may be a natural part of that ecosystem; minimize the likelihood of irreversible or long-term adverse effects upon such populations and species; and ensures maximum practicable diversity of options for the future. The greater the ignorance of the resource parameters, particularly of the

ability and capacity a population or species to respond to changes in its ecosystem, the greater the safety factor must be. Thus, in order to insure that subsistence uses are compatible with the maintenance of healthy populations of fish and wildlife, it must be recognized that the likelihood of irreversible or long-term adverse effects to a population or species must be proportional to the magnitude of the risks caused by a proposed use of such population or species.

The Committee recognizes that the management policies and legal authorities of the National Park System and the National Wildlife Refuge System may require different interpretations and application of the "healthy population" concept consistent with the management objectives of each system. Accordingly, the Committee recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population dynamics, and the manipulation of the components of the ecosystem.

The reference to "natural and healthy populations" with respect to national parks and monuments recognizes that the management policies of those units may entail methods of resource and habitat protection different from methods appropriate for other types of conservation system units. S. R.P. No. 96-413, *supra*, 233, 235.

In authorizing subsistence uses within National Parks, Monuments, Preserves, and National Recreational Areas, it is the intent of the Committee that certain traditional National Park Service management values be maintained. It is contrary to the National Park Service concept to manipulate habitat or populations to achieve maximum utilization of natural resources. Rather, the National Park System concept requires implementation of management policies which strive to maintain the natural abundance, behavior, diversity, and ecological integrity of native animals as part of their ecosystem, and the Committee intends that that concept be maintained. The National Park Service recognizes, and the Committee agrees, that subsistence uses by local rural residents have been, and are now, a natural part of the ecosystem serving as a primary consumer in the natural food chain. The Committee expects the National Park Service to take appropriate steps when necessary to insure that consumptive uses of fish and wildlife populations within National Park Service units not be allowed to adversely disrupt the natural balance which has been maintained for thousands of years. Accordingly, the Committee does not expect the National Park Service to engage in habitat manipulation or control of other species for the purpose of maintaining subsistence uses within National Park System units. *Id.* at 171.

Applicability

ANILCA mandates that subsistence uses by local rural residents be allowed in all national preserves in Alaska and, where permitted by ANILCA, in national

parks and monuments in Alaska. ANILCA, § 203. Accordingly, § 13.41, the applicability section, states that local rural residents may engage in subsistence uses pursuant to the regulations in Subpart B (1) in national preserves (ANILCA, section 203); (2) throughout Cape Krusenstern National Monument and Kobuk Valley National Park (*id.*, section 201(3) and (6)), and (3) where such uses are traditional (as may be further designated for each park or monument in Subpart C) in Aniakchak National Monument, Gates of the Arctic National Park, Lake Clark National Park, Wrangell-St. Elias National Park, and the December 2, 1980, addition to the newly named Denali National Park (*id.*, sections 201 (1), (4), (7), (9); 202(3)).

With respect to the last category of park areas—Aniakchak, Gates of the Arctic, Lake Clark, Wrangell-St. Elias, and the Denali addition—the statute offers no further specifics as to the geographical areas where subsistence uses are traditional. The legislative history offers some guidance. For Gates of the Arctic, for example, the Senate report states as follows:

* * * [S]ubsistence uses of some areas of the park may be essential periodically or continuously for the continued survival of the local people. The Committee * * * feels * * * that the subsistence patterns of the park are well known and can be identified. The Committee noted that the following drainages within the park have apparently been used for subsistence hunting: Etivluk River, Outwash Creek, Kurupa River, Oolamagavik River, Killik River (and all its tributaries), Okpikruat River, Alapah Creek, Kayak Creek, Erratic Creek, Naushuk River, Kuhsuman Creek, Anaktuvuk River, Ernie Creek and the Ilkillik River. It is not the intent of the committee that these drainages be considered the only places where subsistence can occur. But it is the Committee's intent to restrict subsistence hunting in the park to traditional use areas * * * S. Rep. No. 96-413, *supra*, 147; see also, 128 Cong. Rec. H10535 (daily ed. Nov. 12, 1980).

For the other specified areas, the legislative history indicates, at most, that subsistence uses may occur "where such uses have been traditional," "to the extent they (*sic*) now take place," "where they now occur," "at their present level." 126 Cong. Rec. H 10533, 10538, 10540. Since the legislative guidance on where subsistence uses are traditional in the five specified areas is incomplete, the National Park Service had decided not to designate traditional "subsistence hunting zones" for these five areas in this interim rulemaking. Rather, the Park Service looks forward to developing additional information and to receiving public comment on this

issue through research, further rulemaking endeavors, and, most importantly, advice from the local committees and regional councils of section 805 of ANILCA and from the park and monument commissions of section 808. In the meantime, the National Park Service believes that local rural residents should comply with the Congressional intent of § 13.41(c) of the proposed regulations by not hunting in any areas of Aniakchak National Monument, Gates of the Arctic National Park, Lake Clark National Park, Wrangell-St. Elias National Park, or the Denali Park addition where subsistence hunting has not, in recent history, occurred.

Definitions

Local rural resident and resident zones. Throughout the regulations, the National Park Service identifies those people who may engage in subsistence uses where authorized in park areas as "local rural residents." This term derives from the term "local residents" in Title II of ANILCA and the term "rural Alaska residents" in the definition of "subsistence uses" in Title VIII. Title II authorizes the opportunity for continued "subsistence uses by local residents" * * * in national preserves and, where specifically permitted by this Act, in national monuments and parks." ANILCA, section 203 (emphasis added); see also, section 201 (1), (3), (4), (5), (7), (9); 202(3). The relationship between this language in Title II and Title VIII was described as follows in the Congressional Record:

Since the definition of "subsistence uses" in § 803 limits such uses to "rural Alaska residents," a reading of Title VIII and Title II * * * together make it clear that the policy throughout is that only local rural residents are by statute provided the opportunity to engage in subsistence uses in areas of the National Park System * * * 126 Cong. Rec. S15129 (daily ed. December 1, 1980).

Section 13.42(a) defines "local rural residents" with respect to national parks and monuments as persons who either live in designated "resident zones" (see § 13.43 and its explanation, below) or hold a "subsistence permit" (see § 13.44 and its explanation, below). In brief, "resident zones" are designated, and "subsistence permits" will be issued, on the basis of customary and traditional utilization of park or monument lands for subsistence uses without use of aircraft as a means of access. In the case of "resident zones," the National Park Service applies this criterion to "significant concentrations" of people; in the case of "subsistence permits" for people who live outside resident zones,

the Superintendent will apply this criterion to individual applicants.

The definition of "local rural resident" makes clear that, for a person to qualify by virtue of residence in a resident zone, that person must have his or her primary, permanent home within the resident zone, and whenever absent from this home, have the intention of returning to it. The National Park Service will examine factors such as tax returns, hunting, fishing, and driver's licenses, voter registration, and any other evidence appropriate to establish the location of a person's primary, permanent home. In practice, this residence concept should not exclude a person from qualifying as a local rural resident merely because of a temporary absence for military duty or limited-term employment, for example. This concept does not impose a durational residency requirement.

Subsistence uses. The definition of "subsistence uses" tracks the language of section 803 of ANILCA with one modification: as explained below, the regulatory definition offers some guidance on the meaning of the term "customary trade," which the statute leaves undefined.

The term "subsistence uses" means the customary and traditional uses by rural Alaska residents of fish, wildlife, and other 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 from the 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. This definition uses several terms which require further explanation.

To begin with, the definition uses the phrase "customary and traditional" to modify the term "uses" in order to emphasize that Native and non-Native subsistence uses

have played a long established and important role in the economy and culture of the community and * * * (that) such uses incorporate beliefs and customs which have been handed down by word of mouth or example from generation to generation. S. Rep. No. 96-413, *supra*, 269; H. Rep. No. 96-97, 96th Cong., 1st Sess. 280 (1979).

Next, the definition limits subsistence uses to uses "by rural Alaska residents." Clearly, this limitation excludes residents of Ketchikan, Juneau, Anchorage, and Fairbanks from engaging in authorized "subsistence uses." See S. Rep. No. 96-413, *supra*, 233. On the other hand, if they are included within a "resident zone" or obtain a "subsistence permit," residents of

"rural" Alaska—including communities such as Dillingham, Bethel, Nome, Kotzebue, Barrow, and other villages throughout the State (as long as such communities remain "rural")—may engage in "subsistence uses." *Id.* It is important to emphasize that, in national park or monument areas, only "local rural residents" who permanently reside in a resident zone or have a subsistence permit may engage in subsistence uses. See 126 Cong. Rec. S15129 (daily ed. December 1, 1980).

The term "family" is defined to include any person living within a local rural resident's household on a permanent basis as well as those persons living outside the household who are related by blood, marriage, or adoption (legal or equitable). The definition of "family" recognizes extended family patterns common in the subsistence culture of Alaska. This definition of "family" is to be distinguished from the more limited definition used in § 13.43 on determination of resident zones and in § 13.44 on subsistence permits.

The definition of "subsistence uses" includes the making and selling of handicraft articles from the nonedible byproducts only of fish and wildlife resources taken for personal or family consumption. Accordingly, the definition covers such commercial activities only if the edible portions of the resource have been used for personal or family consumption. The "subsistence uses" definition also includes "barter" for personal or family consumption in recognition that a genuine subsistence lifestyle includes certain foodstuffs and other items which may be available through a non-cash exchange. Thus, barter of subsistence resources of a limited and noncommercial nature falls within the meaning of "subsistence uses."

Finally, the definition of "customary trade" adopted today recognizes that the subsistence lifestyle may also include limited involvement in the cash economy through the exchange of furs and, in specified circumstances, other items not covered by the statutory language of the subsistence uses definition. With respect to the exchange of furs for cash, trapping furbearers is an integral and longstanding part of the subsistence lifestyle in many regions of Alaska. While some of the furs are utilized for personal or family use, it is recognized that a portion of the furs ultimately become items for sale on the commercial market. The cash remuneration, in turn, helps to provide the basic tools and supplies associated with trapping and the subsistence

lifestyle of which trapping is a part. For example, local rural residents may engage in trapping to obtain the cash required for necessary store-bought supplies such as gasoline and ammunition. The allowance of cash interchange related to fur trading is intended to provide continuity to the traditional and customary harvest of furbearers by those who are authorized to engage in subsistence uses within parks and monuments.

As with fur trading, so, too, the making and selling of handicraft articles out of plant material is a customary and traditional part of the subsistence lifestyle in certain places. Comments on the proposed interim regulations pointed out that the statutory definition of "subsistence uses" as well as the proposed regulatory definition failed to authorize this trade. Consequently, today's final interim regulations include special provisions in Subpart C to allow for these activities where they are known to occur. At this time, the definition of "customary trade" includes, in addition to the exchange of furs for cash, the selling of handicraft articles made from plant materials (e.g., birch bark baskets) taken by local rural residents in Kobuk Valley National Park and in the southwestern preserve unit of Gates of the Arctic National Park and Preserve. See §§ 13.64(a)(3), 13.69(a)(2).

It should be recognized, that the definition of "customary trade" was intended by Congress to be narrow:

The Committee does not intend that "customary trade" be construed to permit the establishment of significant commercial enterprises under the guise of "subsistence uses." The Committee expects the Secretary and the State to closely monitor the "customary trade" component of the definition and promulgate regulations consistent with the intent of the subsistence title. S. Rep. No. 96-413, *supra*, 234.

Accordingly, this provision is not intended to allow trapping or any other customary trade practice within parks and monuments to be or become a solely or predominantly commercial enterprise beyond its traditional role as part of the subsistence regimen.

Determination of Resident Zones: By definition, the "resident zone" for each national park or monument encompasses the area and communities within the park or monument boundaries as well as certain areas and communities just outside the boundaries where, in the judgment of the National Park Service, significant concentrations of subsistence users of the park or monument reside. Section 13.43(a). This definition reflects a change from the proposed definition insofar as it eliminates resident zones for park

preserves. The Park Service believes that the need to identify local rural residents in preserves is not as pressing as in parks and monuments since sport hunting is allowed in preserves. For the interim regulations period, moreover, the Service believes that its other tools for regulating subsistence fishing and use of timber in preserves—such as enforcement of State subsistence fishing law and retention of the permit requirement for cutting timber—will be adequate to protect park resources and values.

The areas and communities outside the boundaries for the new national parks and monuments listed in Subpart C of the regulations are as follows:

(a) Aniakchak National Monument: Chignik, Chignik Lagoon, Chignik Lake, Meshik, Port Heiden (§ 13.60(a)(1));

(b) Cape Krusenstern National Monument: Kivalina, Kotzebue, Noatak (§ 13.62(a)(1));

(c) Denali National Park: Cantwell, Minchumina, Nikolai, Telida (§ 13.63(a)(1));

(d) Gates of the Arctic National Park: Alatna, Allakaket, Ambler, Anaktuvuk Pass, Bettles/Evansville, Hughes, Kobuk, Nuiqsut, Shungnak, Wiseman (§ 13.64(a)(1));

(e) Kobuk Valley National Park: Ambler, Kiana, Kobuk, Kotzebue, Noorvik, Selawik, Shungnak (§ 13.69(a)(1));

(f) Lake Clark National Park: Iliamna, Lime Village, Nondalton, Pedro Bay, Port Alsworth, Newhalen (§ 13.70(a)(1));

(g) Wrangell-St. Elias National Park: Chisana, Chistochina, Chitina, Copper Center, Gakona, Gakona Junction, Glennallen, Gulkana, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Slana, Tazlina, Tok, Tonsina, Yakutat (§ 13.73(a)(1)).

Under the final interim regulations, anyone who permanently resides within the national park or monument boundaries or in one of the communities listed above may engage in subsistence uses in the appropriate national park or monument. In other words, persons who live in the resident zone for Kobuk Valley National Park, for example, may engage in subsistence uses in that national park, but in no other national park or monument without a permit (unless such person's community is also listed in the resident zone for another national park or monument—e.g., Shungnak is listed for both Kobuk Valley National Park and Gates of the Arctic National Park).

As the above list of communities reveals, the National Park Service has adopted a more liberal designation of resident zones in these final interim regulations than in the proposed regulations. This liberal designation complies with Congress' intent that the Park Service (1) devise a system of resident zones as the primary mechanism for identifying local rural

residents, and (2) avoid a subsistence permit system to the extent possible. See S. Rep. No. 96-413, *supra*, 170-71; 126 Cong. Rec. at H10541. The Park Service has retained other regulatory mechanisms, such as the prohibition on aircraft use for subsistence purposes, to prevent abuse of the subsistence program.

In determining the list of communities outside the boundaries for each national park or monument, the National Park Service reviewed several documents, including the studies of subsistence communities prepared for the Park Service, the 1974 Environmental Impact Statement on the Alaska National Interest Lands, and the 1978 Environmental Supplement on Alternative Administrative Actions. The National Park Service also reviewed information from several of its employees who have studied the subsistence lifestyle throughout the State and, in some cases, have lived "in the bush" for years. In addition, the Park Service reviewed comments submitted by State and local people knowledgeable about the subsistence lifestyle. The communities listed in Subpart C derive from the subsistence field research conducted by independent, qualified investigators on contract to the Park Service, from observations by NPS planning and field personnel, and from the comments and suggestions of State authorities and knowledgeable local sources. The resultant list is meant to include communities where "significant concentrations" of the inhabitants qualify as local rural residents who, without using aircraft as a means of access for purposes of taking fish and wildlife for subsistence uses, have customarily and traditionally engaged in subsistence within the park area. The concentrations may be "significant" in relative quantity (e.g., predominant numbers) or quality (e.g., cultural vitality, community leadership and influence).

It should be noted that a community or area may be added to a resident zone, or deleted from a resident zone, as circumstances change or information is developed that indicates that such community does or does not have the concentrations of local rural residents necessary for inclusion in the resident zone. Section 13.43(b). The Park Service recognizes that additional information for more precise designation of resident zones will probably be developed in the future by NPS, the State Department of Fish and Game Subsistence Division, local committees, regional councils, and

park and monument commissions (ANILCA, sections 805 and 808).

The National Park Service recognizes that certain communities outside the resident zones contain persons who can qualify as local rural residents. For any communities or areas not included in a resident zone, the National Park Service encourages the residents who have customarily and traditionally used national park area resources without using an aircraft for access to apply for a "subsistence permit."

Subsistence Permits and Application Procedures for Subsistence Permits: Under the final interim regulations, any person who permanently resides outside a resident zone must obtain a "subsistence permit" in order to engage in subsistence uses of national park or monument resources. The availability of subsistence permits assures that subsistence users whose communities are not included in a resident zone for whatever reason may nevertheless have the opportunity to engage in subsistence uses in national park or monument areas. Section 13.44.

The availability of subsistence permits is part of the system contemplated by ANILCA for identifying "local rural residents" who are authorized to engage in subsistence uses in national parks and monuments. The subsistence permit is system necessary to ensure the fairness of a regulatory system which seeks primarily—by means of resident zones—to avoid the necessity of permits in allowing subsistence uses by local rural residents. Thus, the subsistence permit system is an integral part of the resident zone system. As a corollary, it should be noted that the Park Service's decision to limit the applicability of the resident zone system to national parks and monuments (*i.e.*, not preserves) necessitated a similar limitation of the applicability of the subsistence permit system. As another corollary, the Service's decision to expand the resident zone designations, thereby encompassing more subsistence users within the zones, should reduce the number of subsistence users who must apply for a permit.

The National Park Service has made efforts to eliminate all unnecessary burdens from the application process while still providing procedural protections to assure fair and reasonable decisionmaking on the permit applications. Section 13.51. Under the regulations, the application process at the Superintendent's level is simple. The applicant must demonstrate to the Superintendent, preferably on a written form but otherwise by oral presentation, either of the following:

(1) He or she has (or is a member of a family which has) customarily and traditionally engaged in subsistence uses within a national park or monument without using aircraft as a means of access for purposes of taking fish or wildlife (§ 13.44(a)(1)); or (2) he or she qualifies as a "local rural resident" who may engage in subsistence uses in another national park or monument, and his or her subsistence lifestyle involves a pattern of subsistence uses between the other national park or monument and the park or monument for which the applicant now seeks a permit (§ 13.44(a)(2)).

Section 13.44(c) makes clear that, for purposes of § 13.44(a)(1), the term "family" is limited to persons living within a rural resident's household on a permanent basis. *See, also*, § 13.43(c). Unlike the definition of "family" in § 13.42(c) ("subsistence uses" definition), family members who live in cities or far from the park area would not qualify for the benefits of § 13.44. The intent of this definition is to allow children of subsistence users, who may not have a personal history of engaging in subsistence uses, to qualify for a permit.

The National Park Service believes that the Superintendent will be able to issue subsistence permits quickly and routinely in cases of genuine subsistence users. Section 13.51(a) requires the Superintendent to grant or deny the application in a timely manner not to exceed forty-five days from receipt of the completed application unless, in extraordinary cases, the Superintendent can show good cause for failing to meet the time deadline. The Superintendent shall explain any denial in writing and promptly forward a copy to the applicant.

Should the Superintendent deny the permit, the applicant who wishes to have his or her application reconsidered must so inform the Alaska Regional Director by letter, telephone, or any other means of communication within 180 days (except for good cause shown) of the Superintendent's issuing the denial. The permit applicant shall present the Alaska Regional Director with (1) any additional information demonstrating that the applicant qualifies for a permit, (2) the basis for the applicant's disagreement with the Superintendent's decision, and (3) a statement as to whether or not the applicant requests an informal hearing before the Regional Director. The Alaska Regional Director shall grant a hearing if the applicant requests it.

To accommodate the permit applicants who would be inconvenienced by travelling to Anchorage for a hearing, the Alaska Regional Director will periodically "ride

circuit," scheduling hearings throughout the State.

The Alaska Regional Director shall decide to affirm, reverse or modify the Superintendent's denial within a reasonable period of time, shall explain his decision in writing, and shall promptly forward a copy to the applicant. This decision shall constitute final action by the Department of the Interior. In accordance with applicable law, the permit applicant may, of course, seek judicial review of a denial on reconsideration.

The regulations published today recognize that subsistence users who do not live in resident zones but nevertheless depend on national park or monument resources must be able to engage in subsistence uses in national park or monument areas immediately. Consequently, § 13.44(b) allows such persons who would otherwise qualify for a subsistence permit (*see* § 13.44(a)) to engage in subsistence uses in a national park or monument without a permit until August 1, 1981. However, it should be emphasized that such persons should begin the application process for a subsistence permit as soon as possible since a subsistence permit will be required as of August 1, 1981. The Park Service encourages those who are able to submit their application in writing.

Prohibition of Aircraft Use: Section 13.45 of the Subpart B regulations generally prohibits the use of aircraft for access to or from lands and waters within a national park or monument for purposes of taking fish or wildlife for subsistence uses within the national park or monument.

The Subpart B regulations do not prohibit use of aircraft for subsistence uses in national preserves.

It is the National Park Service's determination, supported by numerous comments, by available research on the subsistence lifestyle, and by the legislative history of Title II of ANILCA, that local rural residents who have customarily and traditionally engaged in subsistence uses of park and monument resources do not, in most cases, use aircraft for access for subsistence hunting, trapping, and fishing. What cash these local rural residents acquire is used to purchase necessities not otherwise supplied by subsistence uses. Certainly, as a general rule, the expense of aircraft use greatly exceeds the ability of the local rural resident to pay for it. On the other hand, aircraft is commonly used by sport hunters who are now prohibited from hunting in park and monument areas. In this respect, the prohibition of aircraft use for subsistence activities reinforces the ban-

on sport hunting in park and monument areas and assists the National Park Service in distinguishing sport from subsistence hunters.

The Subpart C regulations for individual park areas, however, afford the Park Service flexibility to make exceptions to the general prohibition. For any park or monument, the Park Service may designate "exempted communities" whose local rural residents may obtain individual permits to use aircraft for subsistence hunting, trapping, and fishing (§ 13.45(b)). The Superintendent will attempt to develop a relatively standard permit for the entire community, subject to special individual terms, conditions, and signature for each community resident who wishes to use aircraft. At this time, the National Park Service is designating two communities as "exempted communities," Anaktuvuk Pass in Gates of the Arctic National Park and Yakutat in Wrangell-St. Elias National Park (for access to Malaspina Forelands Area only), whose local rural residents presently rely on aircraft for access to their customary and traditional areas of harvest in the park. The people of Anaktuvuk Pass, isolated, remote, surrounded by difficult terrain, are far removed from the wildlife populations whose harvest sustains them; moreover, they do not have adequate and available alternative resources populations for sustenance. Similarly, residents of Yakutat have customarily used aircraft for access to the Malaspina Forelands in the Wrangell-St. Elias area for subsistence purposes, since traveling by boat, the only other possible means of transportation, can be extremely dangerous due to the violent storms that frequent the Gulf of Alaska. S. Rep. 96-413, *supra*, 169; 126 Cong. Rec. H10541 (daily ed. Nov. 12, 1980). As Congress noted,

Although there may be similar situations in other areas of Alaska in which aircraft use for subsistence hunting may be appropriate and should be permitted to continue, the Committee believes that these types of situations are the exception rather than the rule and that only rarely should aircraft use for subsistence hunting purposes be permitted within national parks and monuments. It is not the intent of the Committee to invite additional aircraft use. S. Rep. No. 96-413, *supra*, 169; see, also, 126 Cong. Rec. H10541 ("It is not the intent to invite additional aircraft use, or new or expanded uses in parks and monuments where such uses have not traditionally and regularly occurred.")

The National Park Service has also included in today's regulations the opportunity for any local rural resident aggrieved by the aircraft prohibition to seek an individual exception to the

prohibition on aircraft pursuant to the procedures of § 13.51. Section 13.45(b)(2). It bears noting that this opportunity is available only to local rural residents, *i.e.*, persons who live in a resident zone or have a subsistence permit. The Superintendent may grant the exception if he or she determines that the applicant has demonstrated an extraordinary situation where no reasonable alternative to aircraft use exists because of the location of the subsistence resources depended upon and the difficulty of surface transportation to these resources, or other emergency situation (*e.g.*, unusual and unforeseeable acts of nature).

The permits issued pursuant to § 13.45(b) (1) and (2) may contain terms and conditions which limit the aircraft use as to area, time of operation, type of aircraft, duration of the permit, and any other factor necessary to restrict the permit to the limited and exceptional purposes it is meant to fulfill.

Section 13.45(c) makes clear that the prohibition on aircraft use is limited. It does not extend to any legal activity other than access for purposes of subsistence hunting, trapping, and fishing. Thus, a local rural resident may, for example, use aircraft in parks and monuments to carry supplies to a cabin, to visit another village, or even to gather berries. Although the National Park Service believes that such use of aircraft in the subsistence culture is rare for the reasons stated above, the Park Service does not have the same enforcement concerns for these activities as it does for the taking of fish and wildlife.

Use of Snowmobiles, Motorboats, Dog Teams, and Other Means of Surface Transportation: In furtherance of section 811 of ANILCA, § 13.46 provides local rural residents engaged in subsistence uses reasonable access to the subsistence resources on which they depend. With respect to local rural residents who are engaged in subsistence hunting, fishing, and gathering activities within the park areas, this regulation liberalizes the provisions of Subpart A on snowmobiles, motorboats, dog teams and other nonmotorized surface transportation (*e.g.*, saddle horses), and certain off-road vehicles. All routes and areas are open to subsistence use of these vehicles except as specifically restricted or closed. The Superintendent will implement such closures or restrictions on the basis of criteria which are more limited than the criteria for closure to general recreational use. Basically, in order to impose a restriction, the Superintendent must determine that the use in question is

causing or is likely to cause an adverse impact on public health or safety, resource protection, protection of historic or scientific values, subsistence uses, conservation of endangered or threatened species, or the purposes for which the park area was established. The Superintendent will arrange notice and public participation concerning closure proposals in order to involve those affected to the fullest extent possible in the decisionmaking.

It should be noted that the types of access vehicles covered by § 13.46 include "means of surface transportation traditionally employed by local rural residents engaged in subsistence uses." The limitations of this phrase, if any, will be addressed as appropriate in future rulemaking efforts.

Under § 13.46, any person operating motorboats, dog teams, snowmobiles, and other means of surface transportation must comply with applicable State and Federal laws governing such operation and must avoid causing waste or damage to fish, wildlife, terrain, or other values of the park area. In addition, consistent with State law, the vehicle operator may not use a motorized vehicle so as to herd, harass, haze, or drive wildlife for hunting or any other purpose.

At all times when not engaged in subsistence uses, local rural residents may use snowmobiles, motorboats, and other means of surface transportation in accordance with the appropriate Subpart A regulations. For example, local rural residents engaged in recreational uses of snowmobiles, motorboats, dog teams, and other means of surface transportation must comply with the provisions of §§ 13.10, 13.11, 13.12, and 13.14, respectively, and local rural residents seeking otherwise-closed access to inholdings or temporary access must comply with the provisions of §§ 13.15 and 13.16, respectively.

Subsistence Fishing: Local rural residents may, of course, engage in fishing in park areas in compliance with applicable State and Federal law. In addition, in § 13.47 of the regulations, the National Park Service has relaxed its general public regulations to allow, in park areas where subsistence uses are authorized, the customary and traditional use of nets, seines, traps, or spears by local rural residents to the extent permitted by State law. See § 13.41 (Applicability). Section 13.50, explained below, governs closures to fishing for subsistence purposes.

Subsistence Hunting and Trapping: Although all national parks and monuments in Alaska are closed to sport hunting and to trapping, many are

open, in whole or part, to hunting and trapping by local rural residents engaged in subsistence uses. ANILCA, sections 816; 201 (1), (3), (4), (6), (7), (9); 202(3); *see also*, § 13.41 (Applicability). Therefore, only local rural residents may engage in hunting and trapping where authorized in national parks and monuments. Of course, national preserves are open to both sport and subsistence hunting as well as trapping, unless the Superintendent has closed a preserve area to sport taking pursuant to § 13.30 of Subpart A or to subsistence taking pursuant to § 13.50 of Subpart B. As with sport users, local rural residents engaged in subsistence hunting or trapping must comply with applicable State law governing hunting and trapping, *e.g.*, bag limits, safety requirements, seasons and hours (§ 13.48). With respect to trapline cabins, § 13.17(c) provides for their construction, reconstruction, temporary use, occupancy, and maintenance pursuant to a permit. In addition, § 13.17 (b) and (d) provides for existing cabin use and occupancy by persons with a possessory interest or right of occupancy in the cabin.

Subsistence Use of Timber and Plant Material: Section 13.49(a) relaxes the general public use regulations by allowing local rural residents in park areas where subsistence uses are allowed to obtain a permit to cut standing live timber of greater than three inches diameter at ground height for subsistence needs such as shelter or fuel. *See* § 13.41 (Applicability). Before issuing a permit, the Superintendent must determine that the proposed cutting is compatible with the purposes for which the park area was established. Furthermore, the Superintendent will include in the permit any stipulations deemed necessary to protect the resources of the park area. No permit is required for cutting live standing timber smaller than three inches diameter for subsistence uses. Thus, for example, local rural residents need not obtain a permit to cut small alder or willow branches to make baskets or fish traps.

Section 13.49(b) makes clear that local rural residents do not need a permit to gather plant materials for subsistence uses, or to gather dead or downed timber for firewood for personal, not commercial, use.

Section 13.49(c) sets forth the standards and procedures for closing a park area to the subsistence uses of a particular plant population. Although not required by ANILCA, the National Park Service has decided to apply similar closure provisions for subsistence uses of plants as the Act

requires for subsistence uses of fish and wildlife.

As discussed below in the latter context, the closure standards are limited, and the closure procedures involve significant public participation, in order to protect the affected local rural residents who depend on the resources.

Closure to Subsistence Uses of Fish and Wildlife: According to section 816 of ANILCA and § 13.50 of the Subpart B regulations, the Superintendent of each park area has the power to close or restrict any part or all of a park area to subsistence uses of a particular fish or wildlife population only temporarily and only if necessary "for reasons of public safety, administration, or to assure the continued viability of such population." To implement Congress' intent, § 13.50 provides protective standards, time limitations, and notice requirements for closures to subsistence taking of fish and wildlife.

With respect to the standards for closure, the Act lists only three: Public safety, administration, and for assurance of the continued viability of a fish and wildlife population. No closure for purposes of administration, moreover, may be made prior to notice and hearing in the vicinity of the closure. The public safety standard clearly allows the Superintendent to act in situations which threaten public health and welfare. For example, the Superintendent may prohibit subsistence hunting and trapping for reasons of public safety in specified areas surrounding a public campground, roadway, or hiking trail. The fish or wildlife viability standard allows the Superintendent to act for purposes of maintaining resource populations upon which local rural residents rely at levels adequately above the threatened level. As Congress stated, "it is not the intent * * * that actual depletion of a population or an emergency exist before a closure under this section may be justified." S. Rep. 96-413, *supra*, 278; H. Rep. No. 96-97, *supra*, 289. Moreover, as stated in section 815 of ANILCA and § 13.40(e) of the regulations and explained previously, the subsistence provisions are not to be construed as permitting a level of subsistence use of fish and wildlife within national preserves to be inconsistent with the conservation of healthy populations, and within national parks and monuments to be inconsistent with the conservation of natural and healthy populations, of fish and wildlife. The administration standard is potentially the broadest of the three closure standards, though "recognition of the

importance of subsistence activities to most (local) rural residents requires that this authority be utilized narrowly and with consistent restraint." *Id.* Guided by this intent, the Superintendent can invoke the administration standard to protect the purposes and values of the park areas and otherwise to manage the park areas prudently. The limitation of section 815 of the Act and § 13.40(e) of the regulations are also relevant to this closure standard.

Closures shall last only so long as reasonably necessary to achieve the purposes of the closure. In the case of closing an area around a hiking trail for reasons of public safety, for example, the closure

should remain in effect only so long as reasonably necessary to provide for the public safety during normal periods of consistent public use, and only apply to the minimum portion of the public lands reasonably necessary to achieve this purpose. S. Rep. No. 96-413, *supra*, 277-78; H. Rep. No. 96-97, *supra*, 289.

Thus, closures may be seasonal in nature, for example, if warranted by the situation.

In the normal case, a closure must be preceded by consultation with the State and adequate notice and informal public hearing in the vicinity of the closure and other locations as appropriate. In an emergency situation, the Superintendent may immediately close the area for a period not to exceed sixty days. The Superintendent may extend an emergency closure only if he or she establishes, after notice and informal public hearing in the vicinity and other locations as appropriate, that the extension is justified under the applicable closure standards.

Finally, § 13.50(c) provides thorough notice procedures designed to inform as many local rural residents as possible about any closures which may affect them.

Summary of 36 CFR Parts 1-9 Provisions Superseded by or Still Applicable After This Rulemaking

Several commenters had requested that the Service provide an unofficial listing of the 36 CFR Parts 1-9 regulations (ordinarily applicable to all National Park System Units) which have either been superseded by or are still effective after this Alaska park rulemaking. In general, the superseded regulations for Alaska park areas include 36 CFR 2.1 (superseded by § 13.22 except for Klondike Gold Rush National Historical Park and Sitka National Historical Park); 2.2(a) (superseded by § 13.13); 2.5(a), (b), (j) (superseded by §§ 13.18, 13.20, 13.63(b),

13.68(a), 13.72(a); 2.11 (superseded by § 13.19 except for park areas enumerated in § 13.19(a)), 2.18 (superseded by § 13.18); 2.20(a)(2) and (b) superseded by § 13.20 except for park areas enumerated in § 13.20(a); 2.23(a)-(d) (superseded by §§ 13.12 and 13.46); 2.34(a)-(c) (superseded by § 13.10); 2.36 (superseded by § 13.13); 3.2 (superseded by § 13.11); 4.19(a)-(b) (superseded by § 13.14); 7.23(a) (superseded by § 13.13); 7.44(f) and (h) (superseded by §§ 13.11, 13.13); 7.46(b)-(c) (superseded by §§ 13.11, 13.13); 7.87 (superseded by numerous provisions); 9.3 (superseded by § 13.15); 9.7 (superseded by § 13.15); and Part 9B.

The remaining provisions of 36 CFR Parts 1-9 generally remain applicable in Alaska park areas, though minor modifications may have resulted from this rulemaking. Persons desiring more detailed and official information on the applicability of the National Park System general regulations in Alaska may contact the Alaska Regional Director's Office.

Compliance with Other Laws

The Service has prepared an Environmental Assessment on this rulemaking and has made a Finding of No Significant Impact pursuant to regulations implementing the National Environmental Policy Act (42 U.S.C. 4332). Copies of the Environmental Assessment and Finding of No Significant Impact are available for public review in the Service's Alaska Regional Office.

The Service has also determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193, February 19, 1981) and that this rulemaking would not have a "significant economic effect on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act (Pub. L. 96-354) and 43 CFR Part 14 (45 FR 85376, December 24, 1980). Finally, the Service has received approval from the Office of Management and Budget for the information collection requirements of these regulations (e.g., applications for permits under §§ 13.13, 13.15, 13.16, 13.17, 13.31, 13.44, 13.45 and 13.51) pursuant to the Paperwork Reduction Act (Pub. L. 96-511).

Drafting Information

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Authority

Section 3 of the Act of August 15, 1916 (39 Stat. 535, as amended; 16 U.S.C. 3); 16 U.S.C. 1, 1a-1, 1c, 462, 1281; the Alaska National Interest Lands Conservation Act (ANILCA), 94 Stat. 2371, Pub. L. 96-487 (December 2, 1980); and the Paperwork Reduction Act of 1980, 94 Stat. 2812, Pub. L. 96-511.

G. Ray Arnett,

Assistant Secretary, Fish and Wildlife and Parks.

Title 36 Code of Federal Regulations is amended by adding new Part 13 to read as follows:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

Subpart A—Public Use and Recreation

Sec.

- 13.1 Definitions.
- 13.2 Applicability and scope.
- 13.3 Penalties.
- 13.4 Information collection.
- 13.10 Snowmachines.
- 13.11 Motorboats.
- 13.12 Nonmotorized surface transportation.
- 13.13 Aircraft.
- 13.14 Off-road vehicles.
- 13.15 Access to inholdings.
- 13.16 Temporary access.
- 13.17 Cabins and other structures.
- 13.18 Camping and picnicking.
- 13.19 Weapons, traps and nets.
- 13.20 Preservation of natural features.
- 13.21 Taking of fish and wildlife.
- 13.22 Unattended or abandoned property.
- 13.30 Closure procedures.
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Subpart B—Subsistence

- 13.40 Purpose and policy.
- 13.41 Applicability.
- 13.42 Definitions.
- 13.43 Determination of resident zones.
- 13.44 Subsistence permits for persons who permanently reside outside a resident zone.
- 13.45 Prohibition on aircraft use.
- 13.46 Use of snowmobiles, motorboats, dog teams, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses.
- 13.47 Subsistence fishing.
- 13.48 Subsistence hunting and trapping.
- 13.49 Subsistence use of timber and plant material.
- 13.50 Closure to subsistence uses.
- 13.51 Application procedures for subsistence permits and aircraft exceptions.

Subpart C—Special Regulations—Specific Park Areas in Alaska

- 13.60 Aniakchak National Monument and Preserve.
- 13.61 Bering Land Bridge National Preserve.
- 13.62 Cape Krusenstern National Monument.

Sec.

- 13.63 Denali National Park and Preserve.
- 13.64 Gates of the Arctic National Park and Preserve.
- 13.65 Glacier Bay National Park and Preserve.
- 13.66 Katmai National Park and Preserve.
- 13.67 Kenai Fjords National Park.
- 13.68 Klondike Gold Rush National Historical Park.
- 13.69 Kobuk Valley National Park.
- 13.70 Lake Clark National Park and Preserve.
- 13.71 Noatak National Preserve.
- 13.72 Sitka National Historical Park.
- 13.73 Wrangell-St. Elias National Park and Preserve.
- 13.74 Yukon-Charley Rivers National Preserve.

Authority: Sec. 3 of the Act of August 15, 1916 (39 Stat. 535, as amended (16 U.S.C. 3); 16 U.S.C. 1, 1a-1, 1c, 462); Alaska National Interest Lands Conservation Act (ANILCA), 94 Stat. 2371 and 1281; Pub. L. No. 96-487 (December 2, 1980); and the Paperwork Reduction Act of 1980, 94 Stat. 2812, Pub. L. No. 96-511.

Subpart A—Public Use and Recreation

§ 13.1 Definitions.

The following definitions shall apply to all regulations contained in this part:

(a) The term "adequate and feasible access" means a reasonable method and route of pedestrian or vehicular transportation which is economically practicable for achieving the use or development desired by the applicant on his/her non-federal land or occupancy interest, but does not necessarily mean the least costly alternative.

(b) The term "aircraft" means a machine or device that is used or intended to be used to carry persons or objects in flight through the air, including, but not limited to airplanes, helicopters and gliders.

(c) The term "ANILCA" means the Alaska National Interest Lands Conservation Act (94 Stat. 2371; Pub. L. 96-487 (December 2, 1980)).

(d) The term "carry" means to wear, bear or carry on or about the person and additionally, in the case of firearms, within or upon a device or animal used for transportation.

(e) The term "downed aircraft" means an aircraft that as a result of mechanical failure or accident cannot take off.

(f) The term "firearm" means any loaded or unloaded pistol, revolver, rifle, shotgun or other weapon which will or is designated to or may readily be converted to expel a projectile by the action of expanded gases, except that it does not include a pistol or rifle powered by compressed gas. The term "firearm" also includes irritant gas devices.

(g) The term "fish and wildlife" means any member of the animal kingdom,

including without limitation any mammal, fish, bird (including any migratory, nonmigratory or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, produce, egg, or offspring thereof, or the dead body or part thereof.

(h) The term "fossil" means any remains, impression, or trace of any animal or plant of past geological ages that has been preserved, by natural processes, in the earth's crust.

(i) The term "gemstone" means a silica or igneous mineral including, but not limited to (1) geodes, (2) petrified wood, and (3) jade, agate, opal, garnet, or other mineral that when cut and polished is customarily used as jewelry or other ornament.

(j) The term "National Preserve" shall include the following areas of the National Park System:

Alagnak National Wild and Scenic River, Aniakchak National Preserve, Bering Land Bridge National Preserve, Denali National Preserve, Gates of the Arctic National Preserve, Glacier Bay National Preserve, Katmai National Preserve, Lake Clark National Preserve, Noatak National Preserve, Wrangell-St. Elias National Preserve, and Yukon-Charley National Preserve.

(k) The term "net" means a seine, weir, net wire, fish trap, or other implement designed to entrap fish, except a landing net.

(l) The term "off-road vehicle" means any motor vehicle designed for or capable of crosscountry travel on or immediately over land, water, sand, snow, ice, marsh, wetland or other natural terrain, except snowmachines or snowmobiles as defined in this chapter.

(m) The term "park areas" means lands and waters administered by the National Park Service within the State of Alaska.

(n) The term "person" means any individual, firm, corporation, society, association, partnership, or any private or public body.

(o) The term "possession" means exercising dominion or control, with or without ownership, over weapons, traps, nets or other property.

(p) The term "public lands" means lands situated in Alaska which are federally owned lands, except—

(1) land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act (72 Stat. 339) and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(2) land selections of a Native Corporation made under the Alaska Native Claims Settlement Act (85 Stat. 680) which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(3) lands referred to in section 19(b) of the Alaska Native Claims Settlement Act.

(q) The term "snowmachine" or "snowmobile" means a self-propelled vehicle intended for off-road travel primarily on snow having a curb weight of not more than 1,000 pounds (450 kg), driven by a track or tracks in contact with the snow and steered by a ski or skis on contact with the snow.

(r) The term "Superintendent" means any National Park Service official in charge of a park area, the Alaska Regional Director of the National Park Service, or an authorized representative of either.

(s) The term "take" or "taking" as used with respect to fish and wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

(t) The term "temporary" means a continuous period of time not to exceed 12 months, except as specifically provided otherwise.

(u) The term "trap" means a snare, trap, mesh, or other implement designed to entrap animals other than fish.

(v) The term "unloaded" means there is no unexpended shell or cartridge in the chamber or magazine of a firearm; bows, crossbows and spearguns are stored in such a manner as to prevent their ready use; muzzle-loading weapons do not contain a powder charge; and any other implement capable of discharging a missile into the air or under the water does not contain a missile or similar device within the loading or discharging mechanism.

(w) The term "weapon" means a firearm, compressed gas or spring powered pistol or rifle, bow and arrow, crossbow, blow gun, speargun, hand thrown spear, slingshot, explosive device, or any other implement designed to discharge missiles into the air or under the water.

§ 13.2 Applicability and scope.

(a) The regulations contained in this Part 13 are prescribed for the proper use and management of park areas in Alaska and supplement the general regulations of this chapter. The general regulations contained in this chapter are applicable except as modified by this Part 13.

(b) Subpart A of this Part 13 contains regulations applicable to park areas. Such regulations amend in part the

general regulations contained in this chapter. The regulations in Subpart A govern use and management, including subsistence activities, within the park areas, except as modified by Subparts B or C.

(c) Subpart B of this Part 13 contains regulations applicable to subsistence activities. Such regulations apply to park areas except Kenai Fjords National Park, Katmai National Park, Glacier Bay National Park, Klondike Gold Rush National Historical Park, Sitka National Historical Park, and parts of Denali National Park. The regulations in Subpart B amend in part the general regulations contained in this chapter and the regulations contained in Subpart A of this Part 13.

(d) Subpart C of this Part 13 contains special regulations for specific park areas. Such regulations amend in part the general regulations contained in this chapter and the regulations contained in Subparts A and B of this Part 13.

(e) The regulations contained in this Part 13 are applicable only on federally owned lands within the boundaries of any park area. For purposes of this part, "federally owned lands" means land interests held or retained by the United States, but does not include those land interests: (1) Tentatively approved, legislatively conveyed, or patented to the State of Alaska; or (2) interim conveyed or patented to a Native Corporation or person.

§ 13.3 Penalties.

Any person convicted of violating any provision of the regulations contained in this Part 13, or as the same may be amended or supplemented, may be punished by a fine not exceeding \$500 or by imprisonment not exceeding 6 months, or both, and may be adjudged to pay all costs of the proceedings (16 U.S.C. 3).

§ 13.4 Information collection.

The information collection requirements contained in §§ 13.13, 13.14, 13.15, 13.16, 13.17, 13.31, 13.44, 13.45, 13.49, and 13.51 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1024-0015. The information is being collected to solicit information necessary for the Superintendent to issue permits and other benefits. This information will be used to grant statutory or administrative benefits. In all sections except 13.13, the obligation to respond is required to obtain a benefit. In § 13.13, the obligation to respond is mandatory.

§ 13.10 Snowmachines.

(a) The use of snowmachines (during periods of adequate snow cover or frozen river conditions) for traditional activities (where such activities are permitted by ANILCA or other law) and for travel to and from villages and homesites, is permitted within park areas, except where such use is prohibited or otherwise restricted by the Superintendent in accordance with the provisions of § 13.30. Nothing in this section affects the use of snowmobiles by local rural residents engaged in subsistence uses as authorized by § 13.46.

(b) For the purposes of this section "adequate snow cover" shall mean snow of sufficient depth to protect the underlying vegetation and soil.

§ 13.11 Motorboats.

Motorboats may be operated on all park area waters, except where such use is prohibited or otherwise restricted by the Superintendent in accordance with the provisions of § 13.30, or § 7.23(b)-(f) of this chapter. Nothing in this section affects the use of motorboats by local rural residents engaged in subsistence uses as authorized by § 13.46.

§ 13.12 Nonmotorized surface transportation.

The use of nonmotorized surface transportation such as domestic dogs, horses and other pack or saddle animals is permitted in park areas except where such use is prohibited or otherwise restricted by the Superintendent in accordance with the provisions of § 13.30. Nothing in this section affects the use of nonmotorized surface transportation by local rural residents engaged in subsistence uses as authorized by § 13.46.

§ 13.13 Aircraft.

(a) Fixed-wing aircraft may be landed and operated on lands and waters within park areas, except where such use is prohibited or otherwise restricted by the Superintendent in accordance with this section. The use of aircraft for access to or from lands and waters within a national park or monument for purposes of taking fish and wildlife for subsistence uses therein is prohibited as set forth in § 13.45.

(b) In imposing any prohibitions or restrictions on fixed-wing aircraft use the Superintendent shall: (1) Comply with the procedures set forth in § 13.30; (2) publish notice of prohibitions or restrictions as "Notices to Airmen" issued by the Department of Transportation; and (3) publish permanent prohibitions or restrictions as a regulatory notice in the United States

Government Flight Information Service "Supplement Alaska."

(c) Except as provided in paragraph (d) of this section, the owners of any aircraft downed after December 2, 1980, shall remove the aircraft and all component parts thereof in accordance with procedures established by the Superintendent. In establishing a removal procedure, the Superintendent is authorized to: (1) Establish a reasonable date by which aircraft removal operations must be complete; and (2) determine times and means of access to and from the downed aircraft.

(d) The Superintendent may waive the requirements of § 13.12(c) upon a determination that: (1) The removal of downed aircraft would constitute an unacceptable risk to human life; or (2) the removal of a downed aircraft would result in extensive resource damage; or (3) the removal of a downed aircraft is otherwise impracticable or impossible.

(e) Salvaging, removing, possessing, or attempting to salvage, remove or possess any downed aircraft or component parts thereof is prohibited, except in accordance with a removal procedure established under paragraph (c) of this section. *Provided, however,* That the owner or an authorized representative thereof may remove valuable component parts from a downed aircraft at the time of rescue without a permit.

(f) The use of a helicopter in any park area, other than at designated landing areas (see Subpart C regulations for each park area) pursuant to the terms and conditions of a permit issued by the Superintendent, is prohibited.

§ 13.14 Off-road vehicles.

(a) The use of off-road vehicles in locations other than established roads and parking areas is prohibited, except on routes or in areas designated by the Superintendent or pursuant to a valid permit as prescribed in paragraph (c) of this section or in § 13.15 or § 13.16. Such designations shall be made in accordance with procedures in this section. Nothing in this section affects the use of off-road vehicles by local rural residents engaged in subsistence as authorized by § 13.46.

(b)(1) The Superintendent's determination of whether to designate a route or area for off-road vehicle use shall be governed by Executive Order 11644, as amended.

(2) Route or area designations shall be published in the "Federal Register."

(3) Notice of routes or areas on which off-road travel is permitted shall be in accordance with the provisions of § 13.30(f).

(4) The closure or restrictions on use of designated routes or areas to off-road vehicles use shall be in accordance with the provisions of § 13.30.

(c) The Superintendent is authorized to issue permits for the use of off-road vehicles on existing off-road vehicle trails located in park areas (other than areas designated as part of the National Wilderness Preservation System) upon a finding that such off-road vehicle use would be compatible with park purposes and values. The Superintendent shall include in any permit such stipulations and conditions as are necessary for the protection of park purposes and values.

§ 13.15 Access to inholdings.

(a) *Purpose.* A permit for access to inholdings pursuant to this section is required only where adequate and feasible access is not affirmatively provided without a permit under §§ 13.10-13.14 of these regulations. Thus, it is the purpose of this section to ensure adequate and feasible access across a park area for any person who has a valid property or occupancy interest in lands within or effectively surrounded by a park area or other lands listed in section 1110(b) of ANILCA.

(b) *Application and Administration.* (1) Applications for a permit designating methods and routes of access across park areas not affirmatively provided for in this part shall be submitted to the Superintendent having jurisdiction over the affected park area as specified under § 13.31.

(2) Except as provided in paragraph (c) of this section, the access permit application shall contain the name and address of the applicant, documentation of the relevant property or occupancy interest held by the applicant (including for 1872 Mining Law claimants a copy of the location notice and recordations required under the 1872 Mining Law and 43 U.S.C. 1744), a map or physical description of the relevant property or occupancy interest, a map or physical description of the desired route of access, a description of the desired method of access, and any other information necessary to determine the adequacy and feasibility of the route or method of access and its impact on the natural or other values of the park area.

(3) The Superintendent shall specify in a nontransferable permit, adequate and feasible routes and methods of access across park areas for any person who meets the criteria of paragraph (a) of this section. The Superintendent shall designate the routes and methods desired by the applicant unless it is determined that:

(i) The route or method of access would cause significant adverse impacts on natural or other values of the park area, and adequate and feasible access otherwise exists; or

(ii) The route or method of access would jeopardize public health and safety, and adequate and feasible access otherwise exists.

(4) If the Superintendent makes one of the findings described in paragraph (b)(3) of this section, he/she shall specify such other alternate methods and routes of access as will provide the applicant adequate and feasible access, while minimizing damage to natural and other values of the park area.

(5) Any person holding an access permit shall notify the Superintendent of any significant change in the method or level of access from that occurring at the time of permit issuance. In such cases, the Superintendent may modify the terms and conditions of the permit, provided that the modified permit also assures adequate and feasible access under the standards of paragraph (b)(3) of this section.

(6) Routes and methods of access permitted pursuant to this section shall be available for use by guests and invitees of the permittee.

(c) *Access requiring permanent improvements.* (1) Application form and procedure. Any application for access to an inholding which proposes the construction or modification of an improved road (e.g., construction or modification of a permanent, year-round nature, and which involves substantial alteration of the terrain or vegetation, such as grading, gravelling of surfaces, concrete bridges, or other such construction or modification), or any other permanent improvement on park area lands qualifying as a "transportation or utility system" under Section 1102 of ANILCA, shall be submitted on the consolidated application form specified in Section 1104(h) of ANILCA, and processed in accordance with the procedures of Title XI of ANILCA.

(2) Decision-making standard. (i) If the permanent improvement is required for adequate and feasible access to the inholding (e.g., improved right-of-way or landing strip), the permit granting standards of paragraph (b) of this section shall apply.

(ii) If the permanent improvement is not required as part of the applicant's right to adequate and feasible access to an inholding (e.g., pipeline, transmission line), the permit granting standards of Sections 1104-1107 of ANILCA shall apply.

(d) *Clarification of the Applicability of 36 CFR Part 9.* (1) 1872 Mining Law

Claims and 36 CFR Subpart 9A. Since section 1110(b) of ANILCA guarantees adequate and feasible access to valid mining claims within park areas notwithstanding any other law, and since the 36 CFR 9.3 requirement for an approved plan of operations prior to the issuance of an access permit may interfere with needed access, 36 CFR 9.3 is no longer applicable in Alaska park areas. However, holders of patented or unpatented mining claims under the 1872 Mining Law (30 U.S.C. 22 *et seq.*) should be aware that 36 CFR 9.9, 9.10 independently require an approved plan of operations prior to conducting mining operations within a park area (except that no plan of operations is required for patented claims where access is not across federally-owned parklands).

(2) Non-Federal Oil and Gas Rights and 36 CFR Subpart 9B. Since section 1110(b) of ANILCA guarantees adequate and feasible access to park area inholdings notwithstanding any other law, and since 36 CFR Subpart 9B was predicated on the park area Superintendent's discretion to restrict and condition such access, 36 CFR Subpart 9B is no longer applicable in Alaska park areas.

§ 13.16 Temporary access.

(a) *Applicability.* This section is applicable to State and private landowners who desire temporary access across a park area for the purposes of survey, geophysical, exploratory and other temporary uses of such nonfederal lands, and where such temporary access is not affirmatively provided for in §§ 13.10-13.15. State and private landowners meeting the criteria of § 13.15(a) are directed to utilize the procedures of § 13.15 to obtain temporary access.

(b) *Application.* A landowner requiring temporary access across a park area for survey, geophysical, exploratory or similar temporary activities shall apply to the Superintendent for an access permit and shall provide the relevant information described in section 13.15(b)(2), concerning the proposed access.

(c) *Permit standards, stipulations and conditions.* The Superintendent shall grant the desired temporary access whenever he/she determines that such access will not result in permanent harm to park area resources. The Superintendent shall include in any permit granted such stipulations and conditions on temporary access as are necessary to ensure that the access granted would not be inconsistent with the purposes for which the park area was reserved and to ensure that no

permanent harm will result to park area resources.

(d) *Definition.* For the purposes of this section, "temporary access" shall mean limited, short-term (i.e., up to one year from issuance of the permit) access, which does not require permanent facilities for access, to undeveloped State or private lands.

§ 13.17 Cabins and other structures.

(a) *Purpose.* It is the purpose of this section to provide procedures and guidance for those occupying and using existing cabins and those wishing to construct new cabins within park areas.

(b) *Existing cabins or other structures.* (1) This subsection applies to all park areas in Alaska except Klondike Gold Rush National Historical Park, Sitka National Historical Park and the former Mt. McKinley National Park, Glacier Bay National Monument and Katmai National Monument.

(2) Cabins or other structures existing prior to December 18, 1973, may be occupied and used by the claimants to these structures pursuant to a nontransferable, renewable permit. This use and occupancy shall be for terms of five years. *Provided, however,* That the claimant to the structure, by application:

(i) Reasonably demonstrates by affidavit, bill of sale or other documentation proof of possessory interest or right of occupancy in the cabin or structure;

(ii) Submits an acceptable photograph or sketch which accurately depicts the cabin or structure and a map showing its geographic location;

(iii) Agrees to vacate and remove all personal property from the cabin or structure upon expiration of the permit;

(iv) Acknowledges in the permit that he/she has no interest in the real property on which the cabin or structure is located; and

(v) Submits a listing of the names of all immediate family members residing in the cabin or structure.

Permits issued under the provisions of this paragraph shall be renewed every five years until the death of the last immediate family member of the claimant residing in the cabin or structure under permit. Renewal will occur unless the Superintendent determines after notice and hearing, and on the basis of substantial evidence in the administrative record as a whole, that the use under the permit is causing or may cause significant detriment to the principal purposes for which the park area was established. The Superintendent's decision may be appealed pursuant to the provisions of 43 CFR 4.700.

(3) Cabins or other structures, the occupancy or use of which began between December 18, 1973, and December 1, 1978, may be used and occupied by the claimant to these structures pursuant to a nontransferable, nonrenewable permit. This use and occupancy shall be for a maximum term of 1 year: *Provided, however*, That the claimant, by application, complies with § 13.17(c)(1) (i) through (iv) above. Permits issued under the provisions of this paragraph may be extended by the Superintendent, subject to reasonable regulations, for a period not to exceed one year for such reasons as the Superintendent deems equitable and just.

(4) Cabins or other structures, construction of which began after December 1, 1978, shall not be available for use and occupancy, unless authorized under the provisions of paragraph (d) of this section.

(5) Cabins or other structures, not under permit, shall be used only for official government business: *Provided, however*, That during emergencies involving the safety of human life, or where designated for public use by the Superintendent through the posting of signs, these cabins may be used by the general public.

(c) *New Cabins or Other Structures Necessary for Subsistence Uses or Otherwise Authorized by Law.* The Superintendent may issue a permit under such conditions as he/she may prescribe for the construction, reconstruction, temporary use, occupancy, and maintenance of new cabins or other structures when he/she determines that the use is necessary to accommodate reasonably subsistence uses or is otherwise authorized by law. In determining whether to permit the use, occupancy, construction, reconstruction or maintenance of cabins or other structures, the Superintendent shall be guided by factors such as other public uses, public health and safety, environmental and resource protection, research activities, protection of cultural or scientific values, subsistence uses, endangered or threatened species conservation and other management considerations necessary to ensure that the activities authorized pursuant to this section are compatible with the purposes for which the park area was established.

(d) *Existing Cabin Leases or Permits.* Nothing in this section shall preclude the renewal or continuation of valid leases or permits in effect as of December 2, 1980, for cabins, homesites, or similar structures on federally owned lands. Unless the Superintendent issues specific findings, following notice and

an opportunity for the leaseholder or permittee to respond, that renewal or continuation of such valid permit or lease constitutes a direct threat or a significant impairment to the purposes for which the park area was established. he/she shall renew such valid leases or permits upon their expiration in accordance with the provisions of the original lease or permit subject to such reasonable regulations as he/she prescribe in keeping with the management objectives of the park area. Subject to the provisions of the original lease or permit, nothing in this paragraph shall necessarily preclude the Superintendent from transferring such a lease or permit to another person at the election or death of the original permittee or leasee.

§ 13.18 Camping and picnicking.

(a) *Camping.* Camping is permitted in park areas except where such use is prohibited or otherwise restricted by the Superintendent in accordance with the provisions of § 13.30, or as set forth for specific park areas in Subpart C of this part.

(b) *Picnicking.* Picnicking is permitted in park areas except where such activity is prohibited by the posting of appropriate signs.

§ 13.19 Weapons, traps and nets.

(a) This section applies to all park areas in Alaska except Klondike Gold Rush National Historical Park, Sitka National Historical Park and the former Mt. McKinley National Park, Glacier Bay National Monument and Katmai National Monument.

(b) Firearms may be carried within park areas in accordance with applicable Federal and State laws, except where such carrying is prohibited or otherwise restricted pursuant to § 13.30.

(c) Traps, bows and other implements authorized by State and Federal law for the taking of fish and wildlife may be carried within National Preserves only during those times when the taking of fish and wildlife is authorized by applicable law or regulation.

(d) In addition to the authorities provided in paragraphs (b) and (c) of this section, weapons (other than firearms) traps and nets may be possessed within park areas provided such weapons, traps or nets are within or upon a device or animal used for transportation and are unloaded and cased or otherwise packed in such a manner as to prevent their ready use while in a park area.

(e) Notwithstanding the provisions of this section, local rural residents who are authorized to engage in subsistence

uses, including the taking of wildlife pursuant to § 13.48, may use, possess, or carry traps, nets and other weapons in accordance with applicable State and Federal laws.

§ 13.20 Preservation of natural features.

(a) This section applies to all park areas in Alaska except Klondike Gold Rush National Historical Park, Sitka National Historical Park, the former Mt. McKinley National Park, Glacier Bay National Monument, and Katmai National Monument.

(b) *Renewable Resources.* The gathering or collecting, by hand and for personal use only, of the following renewable resources is permitted:

(1) Natural plant food items, including fruits, berries and mushrooms, but not including threatened or endangered species;

(2) Driftwood and uninhabited seashells;

(3) Such plant materials and minerals as are essential to the conduct of traditional ceremonies by Native Americans; and

(4) Dead or downed wood for use in fires within park areas.

(c) *Rocks and Minerals.* Surface collection, by hand (including hand-held gold pans) and for personal recreational use only, of rocks and minerals is permitted: *Provided, however*, That (1) collection of silver, platinum, gemstones and fossils is prohibited, and (2) collection methods which may result in disturbance of the ground surface, such as the use of shovels, pickaxes, sluice boxes, and dredges, are prohibited.

(d) *Closure and Notice.* Under conditions where it is found that significant adverse impact on park resources, wildlife populations, subsistence uses, or visitor enjoyment of resources will result, the Superintendent shall prohibit the gathering or otherwise restrict the collecting of these items. Portions of a park area in which closures or restrictions apply shall be (1) published in at least one newspaper of general circulation in the State and designated on a map which shall be available for public inspection in the office of the Superintendent, or (2) designated by the posting of appropriate signs, or (3) both.

(e) *Subsistence.* Nothing in this section shall apply to local rural residents authorized to take renewable resources.

§ 13.21 Taking of fish and wildlife.

(a) *Subsistence.* Nothing in this section shall apply to the taking of fish and wildlife for subsistence uses.

(b) *Fishing.* Fishing is permitted in all park areas in accordance with applicable State and Federal law, and such laws are hereby adopted and made a part of these regulations to the extent they are not inconsistent with § 2.13 of this chapter. With respect to the Cape Krusenstern National Monument, the Malaspina Glacier Forelands area of the Wrangell-St. Elias National Preserve, and the Dry Bay area of Glacier Bay National Preserve, the exercise of valid commercial fishing rights or privileges obtained pursuant to existing law—including any use of park area lands for campsites, cabins, motorized vehicles, and aircraft landings on existing airstrips which is directly incident to the exercise of such rights or privileges—may continue: *Provided, however,* That the Superintendent may restrict the use of park area lands directly incident to the exercise of these rights or privileges if he/she determines, after conducting a public hearing in the affected locality, that such use of park area lands constitutes a significant expansion of the use of park area lands beyond the level of such use during 1979.

(c) *Hunting and Trapping.* Hunting and trapping are permitted in all National Preserves in accordance with applicable State and Federal law, and such laws are hereby adopted and made a part of these regulations: *Provided, however,* That engaging in trapping activities, as the employee of another person is prohibited.

(d) *Closures and Restrictions.* The Superintendent may prohibit or restrict the taking of fish or wildlife in accordance with the provisions of § 13.30. Except in emergency conditions, such restrictions shall take effect only after consultation with the appropriate State agency having responsibility over fishing, hunting, or trapping and representatives of affected users.

§ 13.22 Unattended or abandoned property.

(a) This section applies to all park areas in Alaska except Klondike Gold Rush National Historical Park and Sitka National Historical Park, or as further restricted for specific park areas in Subpart C of this part.

(b) Leaving any snowmachine, vessel, off-road vehicle or other personal property unattended for longer than 12 months without prior permission of the Superintendent is prohibited, and any property so left may be impounded by the Superintendent.

(c) The Superintendent may (1) designate areas where personal property may not be left unattended for any time period, (2) establish limits on the amount, and type of personal property

that may be left unattended, (3) prescribe the manner in which personal property may be left unattended, or (4) establish limits on the length of time personal property may be left unattended. Such designations and restrictions shall be (i) published in at least one newspaper of general circulation within the State, posted at community post offices within the vicinity affected, made available for broadcast on local radio stations in a manner reasonably calculated to inform residents in the affected community, and designated on a map which shall be available for public inspection at the office of the Superintendent, or (ii) designated by the posting of appropriate signs or (iii) both.

(d) In the event unattended property interferes with the safe and orderly management of a park area or is causing damage to the resources of the area, it may be impounded by the Superintendent at any time.

§ 13.30 Closure procedures.

(a) *Authority.* The Superintendent may close an area or restrict an activity on an emergency, temporary, or permanent basis.

(b) *Criteria.* In determining whether to close an area or restrict an activity on an emergency basis, the Superintendent shall be guided by factors such as public health and safety, resource protection, protection of cultural or scientific values, subsistence uses, endangered or threatened species conservation, and other management considerations necessary to ensure that the activity or area is being managed in a manner compatible with the purposes for which the park area was established.

(c) *Emergency Closures.* (1) Emergency closures or restrictions relating to the use of aircraft, snowmachines, motorboats, or nonmotorized surface transportation shall be made after notice and hearing; (2) emergency closures or restrictions relating to the taking of fish and wildlife shall be accompanied by notice and hearing; (3) other emergency closures shall become effective upon notice as prescribed in § 13.30(f); and (4) no emergency closure or restriction shall extend for a period exceeding 30 days, nor may it be extended.

(d) *Temporary closures or restrictions.* (1) Temporary closures or restrictions relating to the use of aircraft, snowmachines, motorboats, or nonmotorized surface transportation or to the taking of fish and wildlife, shall not be effective prior to notice and hearing in the vicinity of the area(s) directly affected by such closures or restrictions, and other locations as

appropriate; (2) other temporary closures shall be effective upon notice as prescribed in § 13.30(f); (3) temporary closures or restrictions shall not extend for a period exceeding 12 months and may not be extended.

(e) *Permanent closures or restrictions.* Permanent closures or restrictions shall be published as rulemaking in the Federal Register with a minimum public comment period of 60 days and shall be accompanied by public hearings in the area affected and other locations as appropriate.

(f) *Notice.* Emergency, temporary and permanent closures or restrictions shall be (1) published in at least one newspaper of general circulation in the State and in at least one local newspaper if available, posted at community post offices within the vicinity affected, made available for broadcast on local radio stations in a manner reasonably calculated to inform residents in the affected vicinity, and designated on a map which shall be available for public inspection at the office of the Superintendent and other places convenient to the public; or (2) designated by the posting of appropriate signs; or (3) both.

(g) *Openings.* In determining whether to open an area to public use or activity otherwise prohibited, the Superintendent shall provide notice in the Federal Register and shall, upon request, hold a hearing in the affected vicinity and other locations as appropriate prior to making a final determination.

(h) Except as otherwise specifically permitted under the provisions of this part, entry into closed areas or failure to abide by restrictions established under this section is prohibited.

§ 13.31 Permits.

(a) *Application.* (1) Application for a permit required by any section of this part shall be submitted to the Superintendent having jurisdiction over the affected park area, or in the absence of the Superintendent, the Regional Director. If the applicant is unable or does not wish to submit the application in written form, the Superintendent shall provide the applicant an opportunity to present the application orally and shall keep a record of such oral application.

(2) The Superintendent shall grant or deny the application in writing within 45 days. If this deadline cannot be met for good cause, the Superintendent shall so notify the applicant in writing. If the permit application is denied, the Superintendent shall specify in writing the reasons for the denial.

(b) *Denial and appeal procedures.* (1) An applicant whose application for a permit, required pursuant to this part, has been denied by the Superintendent has the right to have the application reconsidered by the Regional Director by contacting him/her within 180 days of the issuance of the denial. For purposes of reconsideration, the permit applicant shall present the following information:

(i) Any statement or documentation, in addition to that included in the initial application, which demonstrates that the applicant satisfies the criteria set forth in the section under which the permit application is made.

(ii) The basis for the permit applicant's disagreement with the Superintendent's findings and conclusions; and

(iii) Whether or not the permit applicant requests an informal hearing before the Regional Director.

(2) The Regional Director shall provide a hearing if requested by the applicant. After consideration of the written materials and oral hearing, if any, and within a reasonable period of time, the Regional Director shall affirm, reverse, or modify the denial of the Superintendent and shall set forth in writing the basis for the decision. A copy of the decision shall be forwarded promptly to the applicant and shall constitute final agency action.

Subpart B—Subsistence

§ 13.40 Purpose and policy.

(a) Consistent with the management of fish and wildlife in accordance with recognized scientific principles and the purposes for which each park area was established, designated, or expanded by ANILCA, the purpose of this subpart is to provide the opportunity for local rural residents engaged in a subsistence way of life to do so pursuant to applicable State and Federal law.

(b) Consistent with sound management principles, and the conservation of healthy populations of fish and wildlife, the utilization of park areas is to cause the least adverse impact possible on local rural residents who depend upon subsistence uses of the resources of the public lands in Alaska.

(c) Nonwasteful subsistence uses of fish, wildlife and other renewable resources by local rural residents shall be the priority consumptive uses of such resources over any other consumptive uses permitted within park areas pursuant to applicable State and Federal law.

(d) Whenever it is necessary to restrict the taking of a fish or wildlife

population within a park area for subsistence uses in order to assure the continued viability of such population or to continue subsistence uses of such population, the population shall be allocated among local rural residents engaged in subsistence uses in accordance with a subsistence priority system based on the following criteria:

(1) Customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) Local residency; and

(3) Availability of alternative resources.

(e) The State of Alaska is authorized to regulate the taking of fish and wildlife for subsistence uses within park areas to the extent such regulation is consistent with applicable Federal law, including but not limited to ANILCA.

(f) Nothing in this subpart shall be construed as permitting a level of subsistence use of fish and wildlife within park areas to be inconsistent with the conservation of healthy populations, and within a national park or monument to be inconsistent with the conservation of natural and healthy populations, of fish and wildlife.

§ 13.41 Applicability.

Subsistence uses by local rural residents are allowed pursuant to the regulations of this Subpart in the following park areas:

(a) In national preserves;

(b) In Cape Krusenstern National Monument and Kobuk Valley National Park;

(c) Where such uses are traditional (as may be further designated for each park or monument in Subpart C of this part) in Aniakchak National Monument, Gates of the Arctic National Park, Lake Clark National Park, Wrangell-St. Elias National Park, and the Denali National Park addition.

§ 13.42 Definitions.

(a) *Local rural resident.* (1) As used in this part with respect to national parks and monuments, the term "local rural resident" shall mean either of the following:

(i) Any person who has his/her primary, permanent home within the resident zone as defined by this section, and whenever absent from this primary, permanent home, has the intention of returning to it. Factors demonstrating the location of a person's primary, permanent home may include, but are not limited to, the permanent address indicated on licenses issued by the State of Alaska Department of Fish and Game, driver's license, and tax returns, and the location of registration to vote.

(ii) Any person authorized to engage in subsistence uses in a national park or monument by a subsistence permit issued pursuant to § 13.44.

(b) *Resident zone.* As used in this part, the term "resident zone" shall mean the area within, and the communities and areas near, a national park or monument in which persons who have customarily and traditionally engaged in subsistence uses within the national park or monument permanently reside. The communities and areas near a national park or monument included as a part of its resident zone shall be determined pursuant to § 13.43 and listed for each national park or monument in Subpart C of this part.

(c) *Subsistence uses.* As used in this part, the term "subsistence uses" shall mean 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. For the purposes of this paragraph, the term—

(1) "Family" shall mean all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(2) "Barter" shall mean the exchange of fish or wildlife or their parts taken for subsistence uses—

(i) For other fish or game or their parts; or

(ii) For other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature; and

(3) "Customary trade" shall be limited to the exchange of furs for cash (and such other activities as may be designated for a specific park area in Subpart C of this part).

§ 13.43 Determination of resident zones.

(a) A resident zone shall include—

(1) the area within a national park or monument, and

(2) the communities and areas near a national park or monument which contain significant concentrations of rural residents who, without using aircraft as a means of access for purposes of taking fish or wildlife for subsistence uses (except in extraordinary cases where no reasonable alternative existed), have customarily and traditionally engaged in subsistence uses within a national park or monument. For purposes of

determining "significant" concentrations, family members shall also be included.

(b) After notice and comment, including public hearing in the affected local vicinity, a community or area near a national park or monument may be—

(1) Added to a resident zone, or

(2) Deleted from a resident zone, when such community or area does or does not meet the criteria set forth in paragraph (a) of this section, as appropriate.

(c) For purposes of this section, the term "family" shall mean all persons living within a rural resident's household on a permanent basis.

§ 13.44 Subsistence permits for persons whose primary, permanent home is outside a resident zone.

(a) Any rural resident whose primary, permanent home is outside the boundaries of a resident zone of a national park or monument may apply to the appropriate Superintendent pursuant to the procedures set forth in § 13.51 for a subsistence permit authorizing the permit applicant to engage in subsistence uses within the national park or monument. The Superintendent shall grant the permit if the permit applicant demonstrates that,

(1) Without using aircraft as a means of access for purposes of taking fish and wildlife for subsistence uses, the applicant has (or is a member of a family which has) customarily and traditionally engaged in subsistence uses within a national park or monument; or

(2) The applicant is a local rural resident within a resident zone for another national park or monument, or meets the requirements of paragraph (1) of this section for another national park or monument, and there exists a pattern of subsistence uses (without use of an aircraft as a means of access for purposes of taking fish and wildlife for subsistence uses) between the national park or monument previously utilized by the permit applicant and the national park or monument for which the permit applicant seeks a subsistence permit.

(b) In order to provide for subsistence uses pending application for and receipt of a subsistence permit, until August 1, 1981, any rural resident whose primary permanent home is outside the boundaries of a resident zone of a national park or monument and who meets the criteria for a subsistence permit set forth in paragraph (a) of this section may engage in subsistence uses in the national park or monument without a permit in accordance with applicable State and Federal law. Effective August 1, 1981, however, such

rural resident must have a subsistence permit as required by paragraph (a) of this section in order to engage in subsistence uses in the national park or monument.

(c) For purposes of this section, the term "family" shall mean all persons living within a rural resident's household on a permanent basis.

§ 13.45 Prohibition of aircraft use.

(a) Notwithstanding the provisions of § 13.12 the use of aircraft for access to or from lands and waters within a national park or monument for purposes of taking fish or wildlife for subsistence uses within the national park or monument is prohibited except as provided in this section.

(b) *Exceptions.* (1) In extraordinary cases where no reasonable alternative exists, the Superintendent shall permit, pursuant to specified terms and conditions, a local rural resident of an "exempted community" to use aircraft for access to or from lands and water within a national park or monument for purposes of taking fish or wildlife for subsistence uses.

(i) A community shall qualify as an "exempted community" if, because of the location of the subsistence resources upon which it depends and the extraordinary difficulty of surface access to these subsistence resources, the local rural residents who permanently reside in the community have no reasonable alternative to aircraft use for access to these subsistence resources.

(ii) A community which is determined, after notice and comment (including public hearing in the affected local vicinity), to meet the description of an "exempted community" set forth in paragraph (b)(1) of this section shall be included in the appropriate special regulations for each park and monument set forth in Subpart C of this part.

(iii) A community included as an "exempted community" in Subpart C of this part may be deleted therefrom upon a determination, after notice and comment (including public hearing in the affected local vicinity), that it does not meet the description of an "exempted community" set forth in paragraph (b)(1) of this section.

(2) Any local rural resident aggrieved by the prohibition on aircraft use set forth in this section may apply for an exception to the prohibition pursuant to the procedures set forth in § 13.51. In extraordinary cases where no reasonable alternative exists, the Superintendent may grant the exception upon a determination that the location of the subsistence resources depended upon and the difficulty of surface access

to these resources, or other emergency situation, requires such relief.

(c) Nothing in this section shall prohibit the use of aircraft for access to lands and waters within a national park or monument for purposes of engaging in any activity allowed by law other than the taking of fish and wildlife. Such activities include, but are not limited to, transporting supplies.

§ 13.46 Use of snowmobiles, motorboats, dog teams, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses.

(a) Notwithstanding any other provision of this chapter, the use of snowmobiles, motorboats, dog teams, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses is permitted within park areas except at those times and in those areas restricted or closed by the Superintendent.

(b) The Superintendent may restrict or close a route or area to use of snowmobiles, motorboats, dog teams, or other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses if the Superintendent determines that such use is causing or is likely to cause an adverse impact on public health and safety, resource protection, protection of historic or scientific values, subsistence uses, conservation of endangered or threatened species, or the purposes for which the park area was established.

(c) No restrictions or closures shall be imposed without notice and a public hearing in the affected vicinity and other locations as appropriate. In the case of emergency situations, restrictions or closures shall not exceed sixty (60) days and shall not be extended unless the Superintendent establishes, after notice and public hearing in the affected vicinity and other locations as appropriate, that such extension is justified according to the factors set forth in paragraph (b) of this section. Notice of the proposed or emergency restrictions or closures and the reasons therefor shall be published in at least one newspaper of general circulation within the State and in at least one local newspaper if appropriate, and information about such proposed or emergency actions shall also be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All restrictions and closures shall be designated on a map which shall be available for public inspection at the office of the

Superintendent of the affected park area and the post office or postal authority of every affected community within or near the park area, or by the posting of signs in the vicinity of the restrictions or closures, or both.

(d) Motorboats, snowmobiles, dog teams, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses shall be operated (1) in compliance with applicable State and Federal law, (2) in such a manner as to prevent waste or damage to the park areas, and (3) in such a manner as to prevent the herding, harassment, hazing or driving of wildlife for hunting or other purposes.

(e) At all times when not engaged in subsistence uses, local rural residents may use snowmobiles, motorboats, dog teams, and other means of surface transportation in accordance with §§ 13.10, 13.11, 13.12, and 13.14, respectively.

§ 13.47 Subsistence fishing.

Fish may be taken by local rural residents for subsistence uses in park areas where subsistence uses are allowed in compliance with applicable State and Federal law, including the provisions of §§ 2.13 and 13.21 of this chapter: *Provided, however*, That local rural residents in park areas where subsistence uses are allowed may fish with a net, seine, trap, or spear where permitted by State law. To the extent consistent with the provisions of this chapter, applicable State laws and regulations governing the taking of fish which are now or will hereafter be in effect are hereby incorporated by reference as a part of these regulations.

§ 13.48 Subsistence hunting and trapping

Local rural residents may hunt and trap wildlife for subsistence use in park areas where subsistence uses are allowed in compliance with applicable State and Federal law. To the extent consistent with the provisions of this chapter, applicable State laws and regulations governing the taking of wildlife which are now or will hereafter be in effect are hereby incorporated by reference as a part of these regulations.

§ 13.49 Subsistence use of timber and plant material.

(a) Notwithstanding any other provision of this part, the non-commercial cutting of live standing timber by local rural residents for appropriate subsistence uses, such as firewood or house logs, may be permitted in park areas where subsistence uses are allowed as follows:

(1) For live standing timber of diameter greater than three inches at ground height, the Superintendent may permit cutting in accordance with the specifications of a permit if such cutting is determined to be compatible with the purposes for which the park area was established;

(2) For live standing timber of diameter less than three inches at ground height, cutting is permitted unless restricted by the Superintendent.

(b) The noncommercial gathering by local rural residents of fruits, berries, mushrooms, and other plant materials for subsistence uses, and the noncommercial gathering of dead or downed timber for firewood, shall be allowed without a permit in park areas where subsistence uses are allowed.

(c)(1) Notwithstanding any other provision of this part, the Superintendent, after notice and public hearing in the affected vicinity and other locations as appropriate, may temporarily close all or any portion of a park area to subsistence uses of a particular plant population only if necessary for reasons of public safety, administration, or to assure the continued viability of such population. For the purposes of this section, the term "temporarily" shall mean only so long as reasonably necessary to achieve the purposes of the closure.

(2) If the Superintendent determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular plant population, the Superintendent may immediately close all or any portion of a park area to the subsistence uses of such population. Such emergency closure shall be effective when made, shall be for a period not to exceed sixty (60) days, and may not subsequently be extended unless the Superintendent establishes, after notice and public hearing in the affected vicinity and other locations as appropriate, that such closure should be extended.

(3) Notice of administrative actions taken pursuant to this section, and the reasons justifying such actions, shall be published in at least one newspaper of general circulation within the State and at least one local newspaper if available, and information about such actions and reasons also shall be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All closures shall be designated on a map which shall be available for public inspection at the office of the Superintendent or the affected park area and the post office or postal authority of every affected

community within or near the park area, or by the posting of signs in the vicinity of the restrictions, or both.

§ 13.50 Closure to subsistence uses of fish and wildlife.

(a) Notwithstanding any other provision of this part, the Superintendent, after consultation with the State and adequate notice and public hearing in the affected vicinity and other locations as appropriate, may temporarily close all or any portion of a park area to subsistence uses of a particular fish or wildlife population only if necessary for reasons of public safety, administration, or to assure the continued viability of such population. For purposes of this section, the term "temporarily" shall mean only so long as reasonably necessary to achieve the purposes of the closure.

(b) If the Superintendent determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular fish or wildlife population, the Superintendent may immediately close all or any portion of a park area to the subsistence uses of such population. Such emergency closure shall be effective when made, shall be for a period not to exceed sixty (60) days, and may not subsequently be extended unless the Superintendent establishes, after notice and public hearing in the affected vicinity and other locations as appropriate, that such closure should be extended.

(c) Notice of administrative actions taken pursuant to this section, and the reasons justifying such actions, shall be published in at least one newspaper of general circulation within the State and in at least one local newspaper if available, and information about such actions and reasons also shall be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All closures shall be designated on a map which shall be available for public inspection at the office of the Superintendent of the affected park area and the post office or postal authority of every affected community within or near the park area, or by the posting of signs in the vicinity of the restrictions, or both.

§ 13.51 Application procedures for subsistence permits and aircraft exceptions.

(a) Any person applying for the subsistence permit required by § 13.44(a), or the exception to the prohibition on aircraft use provided by

§ 13.45(b)(2), shall submit his/her application to the Superintendent of the appropriate national park or monument. If the applicant is unable or does not wish to submit the application in written form, the Superintendent shall provide the applicant an opportunity to present the application orally and shall keep a record of such oral application. Each application must include (1) a statement which acknowledges that providing false information in support of the application is a violation of Section 1001 of Title 18 of the United States Code, and (2) additional statements or documentation which demonstrates that the applicant satisfies the criteria set forth in § 13.44(a) for a subsistence permit or § 13.45(b)(2) for the aircraft exception, as appropriate. Except in extraordinary cases for good cause shown, the Superintendent shall decide whether to grant or deny the application in a timely manner not to exceed forty-five (45) days following the receipt of the completed application. Should the Superintendent deny the application, he/she shall include in the decision a statement of the reasons for the denial and shall promptly forward a copy to the applicant.

(b) An applicant whose application has been denied by the Superintendent has the right to have his/her application reconsidered by the Alaska Regional Director by contacting the Regional Director within 180 days of the issuance of the denial. The Regional Director may extend the 180-day time limit to initiate a reconsideration for good cause shown by the applicant. For purposes of reconsideration, the applicant shall present the following information:

(1) Any statement or documentation, in addition to that included in the initial application, which demonstrates that the applicant satisfies the criteria set forth in paragraph (a) of this section;

(2) The basis for the applicant's disagreement with the Superintendent's findings and conclusions; and

(3) Whether or not the applicant requests an informal hearing before the Regional Director.

(c) The Regional Director shall provide a hearing if requested by the applicant. After consideration of the written materials and oral hearing, if any, and within a reasonable period of time, the Regional Director shall affirm, reverse, or modify the denial of the Superintendent and shall set forth in writing the basis for the decision. A copy of the decision shall be forwarded promptly to the applicant and shall constitute final agency action.

Subpart C—Special Regulations— Specific Park Areas in Alaska

§ 13.60 Aniakchak National Monument and Preserve.

(a) *Subsistence.*—(1) *Resident Zone.* The following communities and areas are included within the resident zone for Aniakchak National Monument:

Chignik
Chignik Lagoon
Chignik Lake
Meshik
Port Heiden

§ 13.61 Bering Land Bridge National Preserve.

(a) *Off-Road Vehicles.* The use of off-road vehicles for purposes of reindeer grazing may be permitted in accordance with a permit issued by the Superintendent.

§ 13.62 Cape Krusenstern National Monument.

(a) *Subsistence.*—(1) *Resident Zone.* The following communities and areas are included within the resident zone for Cape Krusenstern National Monument:

Kivalina
Kotzebue
Noatak

§ 13.63 Denali National Park and Preserve.

(a) *Subsistence.*—(1) *Resident Zone.* The following communities and areas are included within the resident zone for Denali National Park addition:

Cantwell
Minchumina
Nikolai
Telida

(b) *Camping.* Camping is prohibited along the road corridor and at Wonder Lake, except at designated areas. Camping is allowed in other areas in accordance with the backcountry management plan.

(c) *Unattended or Abandoned Property.* Leaving unattended and abandoned property along the road corridor, at Wonder Lake, and in the areas included in the backcountry management plan, is prohibited.

§ 13.64 Gates of the Arctic National Park and Preserve.

(a) *Subsistence.*—(1) *Resident Zone.* The following communities and areas are included within the resident zone for Gates of the Arctic National Park:

Alatna
Allakaket
Ambler
Anaktuvuk Pass
Betilles/Evansville
Hughes
Kobuk

Nuiqsut
Shungnak
Wiseman

(2) *Aircraft Use.* In extraordinary cases where no reasonable alternative exists, local rural residents who permanently reside in the following exempted community(ies) may use aircraft for access to lands and waters within the park for subsistence purposes in accordance with a permit issued by the Superintendent:

Anaktuvuk Pass

(2) *Customary Trade.* In The Gates of the Arctic National Preserve unit which contains the Kobuk River and its tributaries, "customary trade" shall include—in addition to the exchange of furs for cash—the selling of handicraft articles made from plant material taken by local rural residents of the park area.

§ 13.65 Glacier Bay National Park and Preserve [Reserved].

§ 13.66 Katmai National Park and Preserve [Reserved].

§ 13.67 Kenai Fjords National Park.

(a) *Subsistence.* Subsistence uses are prohibited in, and the provisions of Subpart B of this part shall not apply to, Kenai Fjords National Park.

§ 13.68 Klondike Gold Rush National Historical Park.

(a) *Camping.* Camping is permitted only in designated areas.

§ 13.69 Kobuk Valley National Park.

(a) *Subsistence.*—(1) *Resident Zone.* The following communities and areas are included within the resident zone for Kobuk Valley National Park:

Ambler
Kiana
Kobuk
Kotzebue
Noorvik
Selawik
Shungnak

(2) *Customary Trade.* In addition to the exchange of furs for cash, "customary trade" in Kobuk Valley National Park shall include the selling of handicraft articles made from plant material taken by local rural residents of the park area.

§ 13.70 Lake Clark National Park and Preserve.

(a) *Subsistence.*—(1) *Resident Zone.* The following communities and areas are included within the resident zone for Lake Clark National Park:

Iliamna
Lime Village
Newhalen
Nondalton

Pedro Bay
Port Alsworth

§ 13.71 Noatak National Preserve
[Reserved].

§ 13.72 Sitka National Historical Park.

(u) *Camping.* Overnight camping is prohibited.

§ 13.73 Wrangell-St. Elias National Park and Preserve.

(a) *Subsistence.*—(1) *Resident Zone.*
The following communities and areas are included within the resident zone for Wrangell-St. Elias National Park:

Chisana
Chistochina
Chitina
Copper Center
Gakona
Gakona Junction
Glennallen
Gulkana
Kenny Lake
Lower Tonsina
McCarthy
Mentasta Lake
Nabesna
Slana
Tazlina
Tok
Tonsina
Yakutat

(2) *Aircraft Use.* In extraordinary cases where no reasonable alternative exists local rural residents who permanently reside in the following exempted community(ies) may use aircraft for access to lands and waters within the park for subsistence purposes, in accordance with a permit issued by the Superintendent:

Yakutat (for access to the Malaspina Forelands Area only)

§ 13.74 Yukon Charley Rivers National Preserve [Reserved].

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Aspects Needing Consideration in Subsistence Legislation.

The continuing controversy surrounding the subsistence law attests to several basic flaws in the law. Those flaws have made implementation of the law by the Boards of Fisheries and Game extremely difficult, as numerous successful challenges to the Boards' regulations amply demonstrate.

The first part of this discussion will highlight the major flaws in the current law and then suggest corrective approaches for them. The three bills currently in the Legislature, HB 288 and SB 231 (the Governor's bills--hereafter treated together) and SB 320 will then be evaluated regarding these flaws.

The last part of this discussion will consider several other aspects of the subsistence issue that have generated considerable debate. The Governor's bills and SB 320 will be evaluated relevant to those aspects.

A. BASIC FLAWS IN THE CURRENT SUBSISTENCE LAW.

1. Lack Of Adequate Definition Of Subsistence Use.

Perhaps the most significant flaw hindering successful implementation is an inadequate definition of subsistence use. Defining subsistence use as the customary and traditional use of fish and game for food, clothing, etc., is not adequate. The quagmire that the Boards found themselves in is ample proof of that. For example, the Board of Game chose an individual family approach, using history of use and income level as a means of identifying who had subsistence uses, whereas the Board of Fisheries used community attributes and residency as the criteria. Both approaches were legally faulty. Customary and traditional are words that do not have legally precise meanings. If the Legislature believes it necessary to keep customary and traditional use as the definition of subsistence use, then customary and traditional need to be clearly and unambiguously defined so that all Alaskans have the same understanding of what is subsistence.

Governor's bills.--These two bills do not define customary and traditional use. Instead, the bills give the subsistence priority to rural Alaskan residents. In defining who qualifies, however, additional confusion regarding customary and traditional use arises. That confusion arises because the priority is given to residents of communities and areas in which personal and family consumption of fish and wildlife is a significant characteristic of the economy. So is personal and family consumption the definition of customary and traditional use? Is the economic aspect the critical aspect of

the definition (and where then should the economically important commercial fisheries fit in)? What constitutes a significant characteristic of the economy? Rather than reducing confusion by defining customary and traditional, the Governor's bills simply add an additional level of confusion.

SB 320.--This bill does not explicitly define customary and traditional. However, it defines who qualifies for that use. By so doing, the bill in effect defines subsistence use. The definition essentially involves a documented history of use and an inability to obtain alternative sustenance. The criteria that SB 320 contain can be implemented. They are also clear enough in their meaning so that litigation due to ambiguity should not be frequent. Furthermore, SB 320's approach to subsistence probably is the one most Alaskans have in mind when they think of subsistence; general accord as to what is subsistence should result.

2. Inability To Regulate And Manage Subsistence Harvests.

The current law does not allow adequate regulation of subsistence harvests. The recent Supreme Court decision in the Madison case, and the Court of Appeals ruling in the Eluska case clearly indicate that no restrictions at all can be placed on subsistence take if sport or commercial harvests are occurring (in fact, if any consumptive uses other than subsistence are occurring). Furthermore, subsistence use can only be restricted if sustained yield (of that subsistence use) is jeopardized. The consequences of not being able to regulate the harvest of cow moose during the calving season, the inability to stop shooting of ptarmigan during nesting, and the inability to restrict gill netting of spawning rainbow trout should be obvious to all. To properly manage fish and wildlife populations, the regulatory agencies need the ability to restrict those harvests that are most detrimental to fish and wildlife stocks. Such flexibility often allows larger total harvests to be taken safely. For example, 500 geese might be harvested on a sustainable basis if they are shot during nesting, but a sustainable harvest of more than 2,000 might be possible if they are taken in the fall. For common property such as fish and wildlife, one cannot allow sound management practices to be violated, regardless of the beneficial use being considered. The present law needs to be modified to allow adequate regulation of subsistence harvests.

Governor's bills.--The Governor's bills don't address this problem. In fact, an Assistant Attorney General apparently advised one legislator during the last week of the session that the Boards did have authority to restrict subsistence harvests -- even despite

the very explicit wording in the Court of Appeals ruling (see particularly footnotes 6 and 7 of that ruling). One can only conclude that the Assistant Attorney General's pronouncement was one of advocacy and not of legal scholarship. The point is, the Governor's bills would not correct the regulatory difficulty that currently does exist.

SB 320.--This bill does address the problem. It specifically states that only those subsistence uses allowed by regulation are legal. Obviously, regulations based on proven principles of fish and wildlife management can be implemented under this bill.

3. Legal Implications Of Granting Priority To A Use.

Does granting a use a priority status infer that regulations partially restricting such use (i.e. not allowing complete satisfaction of that use), so that other uses can be partially satisfied concurrently, are illegal? That is, does a priority use have exclusive right to the resources if the resources cannot satisfy all demands for the priority use? Or is a priority satisfied if only a reasonable opportunity is provided to subsistence users, even though such an opportunity is not expected to fully satisfy all demands for the priority use? To our knowledge, the legal implications of granting a use a priority status have not been addressed in the courts. Undoubtedly they will be, if the current priority designation is retained in the law. Rather than let the courts decide, the Legislature should carefully specify what is meant by priority if that designation is retained. If priority can be equated only with exclusive use in cases of inadequate resource supply, then the designation should be changed from priority to preference. Whatever the designation, it is not reasonable that other uses will be allowed only in those cases in which the status use can be satisfied completely.

Governor's bills.--These bills do not address the priority issue. The priority designation would be unchanged if the Governor's bills are adopted as is.

SB 320.--This bill does not specifically address the priority issue. The bill does indicate that historical levels of subsistence use could be designated, thereby putting a cap on the amount of subsistence use allowed. However, the question of exclusivity when the resources are in short supply is not addressed. We believe that must be addressed in the bill.

B. OTHER ASPECTS OF THE SUBSISTENCE ISSUE.

1. Location Of Residence As A Basis For The Subsistence Priority.

The current law does not have residency as a criterion for subsistence use. It is used, however, in allocating resources among subsistence users. The legislative record established during passage of the current law clearly indicated legislative intent that all subsistence uses, regardless of where occurring in the state, would have a priority; the intent clearly was not to restrict the priority only to certain communities or only to rural Alaska. In spite of that record, the Boards did restrict the priority to rural Alaskans, with the Board of Fisheries implementing it solely on a community basis. The Attorney General's staff took an active advocacy role in developing the rural/community approach; an often voiced argument was that the State needed to be "in compliance" with the Federal rural designation, otherwise Federal preemption of State management on Federal lands would result. The State Supreme Court in the Madison ruling found the rural/community approach in violation of the State subsistence law; the Court did not rule on the constitutionality of that approach. However, a significant legal question remains regarding the constitutionality of the location of residency criterion, particularly when one considers the very extensive legislative record documenting that subsistence uses occur in both urban and rural Alaska.

The current State administration, through the Attorney General's staff and the Commissioner's office of ADF&G, is pushing a rural/community approach. Their principal argument is that in view of the Supreme Court's Madison ruling a rural/community approach is necessary to eliminate the management/regulatory chaos created by the Madison decision. If that decision did create such chaos, the rural/community approach, which would reduce the number of individuals qualifying for the subsistence priority, would not eliminate the chaos, although it might constrain it somewhat. Any chaos created by the decision would be due to two sources: an increased number of subsistence users and the legal recognition that subsistence use of a resource cannot be restricted so long as any other consumptive use of that resource is occurring. The latter aspect has at least as dire an implication for resource management as does the former. The salient point is this: using a rural/community criterion for determining the subsistence priority is not going to correct the management/regulatory hiatus (revealed by the Madison decision) that exists with the current subsistence law! That aspect is of fundamental importance when considering revisions to the subsistence law.

The rural/community criterion for determining who gets a subsistence priority has one significant drawback -- it is not fair! Not all individuals and families with equal dependence on the fish and wildlife resources are treated equally. All individuals in a community designated as a subsistence community would get the subsistence priority (regardless of their use of the resources), but those individuals in a community not so designated would not have the priority, regardless of how dependent on the resources an individual or a family might be! People equally situated should be treated equally. Until that is assured, the subsistence law will be a continuing source of controversy.

The argument has been raised that the subsistence priority must be on a community basis so that a village economy is not threatened or unduly impacted. If a village economy has a substantial dependence on subsistence use of fish and wildlife, one would expect most individuals and families in that community to qualify on an individual basis for the subsistence priority. Hence, that village's economy would be protected by granting the priority on an individual, not a community, basis.

Governor's bills.--As indicated above, the administration is pushing the rural/community approach; these bills contain the rural/community criterion.

SB 320.--This bill assigns the priority on an individual basis, including all dependant members of that individual's household.

2. Compliance With The Federal Law.

One very significant difference between the State and Federal subsistence provisions is the priority. In State law, subsistence use is the priority use; in Federal law subsistence use is only a priority among the consumptive uses. That difference has troublesome management implications for Alaska. Under State law, the Boards are required to provide for subsistence use, restricting such use only if two conditions hold: 1) all other competing consumptive uses are abolished, and 2) sustained yield of the subsistence use is jeopardized. Obviously, National Parks and Preserves, primarily dedicated to non-consumptive uses, were not established under ANILCA with that scenario in mind. Recent interactions between the Board of Game and the National Park Service regarding subsistence regulations in the Gates of the Arctic National Park demonstrate the divergent mandates. Obviously, State law is not in compliance with the Federal law on the critical point of priority. Should we modify our State law to gain compliance, thus placing subsistence use only in a priority status with respect to other consumptive uses? If compliance with the Federal law is very important, perhaps we should! But is compliance that

Important?

The argument advanced for compliance is that without it the Feds might preempt State management authority on Federal lands. They might, especially in those instances in which the variant in the State law disallows satisfaction of provisions mandated in the Federal law. The different specifications for priority might be one such variant, for Federal officials may need to restrict subsistence uses in order to protect non-consumptive values for which the land was set aside.

The question of compliance needs to be evaluated on a case by case basis. That is the only rational approach, for one provision of the law might be modified with only slight negative impacts on state and private lands, whereas modification of a different provision to conform to Federal law might produce very undesirable results for resource use on non-federal lands. That is, some provisions in the Federal subsistence law may be very undesirable ones from the State perspective (and perhaps even at variance with the State of Alaska constitution). The rural provision in the Federal law may be the prime example.

Non-compliance does not imply that Federal preemption is inevitable. Even if legal action is initiated, based on claims that the State statutes and regulations do not provide the subsistence privileges specified in ANILCA, the State's management authority probably will not be preempted unless it is clear that State laws and regulations are more restrictive than those the Federal officials would promulgate. Who is likely to be stronger advocates of consumptive uses of fish and wildlife -- the State of Alaska or the Federal officials, particularly those in the National Park Service? Anyone contemplating legal action to institute Federal management of subsistence should carefully evaluate the ultimate consequences of those actions.

Governor's bills.--These bills would bring State law into accord with the Federal law regarding rural priority. Other points of disagreement would remain.

SB 320.--This bill would not change the current situation that the priority is given to any subsistence user, rural or urban. Other points of disagreement would also exist.

3. Trade and Barter Provisions

The state and federal definitions of barter are identical. However, state and federal definitions of trade differ. In state statute "customary trade" is considered a "subsistence use" only if it is utilized for purposes of "personal or family consumption." Under Sec. 803 of ANILCA, only the "barter" and "sharing" of subsistence resources are tied to "personal or family consumption." "Customary trade" is not modified.

Existing state law provides for trade or barter of subsistence caught resources as follows:

a. Subsistence uses is defined to include the customary trade, barter, or sharing for personal or family consumption of wild renewable resources;

b. barter is defined as the exchange or trade of fish and game or their parts taken for subsistence uses i.) for other fish or game or their parts, ii.) for other food or for non-edible items other than money if the exchange is of a limited and non-commercial nature.

In federal law "subsistence uses" is defined to include use "for barter, or sharing for personal or family consumption; and for customary trade."

Present state and federal statute wording allows barter, for "non-edible items" such as gasoline, machinery, tools, clothing and other things as well as for edible items not normally consider food, such as alcohol or other drugs (to which other prohibitions may apply).

Present state regulation allows that "customary trade may include limited exchanges for cash, but does not include significant commercial enterprises."

These provisions put fish and game in virtually the same situation as any other commodity, in spite the "limited and non-commercial" constraint and the Commissioner's authority to shut down trade or barter.

Neither the Governor's bills nor SB 320 propose changes in wording relating to trade and barter.

The sharing and exchange of fish and wildlife is common and widespread among Alaskans and is not limited to subsistence use(r)s. State law should accomodate the practice of sharing and exchange of fish and wildlife.

To ensure that fish or game taken under subsistence use rules is not misused, the existing provisions in state statute allowing exchange of fish or game for "non-edible" items should be deleted. The regulation allowing for limited exchanges for cash should be nullified.

Because trapping is authorized under other definitions in statute, the sale of pelts would be unaffected by this change. (However, would their be a priority for "subsistence trapping"?)

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Subsistence Use of Fish and Game Resources in Alaska: Considerations in Formulating Effective Management Policies

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Background

The Subsistence Priority in State and Federal Law

In 1978, the Alaska Legislature enacted a statutory priority for subsistence uses of Alaska's fish and game resources.¹ Congress adopted legislative language in 1980 for the Alaska National Interest Lands Conservation Act (ANILCA), which is similar in most respects to the definition and priority established by state law.² In addition, ANILCA provides, in part:

It is hereby declared to be the policy of Congress that—(1) consistent with sound management principles and the conservation of healthy populations of fish and wildlife, the utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands; . . . (2) nonwasteful subsistence uses of fish and wildlife and other renewable resources shall be the priority consumptive uses of all such resources on the public lands of Alaska. . . .³

This strong statement is in keeping with the ANILCA provisions that require federal land use decisions to include evaluation of potential impacts on subsistence uses and resources.⁴

Research on Subsistence Uses and Their Importance

Both state and federal laws recognize the need for research on subsistence uses of resources.⁵ The Alaska Legislature directly addressed this need by creating a new section in the Department of Fish and Game. The task assigned to the Division of Subsistence was necessarily broad because so little scientific research data on subsistence were available. The legislative mandate stated in part:

The section of subsistence hunting and fishing shall . . . compile existing data and conduct studies to gather information, including data from subsistence users, on

¹See Ch. 151, 1978 Alaska Session Laws.

²See U.S.C.A. §§3113, 3114 (1980 Laws Special Pamphlet).

³16 U.S.C.A. §3112 (1), (2) (1980 Laws Special Pamphlet).

⁴16 U.S.C.A. §3120 (1980 Laws Special Pamphlet).

⁵ANILCA, 16 U.S.C.A. §3122 (1980 Laws Special Pamphlet), provides:

"The Secretary, in cooperation with the State and other appropriate Federal agencies, shall undertake research on fish and wildlife and subsistence uses on the public lands; seek data from, consult with and make use of, the special knowledge of local residents engaged in subsistence uses; and make the results of such research available. . . ."

all aspects of the role of subsistence hunting and fishing in the lives of the residents of the state.⁶

In addition to conducting applied social science research, the Division of Subsistence performs diverse policy-related roles but does not have authority to make regulatory decisions, to manage resources, or to enforce regulations. The Division is the only agency engaged in comprehensive research on subsistence uses of resources, and the demand for these studies has increased exponentially. Previously unavailable data have enabled the Alaska boards of fisheries and game to apply the subsistence priority (Thomas 1981) in their regulatory decisions and also have been used extensively in evaluating major land and water management issues (Veitre and Veitre 1981).

Understanding the Nature and Significance of Current Subsistence Uses of Resources in Alaska

The development of subsistence policy has been hampered by inaccurate assumptions about the nature of the resource uses involved. There are some well-known myths about fishing and hunting for subsistence. One is that subsistence activities are pursued using "primitive" technologies such as spears, bolas, and bows and arrows. Another myth is that subsistence refers to bare survival of persons in rural settings. A third myth is that the presence of cash transforms subsistence into something that does not require the harvest of fish and game. These erroneous notions make rational policy development more difficult by obscuring the true complexity and adaptability of subsistence systems. Research by the Division of Subsistence is directed toward providing a more accurate portrayal of current subsistence uses in Alaska.

Alaska's human history is entwined with the use of wild renewable resources. Among northern aboriginal peoples, adaptations directly related to patterns and cycles of resource availability are among the key elements of sociocultural differentiation. After contact with western society, the harvest, distribution, and use of locally available food and raw materials have continued to provide essential economic, nutritional, cultural, and social benefits to a large number of communities and households. For non-Native residents as well, the use of fish and game has satisfied similarly important needs.

Today both Natives and non-Natives participate in subsistence economic sys-

⁶AS 16.05.094 (1). Other duties described in the legislative mandate require that the Division of Subsistence:

- (2) quantify the amount, nutritional value, and extent of dependence on food acquired through subsistence hunting and fishing;
- (3) make information gathered available to the public, appropriate agencies, and other organized bodies;
- (4) assist the department, the Board of Fisheries, and the Board of Game in determining what uses of fish and game, as well as which users and what methods, should be termed subsistence uses, users, and methods;
- (5) evaluate the impact of state and federal laws and regulations on subsistence hunting and fishing and, when corrective action is indicated, make recommendations to the department;
- (6) make recommendations to the Board of Game and the Board of Fisheries regarding adoption, amendment and repeal of regulations affecting subsistence hunting and fishing;
- (7) participate with other divisions in the preparation of statewide and regional management plans so that those plans [recognize] and incorporate the needs of subsistence users of fish and game.

teins. These economies are systems of production, distribution, and consumption that are based upon the harvest of renewable resources. Within subsistence economies, a substantial portion of the goods produced are for direct local consumption rather than for export and sale on external markets. Modern subsistence systems have some cash flow, but the cash sector is generally limited, seasonal, and tenuously linked with exogenous economic systems (Lonner 1980). Even in towns having viable non-subsistence sectors of production and exchange, subsistence production and distribution nevertheless may be functional and vital to the entire community at certain times of the year, especially for subcommunities, groups, or households within the town that rely on subsistence harvests. Recent data suggest that, in many rural Alaska communities, the "commercial" and "subsistence" sectors of the economy are complementary and mutually supportive (Wolfe 1981: 88-96, 1979: 264-266, Ellanna 1980: Vol I).

Subsistence uses of locally available resources often provide substantial community and family self-sufficiency. In much of Alaska, the absence of reliable alternatives means that subsistence may be the only stable economic base. This is not to suggest that subsistence should be viewed as a less desirable alternative than the commercial economies which typify most other areas in the United States. Indeed, because connections to commercial markets are limited, it has been argued that subsistence economic systems tend to be "buffered" against the vagaries of inflation and other external economic effects (Lonner 1980).

Use of locally available resources—although dynamic—is so well established in many areas of Alaska that human communities may properly be viewed as integral parts of the ecosystems in which they participate. Accordingly, much of the Division's current research is, in effect, addressed to questions about human ecology. The presence and distribution of human populations as well as their social and cultural forms are viewed as beneficial adaptations, developed over time, in response to natural environments of fish and wildlife resources (Steward 1972, Cohen 1974, Vayda 1969, Lee and DeVore 1968).

Ethnohistorical data as well as information on current practices and use patterns are important in developing this picture of ecological relationships over time. Historic sites used for harvest or other subsistence activities provide a chronicle of relative resource abundance and movements (Fall 1981a, 1981b: 3-8, Table 1, Map No. 1). Traditional names also provide valuable information on resource use (Kari, cited in Fall 1981b: Table 3). For example, the Dena'ina name for Point McKenzie near present day Anchorage in Cook Inlet, *Dilhi Tunts'del'ust Beydegh* ("hooligans are transported point"), derives from the significant trade in eulachon oil that occurred here during April and May (Fall 1981b:8). Similarly, names of sites, seasons, and activities offer keys to understanding the annual cycle of subsistence resource uses and, concomitantly, the resources upon which the local economy depended.

In order to assess current uses, a variety of well-established social science methods are employed by the Division of Subsistence. The Division has conducted research using literature reviews, oral histories, participant-observation methods, informal interviews, interview surveys, mail surveys, and combinations of these techniques. In addition, particular field studies may require stratified sampling, selection of index study communities, comparative approaches, longitudinal designs, and other specialized applications. After data have been gathered in the field,

analysis involves standard quantitative and descriptive treatments. Quantitative information is evaluated using accepted statistical computer programs. Where appropriate, geographic data are mapped in order to facilitate their use in land and water management decisions.

Considerations in Subsistence Policy Formulation

Reliable research data on subsistence uses in Alaska are extremely limited; indeed, comprehensive research efforts are just beginning. Nevertheless, studies completed to date and current field experience permit generalizations indicating certain components essential for effective management of subsistence resources.

For purposes of evaluating the factors to be considered in formulating management policy, I shall assume that a fundamental management goal is to maintain the productivity of the resource base so human use may continue. In addition, I shall assume that the word "subsistence" does not refer to resource uses that are characterized by "primitive" methods or limited to bare, physical survival. Instead, subsistence involves the use of locally available resources primarily for local consumption as part of the complex economic systems described earlier.⁷ Although other views of "subsistence" have been articulated based upon various configurations of political values, the assumptions offered here have the advantage of being consistent with available research data concerning resource uses in Alaska.

The following discussion draws upon research findings, field experiences, and other current developments related to diverse Alaskan subsistence uses.

Cooperation Between Managers and Users in Development of Reliable Data and Management

Effective management of wild renewable resources can be achieved only if resource managers have reliable data and if resource users cooperate in the implementation of the desired management regime. Of course, user cooperation is necessary in order to obtain high quality data on harvests and other aspects of subsistence use. However, accurate harvest data are of only limited utility if harvest timing or other features of the harvest are inconsistent with the management plan. Neither reliable data nor other types of cooperation are likely to result unless users are assured that their interests are recognized and their uses are protected. Because use of wild resources is so important to many communities and households, unrealistic regulations may virtually compel uses outside the regulatory system (Collins 1982, Stickney 1981). If this occurs, the users may feel extremely uneasy⁸ and reluctant to provide information.

⁷Alaska law provides a technical definition:

'[S]ubsistence uses' means the customary and traditional uses in Alaska 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 non-edible byproducts of fish and wildlife resources taken for personal or family consumption. . . .

AS 16.05.940(26). The definition appearing in federal law is substantially similar but includes the limiting language, "by rural Alaska residents". 16 U.S.C.A. §3113 (1980 Laws Special Pamphlet).

⁸This discomfort is not merely due to anxiety about possible arrest. Many subsistence users strongly desire to comply with societal standards but believe they cannot do so and still provide for their families (Davidson 1974). In addition, some rural residents attempt to comply with ill-suited regulations simply from a sense of deference to the legal system, frequently absorbing significant losses and hardships in the process.

For example, Robert J. Wolfe conducted his initial research on food production in a village near the mouth of the Yukon River in 1978 (Wolfe 1979). Village residents recognized that regulations did not reflect certain characteristics of their harvest activities, such as spring take of waterfowl. Accordingly, local representatives insisted upon guarantees of confidentiality at the outset, in addition to the anonymity that Wolfe had already built into his design. Limitations on that portion of the research data dealing with waterfowl were imposed as preconditions to his conducting any research in the village (Wolfe, pers. comm. 1982). Representatives of Yukon Delta residents feared adverse enforcement attention if details of waterfowl use on the Delta were published and they took action consistent with this concern.

By contrast, a different regulatory climate existed on the Delta when Wolfe conducted additional research during 1981. In the interim, federal enforcement policy had moderated, and proposals to amend migratory bird treaties had been made.⁹ There was less fear among Delta residents that information presented about their use of migratory birds would result in damage to their communities, and their representatives approved the reporting of important harvest and use data (Wolfe, pers. comm. 1982). The resulting research product provided previously unavailable insight into the complex socioeconomic systems of the Yukon Delta (Wolfe 1981).

Subsistence uses in rural communities can be expected to continue regardless of whether harvest regulations are consistent with the realities of local practice. Quite simply, users will take the actions they believe necessary to provide for their families and communities. If seasons, bag limits, or other limitations are inconsistent with these practices, they will be perceived as irrelevant and are unlikely to be effective.

For example, the migratory bird treaty with Canada prohibits the taking of most migratory birds between March 10 and September 1. This would eliminate virtually all use of these resources in northern and western Alaska because they are not present prior to March 10 and are migrating again at the time the treaty would

⁹Migratory birds are addressed in bilateral treaties between the United States and Canada, Japan, Mexico, and the Soviet Union. The most recent agreement, signed with the Soviet Union in 1976, authorizes the United States to set seasons which permit the taking of migratory birds and their eggs by indigenous inhabitants of Alaska for their own nutritional and other essential needs, but the seasons must provide for the preservation and maintenance of the migratory bird stocks. See Convention Concerning the Conservation of Migratory Birds and Their Environment, Nov. 19, 1976, United States - Union of Soviet Socialist Republics, 19 U.S.T. 4647, T.I.A.S. No. 5604. The treaty with Japan contains provisions allowing harvests by Eskimos and Indians for food and clothing. See Convention for the Protection of Migratory Birds in Danger of Extinction and Their Environment, Mar. 4, 1972, United States - Japan, 25 U.S.T. 3329, T.I.A.S. No. 7990. The treaty with Canada prohibits the hunting of most migratory birds during spring and summer, with certain exceptions. See Convention for the Protection of Migratory Birds, Aug. 16, 1916, United States - Great Britain (signatory for Canada), 39 Stat. 1702, T.S. No. 628. The treaty with Mexico does not refer to subsistence hunting. See Convention for the Protection of Migratory Birds and Game Mammals, Feb. 7, 1936, United States - Mexico, 50 Stat. 1311, T.S. No. 912. When the Migratory Bird Treaty Act was amended to implement the Soviet treaty, 16 U.S.C. §712 (Supp. III 1979), Congress indicated its intention that the language of the Soviet treaty should be followed in amending the treaties with Canada, Japan, and Mexico to provide consistency among provisions governing subsistence. See S. Rep. No. 1175, 95th Cong., 2nd Sess., reprinted in 1978 U.S. Code Cong. & Ad. News 7641, 7645.

Negotiations with Canada produced a protocol amendment signed by both parties on January 30, 1979. A request for negotiations on similar amendatory language was made by the Department of the Interior in late 1979. However, these negotiations have not been concluded; nor has the protocol amendment with Canada been ratified.

allow harvests in the fall. Of the species excepted, many are neither readily available nor commonly used throughout much of Alaska and Canada. Obviously, subsistence use of migratory birds is not likely to occur without violating these limitations.

Similar problems have arisen because of inconsistencies between regulations and social or cultural roles of subsistence. For example, the usual "bag limit" concept in wildlife management allows a licensed hunter to fill his bag limit for the day or season and then to take no more animals. In rural Alaska, however, one hunter may be responsible not only for supplying his own immediate family but also for a system of community sharing with elders and others who need meat but cannot hunt. A hunter with those responsibilities may "overharvest" according to the bag limit; but when considered in light of the distribution among family and community members, the average individual use may be well within the established bag limit. In such circumstances, the regulatory intent actually may be met but the hunter and his social responsibilities are in conflict with the letter of the law (Skoog 1980).

Major discontinuities between management regulations and local practices may, in some instances, produce total lack of management effectiveness. Our research suggests, for example, that in some interior Alaskan communities where regulatory measures have shown great inconsistencies with local practice, the regulations are considered to be applicable only to other users; in fact, to follow such regulations would, from the perspective of local residents, be irrational, since it would make long-established harvest strategies ineffective (Stickney 1981). Instead, it is their belief that the Board of Game could not have intended the regulations to apply to subsistence uses or else the provisions would have been drafted differently. The practical effect of this discontinuity is that parallel systems now exist: codified management regulations and enforcement, and non-codified local practice and social control.

An additional problem for wildlife managers arises if this divergence is not recognized. Because most managers are accustomed to a system of regulatory restraints, it is easy to assume that regulations have direct effects in controlling harvest; that is, changes in bag limits or seasons are presumed to produce corresponding changes in behavior. Where this is not the case but management nevertheless proceeds without modifying the assumption, serious management shortcomings may result.¹⁰

Harvest Levels Based Upon the Ability of Resource Populations to Sustain Take Rather Than Upon Arbitrary Limits

Because subsistence economic systems in Alaska are both diverse and dynamic, demand for resources should not be regarded as a constant. Indeed, variability in species selection and in food output over short and long-term cycles may be one

¹⁰The significance of this effect should not be overstated, however. Harvest practices and cycles of activity are long-established in many areas. As a result, managers' assessments of population status may unknowingly take into account unreported harvest or other use characteristics that may affect resource abundance and distribution.

defining characteristic of subsistence economies. Demand for wildlife, like other products, is not static but is affected by many factors including:

1. the availability of the resource; (seasonal, annual, or longer-term fluctuations occur and populations are often subject to impact by "non-consumers" such as industrial development);
2. the relative expense, in time, effort, and money, required to harvest a resource;
3. the relative utility of a product in comparison with other products, including other species; and
4. the relative perceived need for the resource.

(Wolfe 1979:214-244). Each of these is influenced by a number of other factors, such as resource population size, geographic distances of resources from a user group, levels of harvest for other species during a year, monetary income during a year, restrictions placed upon methods of harvest and harvest seasons, competition among user groups, climatic and geophysical conditions (such as ice conditions), and other considerations. Many of these variables may fluctuate from year to year. It is clear that regulations are only one factor, and in many cases not a significant one, affecting demand for resources and harvest levels.

Because of these dynamics, arbitrary harvest limits have no place in a sensible management program. A static ceiling is not responsive to cycles of harvestable resources that often occur over long periods. If an arbitrary ceiling is imposed, it may lead to inhibition or distortion of harvest patterns associated with these resources and may cause unanticipated changes in other parts of the annual harvest cycle. The net effect could be impairment of both subsistence use patterns and management plans. An alternative approach would be based upon potentially flexible harvest levels or ranges derived from longitudinal data on resource populations and harvests by humans. Such an approach would allow for possible variation in use without adversely affecting the population base.

Management in Light of All Relevant Factors—Not Overemphasizing Harvest by Humans

Harvest by people is only one of many variables affecting abundance and distribution of resources. Wildlife management analyzes the dynamics of a species by means of population data (census, distribution and composition), fecundity and recruitment, mortality factors (including losses to predation, disease, weather, and harvest), and habitat condition (Skoog 1980). Overemphasis on the influence of the "human harvest" factor may lead to a mischaracterization of overall ecosystem dynamics and potentially ineffective management methods.

Similarly, evaluation and prediction of the subsistence use component of this harvest should not rely solely on quantified harvest data for particular species. Research on the dynamics of social and biological systems interacting over time can provide much better indices of resource demand than single species harvest data. This is not to denigrate the importance of harvest data but merely to recognize its limitations for predicting future changes in subsistence practices.

Effective Mutual Education About the Desirability of Management and the Significance of Local Conditions

Accurate subsistence harvest data can be obtained only if users understand the purposes for which the data are being sought and if they perceive those purposes

as consistent with desirable ends. In the field work conducted by the Division of Subsistence, evidence has been found repeatedly that management concepts, procedures, and agencies are poorly understood in much of rural Alaska. Few distinctions are drawn between management or enforcement agencies such as the U.S. Fish and Wildlife Service, the Alaska Department of Fish and Game, and the Division of Fish and Wildlife Protection (Alaska Department of Public Safety). In addition, the processes by which regulations are developed, the uses of research data, and the reasons for management choices tend to be much more mysterious to local users than resource managers frequently assume.

Division of Subsistence field staff have noted that taking of fish or game frequently occurs outside the regulations—not because participants wish to break the law but because they perceive that the regulations are irrelevant to their long-established practices. In some areas the harvesters may be only vaguely aware of the regulations, harvest reporting requirements, or uses of management data. Even if the regulatory requirements are known, some residents have virtually no choice; to provide for their families is the major directive. Accordingly, if management is to be effective, a sensitive program of mutual education must be undertaken, in which each party seeks to understand the orientation of the other for their common benefit. This is particularly important where compulsory rules and regulations are not elements of the indigenous culture.

Meaningful Involvement of Users in Development of Regulations

Regardless of the quality of data gathered through field observations, local users consistently have additional information about production and exchange practices and resource conditions. The users typically have unique insight into what management measures are likely to be acceptable. Because effective management fundamentally depends upon voluntary compliance,¹¹ it is desirable to build these dimensions of user experience into the regulations.

Cooperation by users in implementation of management measures also is made more likely if the users have a meaningful role in formulating regulations. Effective participation means more than simply receiving information. Instead, it requires that user representatives be involved in understanding the problem to be addressed and in identifying management options. One potential component of this process is creation of a formal participation role such as the local advisory committee and regional council system established by the Alaska Boards of Fisheries and Game.¹²

¹¹It is unrealistic to assume that enforcement activity will be adequate to assure compliance with regulations. For example, the Yukon-Kuskokwim Delta contains more than 55 separate villages and many additional summer fish camps. Enforcement of fish and game regulations throughout this large area is obviously impractical unless most users comply voluntarily.

¹²On March 1, 1982, there were 67 local advisory committees recognized by the Boards: several petitions for new committees also were pending. The committees perform a variety of functions, including development and evaluation of regulatory proposals. See 5 AAC 96.050.

The Boards also have designated six regions within which operate councils composed of advisory committee representatives. The regional councils are intended to facilitate communication among local committees, to provide a forum for resolving disagreements about management issues, to make recommendations to the Boards, and to perform a variety of other authorized functions. See 5 AAC 96.250. The importance of the regional council and advisory committee system also is recognized by federal law. See 16 U.S.C.A. §3115 (1980 Laws Special Pamphlet).

Another opportunity for strengthening cooperative relationships between managers and users is the employment of local field staff.¹³ In this way, local people can be involved in resource assessment activities that provide insight into the issues of concern to regulatory authorities. After regulations have been adopted, local field staff can make unique contributions to the implementation phase, in part by conveying information to other members of the community.¹⁴

Local resource users have shown great interest in the management of fish and game. In several instances, user representatives have formed organizations to facilitate their participation in management. For example, coastal communities that utilize marine mammals have formed the Eskimo Walrus Commission (EWC). In addition to sharing information and advising on management matters, the Commission for two years has conducted studies, under grants from the Alaska Legislature, on uses of marine mammals.

In support of the Commission, the Pacific Walrus Technical Committee (PWTC) was created at the suggestion of the U.S. Fish and Wildlife Service. The Technical Committee includes scientific and management personnel from federal and state agencies as well as commission representatives. The PWTC provides technical information and liaison to the Commission. Together, the EWC and the PWTC provide a direct user-manager dialogue and a means for shared management discussions. They also represent a significant initiative by local users in developing a meaningful management role.¹⁵

Summary and Conclusions

Effective wildlife management in Alaska requires an approach reflecting the realities of today's subsistence way of life. Otherwise, management will be hampered by a significant data shortfall, possibly producing virtual inability to manage. Wildlife managers have a real opportunity to gather reliable data and to achieve local cooperation. Because subsistence use data have not previously been available to managers, even a relatively small investment in the necessary research has produced a substantial return of usable information. The potential benefits include both better management decisions and more effective execution of management programs.

¹³The Division of Subsistence has enjoyed considerable success in employing local and bilingual staff in professional resource specialist positions and in technical assistant roles. Their contributions to field data and analysis have been substantial (See, e.g., Stokes and Andrews 1982). The Division views the technician responsibilities as valuable experience which may lead to higher level program positions. The U.S. Fish and Wildlife Service also has employed local staff in gathering subsistence use data (See Copp and Smith 1981).

¹⁴Management approaches sometime have encountered resistance because they attempt to impose unfamiliar forms of social control that conflict with long-established local mechanisms. Traditional methods of encouraging socially acceptable behavior may help provide effective limits for use in fish and wildlife management. Indeed, it has been argued that such methods offer far greater potential for success than the Anglo-American codifications used in the United States (See Worl Associates 1978, Worl 1979, see also Hallowell 1955).

¹⁵Other users have established organizations with similar purposes. The Alaska Eskimo Whaling Commission is involved directly in monitoring bowhead whale harvest quotas, through a cooperative agreement with the National Marine Fisheries Service, U.S. Department of Commerce. Similarly, rural Alaskan users of the Porcupine Caribou Herd have joined with their counterparts in the Yukon Territory to form the International Porcupine Caribou Commission.

Short-term results may include not only better maintenance of the resource base but also continuation of opportunities for non-subsistence use. Wildlife users outside of Alaska may benefit directly from this improved management. In the context of migratory birds, for example, more reliable harvest and use data could lead to projections of take which, in turn, could produce more accurate assessments of harvestable surplus.

Plans for better research and management probably will be ineffective, however, if users perceive management to be either antithetical or irrelevant to their interests. To increase the probability that management will be effective, several specific measures have been suggested:

1. Cooperation between managers and users in development of reliable data and management.
2. Harvest levels based upon the ability of resource populations to sustain take rather than upon arbitrary limits.
3. Management in light of all relevant factors—not overemphasizing harvest by humans.
4. Effective mutual education about the desirability of management and the significance of local conditions.
5. Meaningful involvement of users in development of regulations.

These steps are mutually supportive and should not be considered in isolation.

Because subsistence economic systems are dynamic, research data should include all aspects of system functioning—not merely harvest data. Only in that way will predictive ability be developed, since harvest data alone, even when suggesting historical trends, do not identify causal factors. In addition, existing data are inadequate in most parts of Alaska to allow reliable estimates of current harvests. Even if such information were available, resulting estimates would not provide an adequate basis for management because current harvest levels, lacking both longitudinal data and analysis of system dynamics, are not meaningful as projections for the future.

The potential rewards of realistic management policies for subsistence include long-term benefits as well. Wise harvest allocation policies will enable subsistence-reliant communities to retain the economic base that best meets their needs—including nutritional, social, and cultural components. To the extent these communities continue their subsistence way of life, concern about wildlife populations and habitats will be an important theme of local and regional planning decisions. As with improved management, users in Alaska and in other places stand to benefit.

The value of using fish and game as part of the self-sufficiency base is, at best, difficult to quantify, but its importance to Alaskan communities and households is clear. Managing in recognition of subsistence realities can protect these opportunities while maintaining the resource populations that all user groups value.

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ECONOMIC OVERVIEW OF FISH AND WILDLIFE: STATEWIDE OVERVIEW
OF SUBSISTENCE AND OTHER LOCAL USE

IV. ROLE OF SUBSISTENCE IN COMMUNITY AND REGIONAL ECONOMIES

Non-commercial fishing and hunting figure prominently in the economy and social welfare of many Alaskan communities. The subsistence harvest of fish and game is a relatively hidden component of Alaska's economy, unmeasured in indices of economic production or social welfare.

Although unmeasured, food and material from wild resource harvests are providing substantial economic and social benefits to the state. If subsistence foods were not produced annually in rural Alaska, they would have to be replaced by imported products at substantial economic and social costs to the state.

This section provides information on the large contribution that subsistence fishing and hunting makes to the state. The section provides recent subsistence harvest estimates in Alaska and compares the level of harvest to levels of meat, fish, and poultry production and consumption in the United States as a whole. These comparisons demonstrate the significant roles that fishing and hunting are currently making to the economic welfare of the state. The information also demonstrates the unique nature of

Alaska's economy in comparison with the rest of the United States: in Alaska, many rural regions are supported by a mixed subsistence-cash economy.

Subsistence harvests contained in this section primarily have been gathered by the Division of Subsistence, Alaska Department of Fish and Game. The materials were originally summarized in Wolfe and Walker (1985). Table A lists the major sources of harvest information. These sources should be consulted for harvest methodologies.

Food Consumption Patterns: U.S. and Alaska

The important economic role subsistence plays in Alaska can be understood by looking at food consumption patterns in the United States as a whole. On average, residents of the United States consume about 1,371 pounds of food per person every year, depicted in Figure 1 (U.S. Department of Commerce 1984). "Consumption" in this sense refers to the amount of food produced annually by the American and foreign food industries for U.S. domestic consumption (technically, "consumption" is the residual after exports, nonfood use, and ending stocks are subtracted from the sum of beginning stocks, domestic production, and imports). As shown in Fig. 1, Americans consume a varied inventory of food products, including dairy products, grains, vegetables, fruits, meat-fish-poultry products, potatoes-beans, sugar-corn sweeteners, and other fats and oils, totalling altogether 1,371 pounds per person annually. The largest single item

in the American diet is dairy (339 pounds per person). Meat, fish, and poultry together provide 255 pounds in the American diet each year. The 255 pounds of meat-fish-poultry will serve as a convenient national standard with which to assess the economic contribution of subsistence harvests in Alaskan communities.

The diet of rural Alaska often stands in marked contrast to the average American diet. Figures 3, 4, and 5 illustrate the amount of subsistence foods produced and consumed in a year in three rural Alaskan communities in Southwest Alaska, Western Alaska, and Northwest Alaska (Behnke 1982, Wolfe 1981, Burch 1985). Residents of Nondalton in Southwest Alaska produce on average about 738 pounds of subsistence foods per person each year (usable product). Unlike the average American, Nondalton residents consume large quantities of fish, primarily salmon (508 lbs per person), but also grayling, whitefish, pike, trout, and Dolly Varden/char. Nondalton residents also consume substantial quantities of moose (85 lbs), caribou (61 lbs), and small game (31 lbs), as well as smaller quantities of black and brown bear, waterfowl, and grouse (cf., Behnke 1982).

Residents of Alakanuk in Western Alaska also produce and consume large quantities of subsistence foods each year, about 730 pounds per person (Fig. 3). Their diet is more varied than at Nondalton, containing bearded seal (42 lbs) spotted and ringed seal (44 lbs), and belukha whale (35 lbs)

in addition to fish and game. Certain fish species utilized are also different from those at Nondalton, including cisco, Alaska blackfish, cod, smelt, sheefish, lamprey, and burbot. Like Nondalton, salmon comprises the largest single resource consumed (198 lbs per person) (cf, Wolfe 1981).

Residents of Kivalina in Northwest Alaska produce and consume even larger amounts of subsistence foods (968 lbs per person per year) than Nondalton and Alakanuk. The largest single food item is caribou (302 lbs), followed by char (189 lbs), belukha (177 lbs), and bowhead whale (136 lbs). Like Alakanuk, other wild resources in the food inventory include bearded seal, ringed seal, moose, polar and brown bear, and waterfowl. Unlike Nondalton and Alakanuk, salmon make only modest contributions to the family larder (22 lbs) (cf. Burch 1985). Of course, harvest levels of particular species vary from year to year in these three case communities; however, the overall volume of all resources harvested remains relatively stable between years, as has been documented by Wolfe (1979, 1981), Benhke (1982), and Burch (1985).

The examples subsistence harvests of Nondalton, Alakanuk, and Kivalina illustrate that diets in some rural Alaska communities vary substantially from the American norm. They also demonstrate that wild food consumption in rural Alaska can be at levels two to three times the national average domestic meat-fish-poultry consumption. This high level of use of subsistence fish and game exists

because many of the perishable items found in the U.S. diet are not sold in rural village stores, especially dairy products, fruits, vegetables, and potatoes, which collectively comprise 56 percent of the American diet (767 lbs per person annually). The larger quantities of wild fish and game harvested in place like Nondalton, Alakanuk, and Kivalina are substituting for the nutrients provided by dairy products, fruits, vegetables, and potatoes in the typical American diet. The primary food groups imported into rural Alaska are grains, sugars, and fats which are less perishable.

Persons unfamiliar with rural Alaskan economies are often surprised at the high quantities of wild food products harvested each year, commonly between 700-800 lbs per person. However, compared with the levels of production by the U.S. food industry (1,371 lbs per person annually), subsistence production at 700-800 lbs per person annually is understandable.

Regional Subsistence Harvests

Using the 255 lbs of meat-fish-poultry consumed by the average American as a standard, Figure 5 compares wild resource harvests across regions in Alaska. As shown in Fig. 5, most rural regions of the state are harvesting at least half or more of the national standard level of meat-fish-poultry consumption in the United States as a whole. Areas where lower wild harvests occur in Alaska include the

large urban centers (Fig. 6) and certain communities of the Kenai Peninsula (Fig. 7). The lower per capita harvests in these areas are due to the market-based economic systems of the communities: resource harvests by families primarily follow a recreational pattern of use, that is, harvest activities represent periodic breaks from stable wage employment. While highly valued for their recreational nature by community residents, fishing and hunting do not contribute much to the community's food supply.

In contrast, the wild resource harvests of other regions are substantial. Harvest levels in the road-connected areas of the Copper Basin (Fig. 8) and Upper Tanana River drainage (Fig. 9) are commonly half or more of the national standard. The major species harvested are salmon, moose, and caribou. In some communities, game provides about as much as fish to the families' diet. As is discussed further below, the wage sector of the economies of the Copper Basin and Upper Tanana regions are not as stable or diversified as wage opportunities in Alaska's urban centers. Seasonal and part-time employment is the norm, and low household incomes are common (Fall and Stratton 1984; Haynes et al 1984). Fishing and hunting provides an important component to the domestic family's livelihood under these economic circumstances.

Resource harvest levels are at or somewhat exceeding the national standard meat-fish-poultry consumption level in communities of the Southeast archipelago (Fig. 10), Kodiak

Island (Fig. 11), and the Alaska Peninsula (Fig. 12). In the communities of these regions, fish comprises the bulk of the subsistence harvest, although game harvests are often high in certain communities. Harvesting wild resources is conducted in association with seasonal commercial fisheries in these regions. Commonly, the earnings from commercial fishing are invested in equipment which is used for both commercial and subsistence fish harvests. The economies of coastal fishing communities of Alaska commonly exhibit this unique combination of subsistence activities and market activities: high subsistence harvests contribute food for local family consumption and commercial fish harvests produce commodities for export sale.

The largest subsistence harvests occur within the Bristol Bay-Iliamna region (Fig. 13), Subarctic Interior (Fig. 14), Yukon-Kuskokwim Delta (Fig. 14), and Arctic Coastal region (Fig. 10). As described earlier, annual subsistence harvests in the 700-800 lbs per person range are common, two to three times the national standard meat-fish-poultry consumption level. Some communities produce in the 1,000 lb per capita range. These areas of the state are relatively remote from the urban centers. The socioeconomic systems of communities commonly follow traditional cultural patterns distinctively different from cultural patterns of the Euro-American tradition. In these regions, high subsistence production results from a combination of subsistence-wage activities at the domestic family level.

Cash incomes are used by families to capitalize in fishing and hunting equipment. Productive labor is organized primarily by kinship and other traditional principles. Subsistence products are widely shared along local non-market distribution networks. In this manner, the regional economies are able to produce and distribute high subsistence outputs that rival on a per capita basis the productivity of the U.S. food industry.

Mixed Subsistence-Cash Economies

This statewide survey indicates that subsistence harvests are a prominent part of the economy and social welfare of many Alaskan regions. Subsistence productivity is substantial in most areas except the large population centers of Anchorage, Fairbanks, Juneau, Palmer-Wasilla, and the northern Kenai Peninsula area. Most rural regions in Alaska harvest wild resources at levels half or greater than the mean per capita use of meat, fish, and poultry in the United States.

Fishing and hunting for subsistence provides a reliable economic base for many regions. This type of regional economy has been termed a "mixed, subsistence-cash economy" (Wolfe 1979; Wolfe et al 1985). It is this type of economy that makes Alaska unique among other states. In a mixed economy, subsistence production is augmented and supported by cash employment. As stated above, depending upon the region, employment may be in commercial fishing, public

sector wage employment (schools, local government), capital construction, and other types of economic enterprises. A region is able to support itself by investing a portion of the monetary earnings into the subsistence sector to produce a portion of the region's food supply. Commonly this is the only viable economic strategy, because the cash sector of the regional economy is of modest size, or is insecure.

Table B depicts community differences in monetary income levels, grouped by region. The Table provides the amount of taxable income reported on individual 1982 income tax returns, averaged by community. Taxable income represents an individual's monetary income after deductions. For example, in the Anchorage area, the average taxable income reported on 1982 income tax returns from Fort Richardson was \$12,135. Table B groups communities by region, and provides the median community income for each region. For example, in the Anchorage area, Girdwood is the middle community, with a 1982 income of \$22,709.

Based on median community incomes, a ranking of each region's monetary income is possible. Anchorage is number one (\$22,709), Fairbanks number two (\$22,698), and so forth, with Bristol Bay-Iliamna last (\$8,892).

Reported taxable income is deceptive in one respect: it does not represent the real purchasing value of earned income because of statewide cost of living differentials. In more remote regions, store prices are commonly much higher in comparison with store prices in Anchorage or

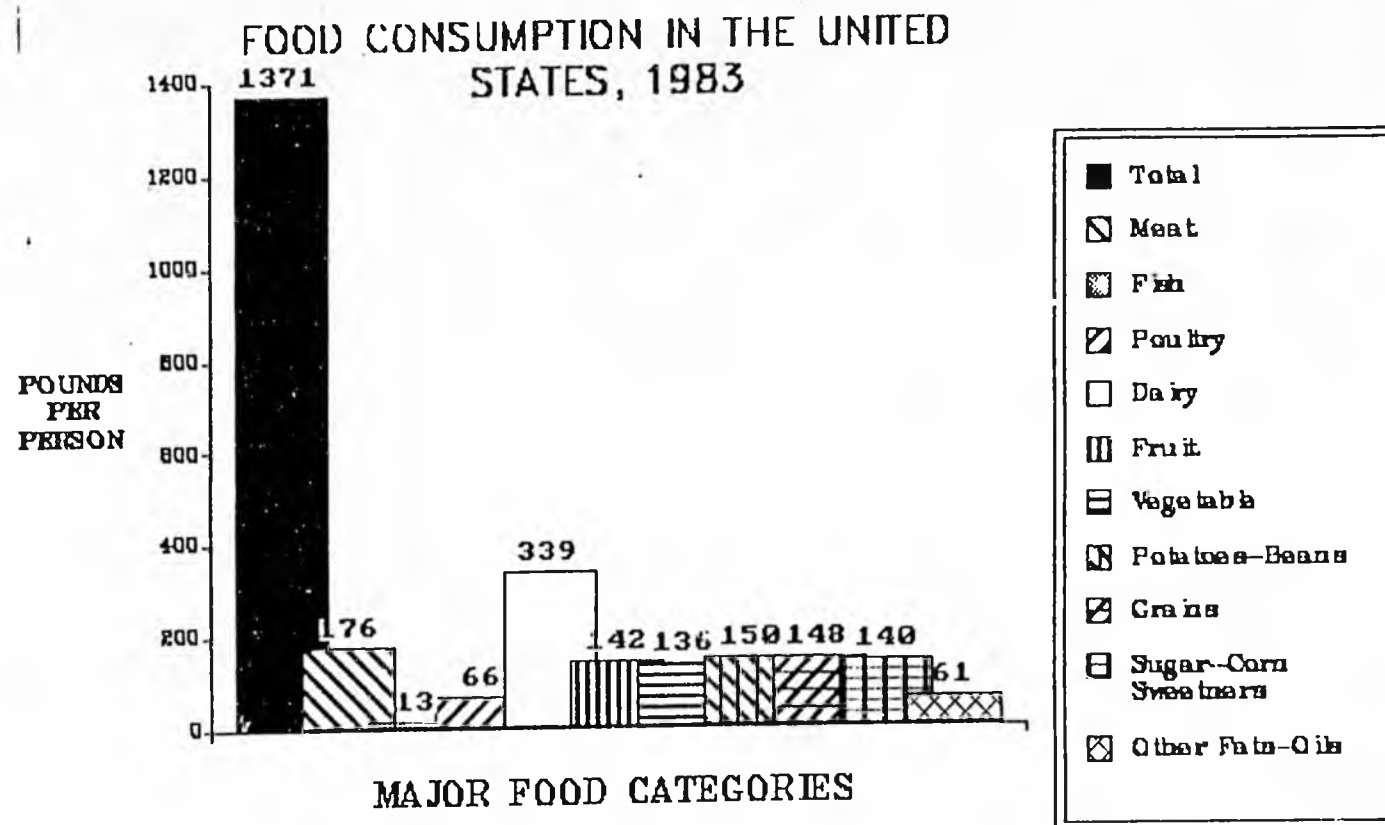
Fairbanks. Table A depicts the cost of food by region in Alaskan communities, using the market basket price of food in Anchorage as an index of 100 (University of Alaska Cooperative Extension Service). It shows that food that costs \$1.00 in Anchorage costs \$1.85 in Hoonah, and \$2.26 in Fort Yukon. Thus, the real purchasing power of earned income in many remote regions is about one-half of the value of money in Anchorage.

Table B provides regional estimates of the cost of living differentials based on the food price indexes of Table A, and adjusts the region's median community income levels. For example, the Fairbanks region's median community income of \$22,698 is adjusted down to \$20,635 because food prices are 110% higher in Fairbanks in comparison with Anchorage.

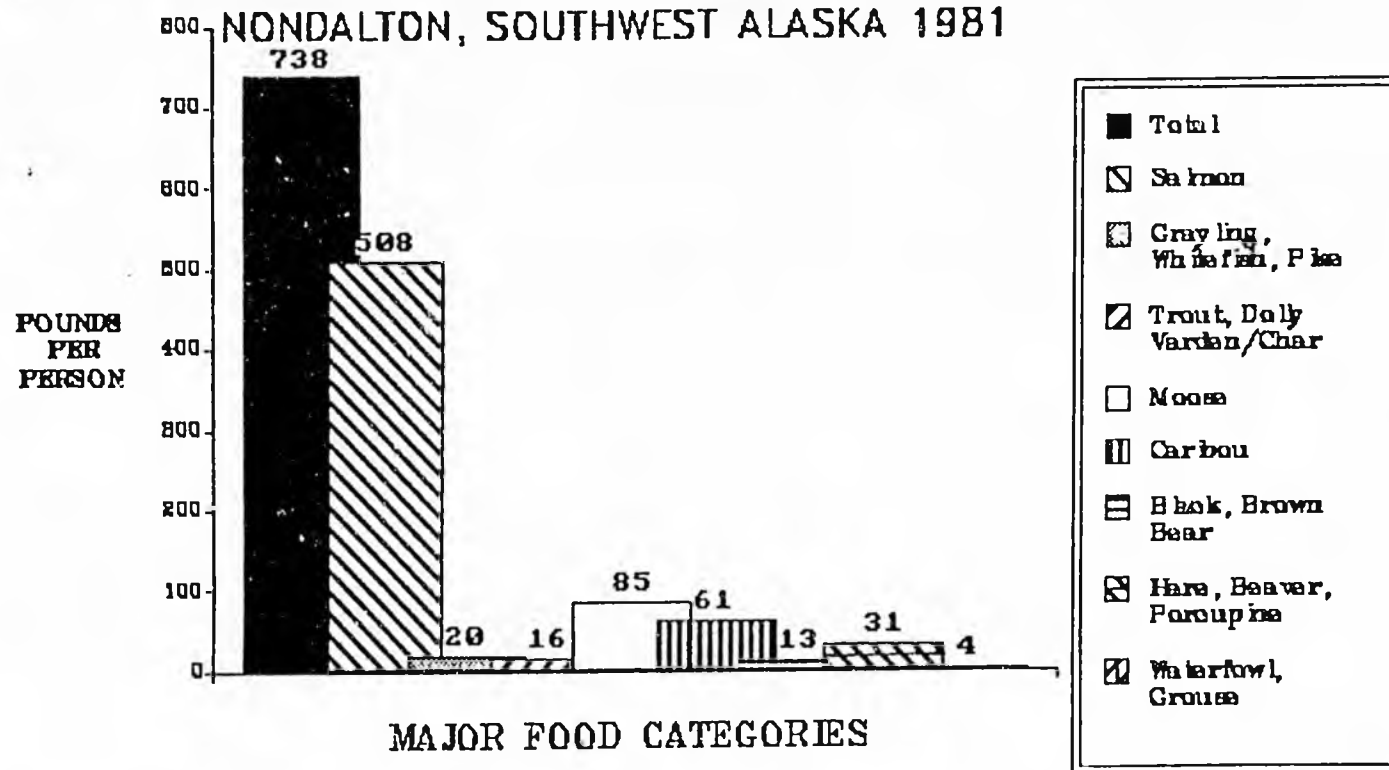
The adjusted median community income in Table B is a good indicator of the strength of the wage sectors of each region's economy. Remarkably, once incomes are adjusted to their true purchasing potential, some region's are shown to be extremely poor in terms of cash. In the Arctic region, the median 1982 taxable income was only \$5,841 per income tax return. In Interior Alaska communities, the median 1982 taxable income was only \$4,695. The poorest regions in the state were the Yukon-Kuskokwim Delta (\$4,446) and Bristol Bay-Iliamna (\$4,322).

Clearly, communities in these cash-poor regions could not possibly manage on such low earnings if it were not for

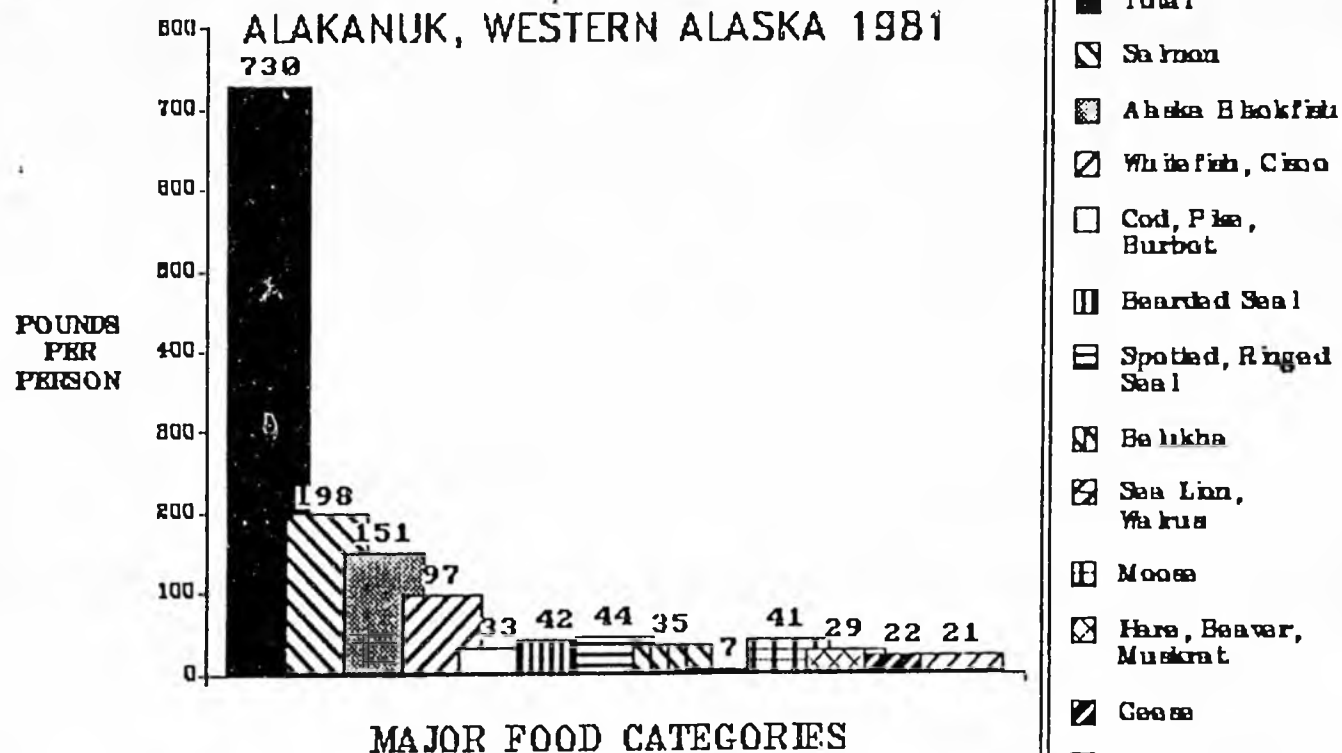
the way that money is used. The low monetary incomes are invested into subsistence fishing and hunting activities, producing large quantities of subsistence foods which support the region's population. If it were not for the operation of these mixed, subsistence-cash economic systems, many rural communities in most regions in Alaska would experience significant economic hardships. In fact, even the poorest Alaskan communities with mixed subsistence-cash economies do quite well in regards to food. The poorest (in monetary terms) families in rural Alaska eat better than the richest families in the continental United States. The mixed subsistence-cash economy is the economic backbone of Alaska's rural regions.



SUBSISTENCE FOOD HARVESTS AT NONDALTON, SOUTHWEST ALASKA 1981

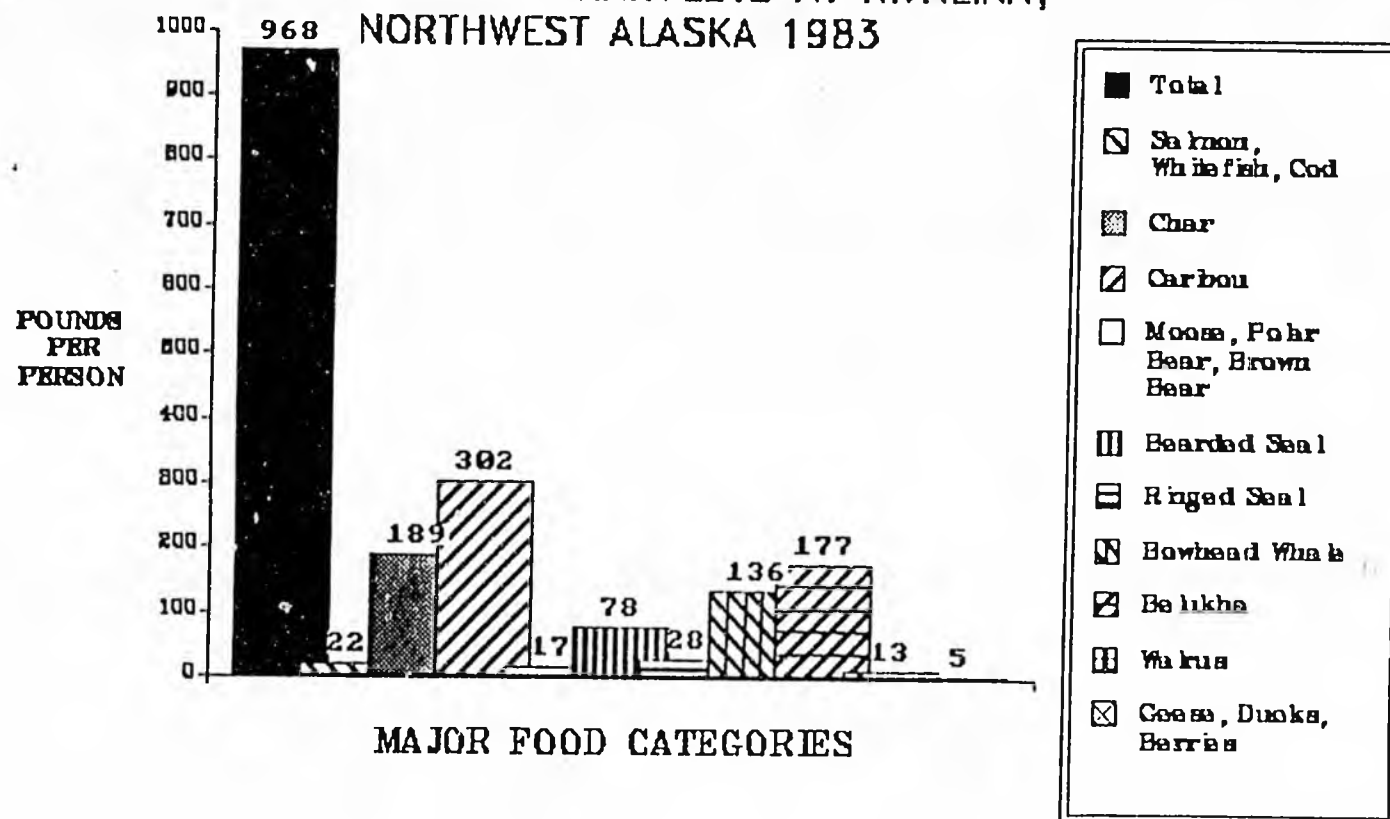


SUBSISTENCE FOOD HARVESTS AT ALAKANUK, WESTERN ALASKA 1981

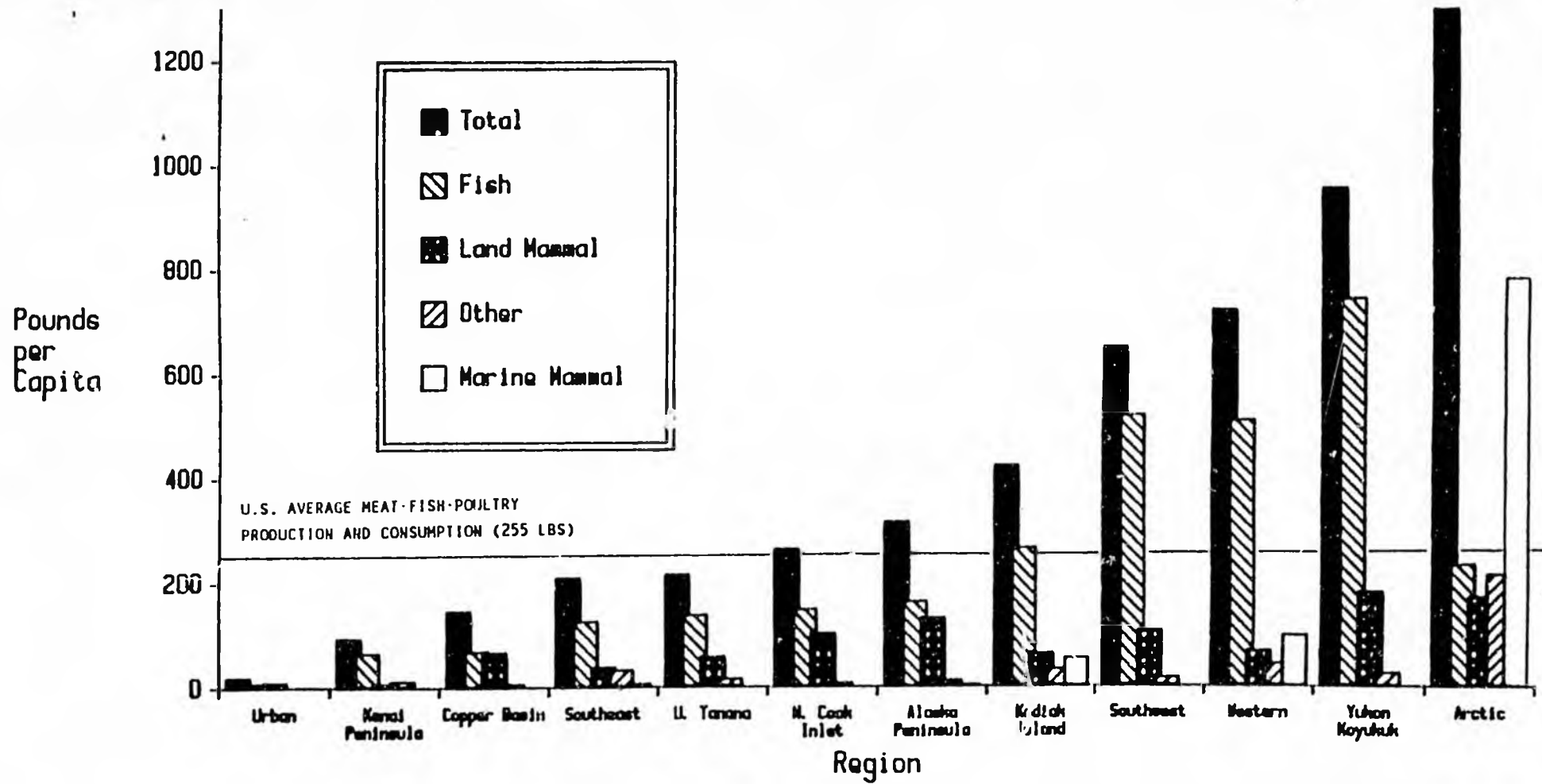


- Total
- ▨ Salmon
- ▩ Alaska Blackfish
- ▧ Whitefish, Chinook
- Cod, Pike, Burbot
- ▤ Bearded Seal
- ▥ Spotted, Ringed Seal
- ▦ Belukha
- ▧ Sea Lion, Walrus
- ▨ Moose
- ▩ Hare, Beaver, Muskrat
- ▧ Goose
- ▥ Other Birds

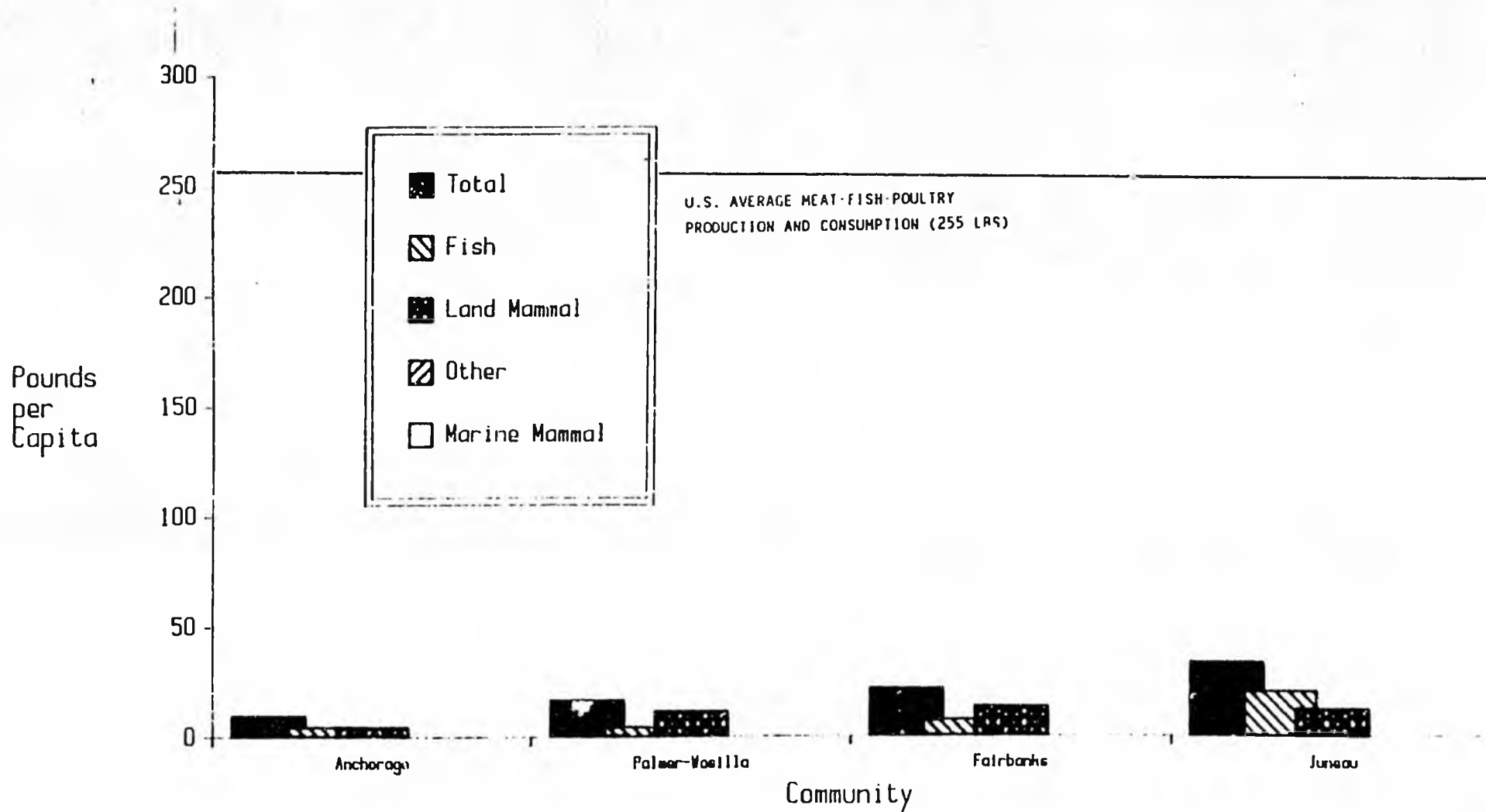
SUBSISTENCE FOOD HARVESTS AT KIVALINA, NORTHWEST ALASKA 1983



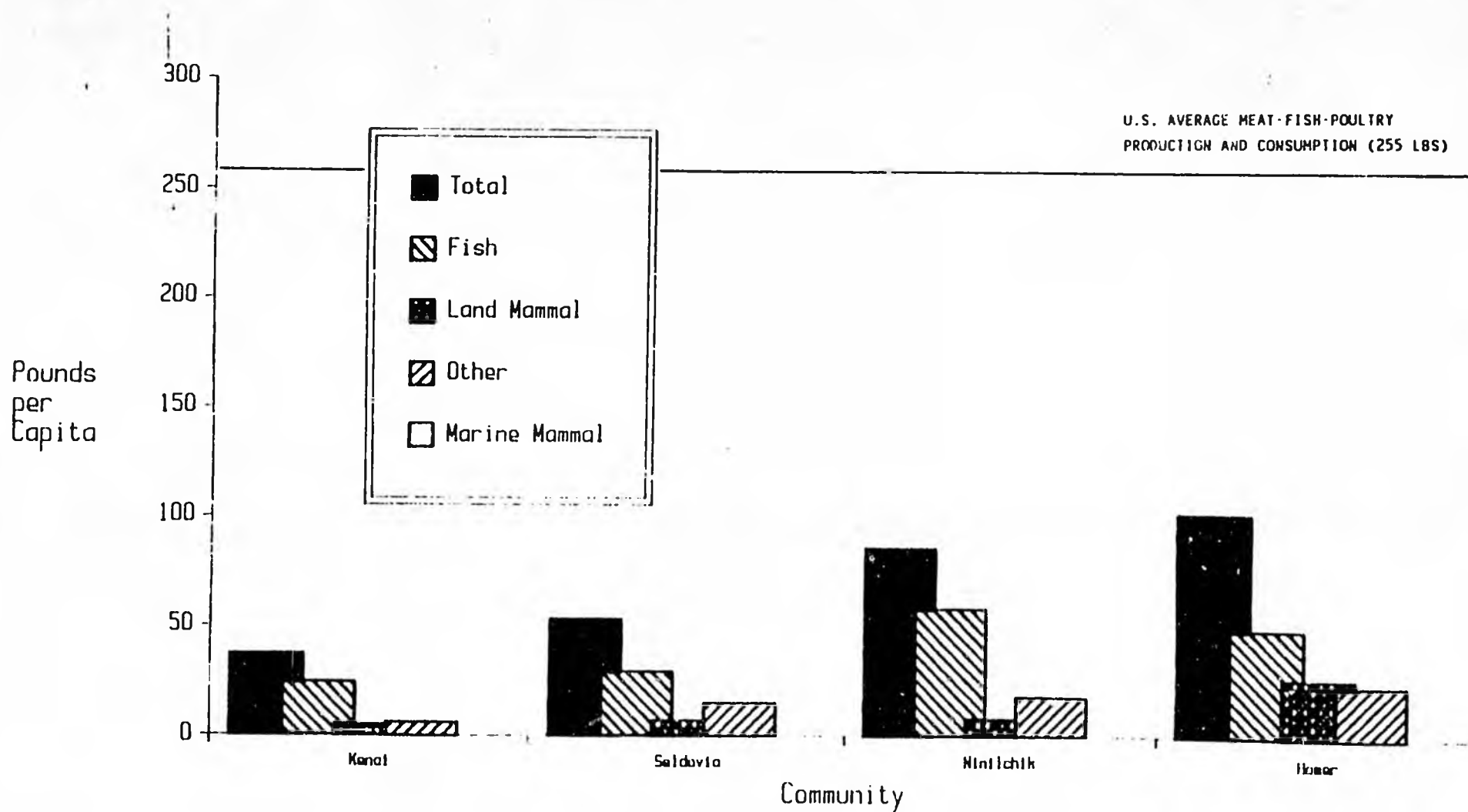
RESOURCE HARVEST BY REGION



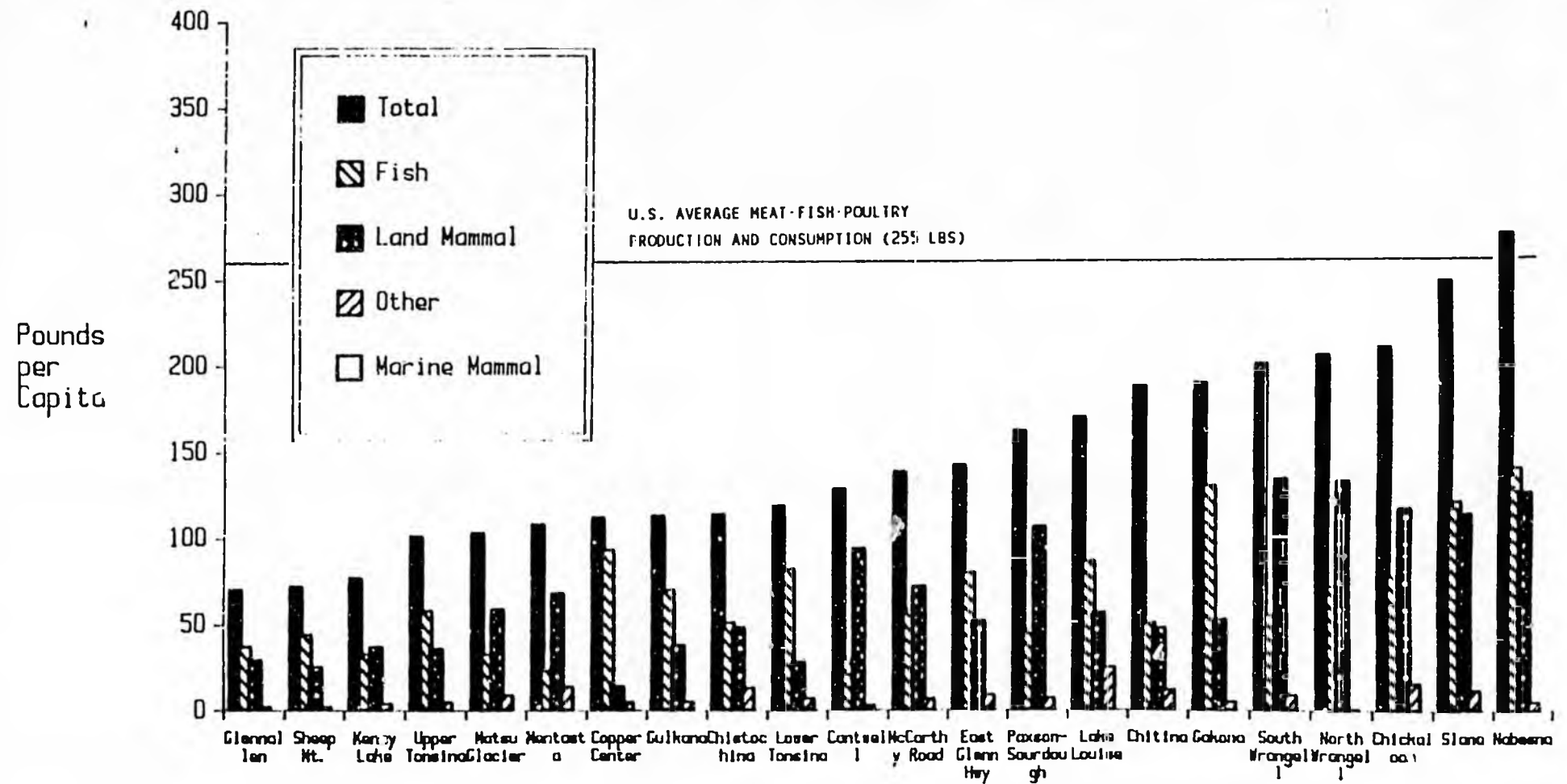
RESOURCE HARVEST, FOUR URBAN AREAS



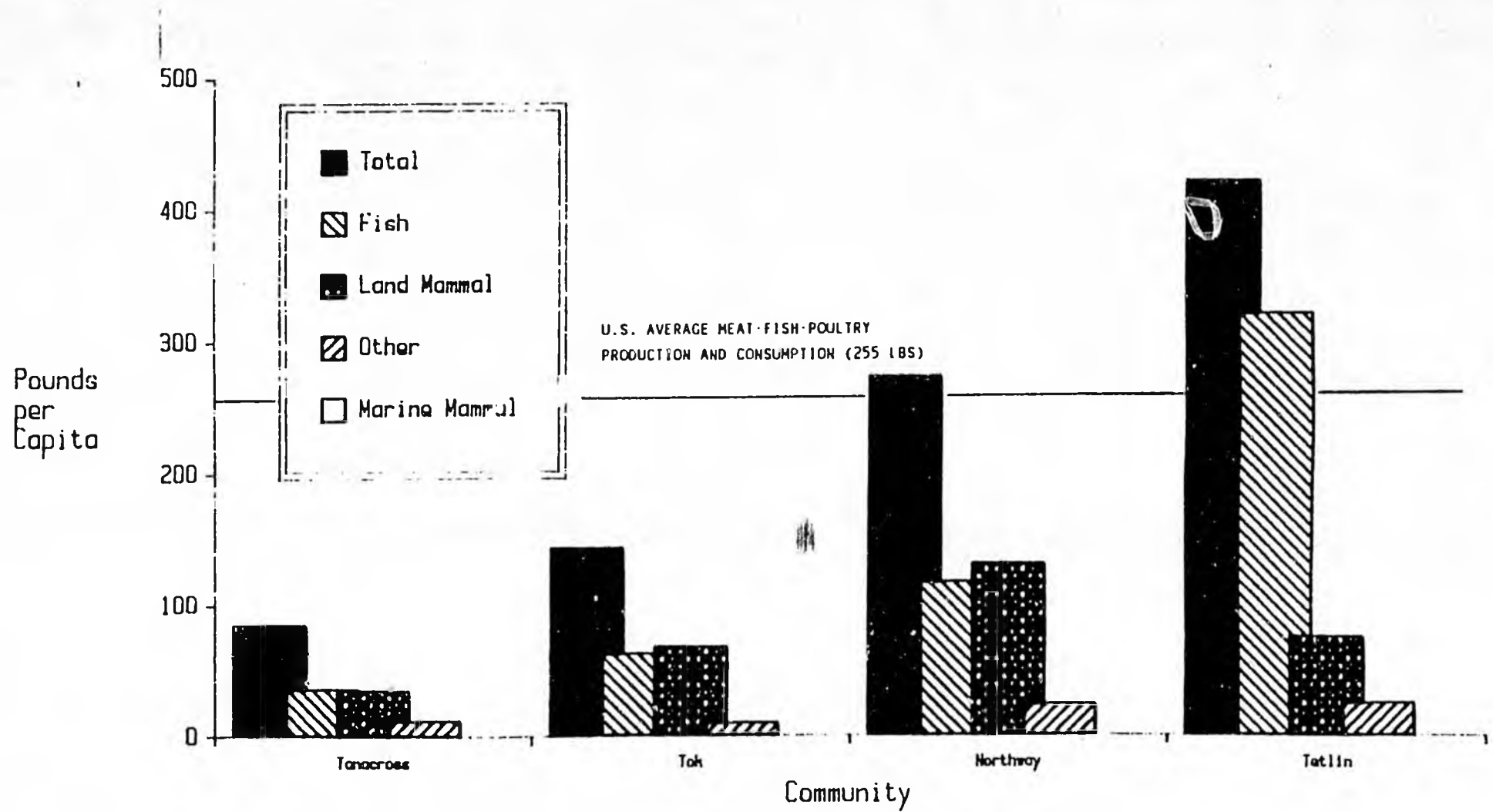
RESOURCE HARVEST, NORTH KENAI PENINSULA



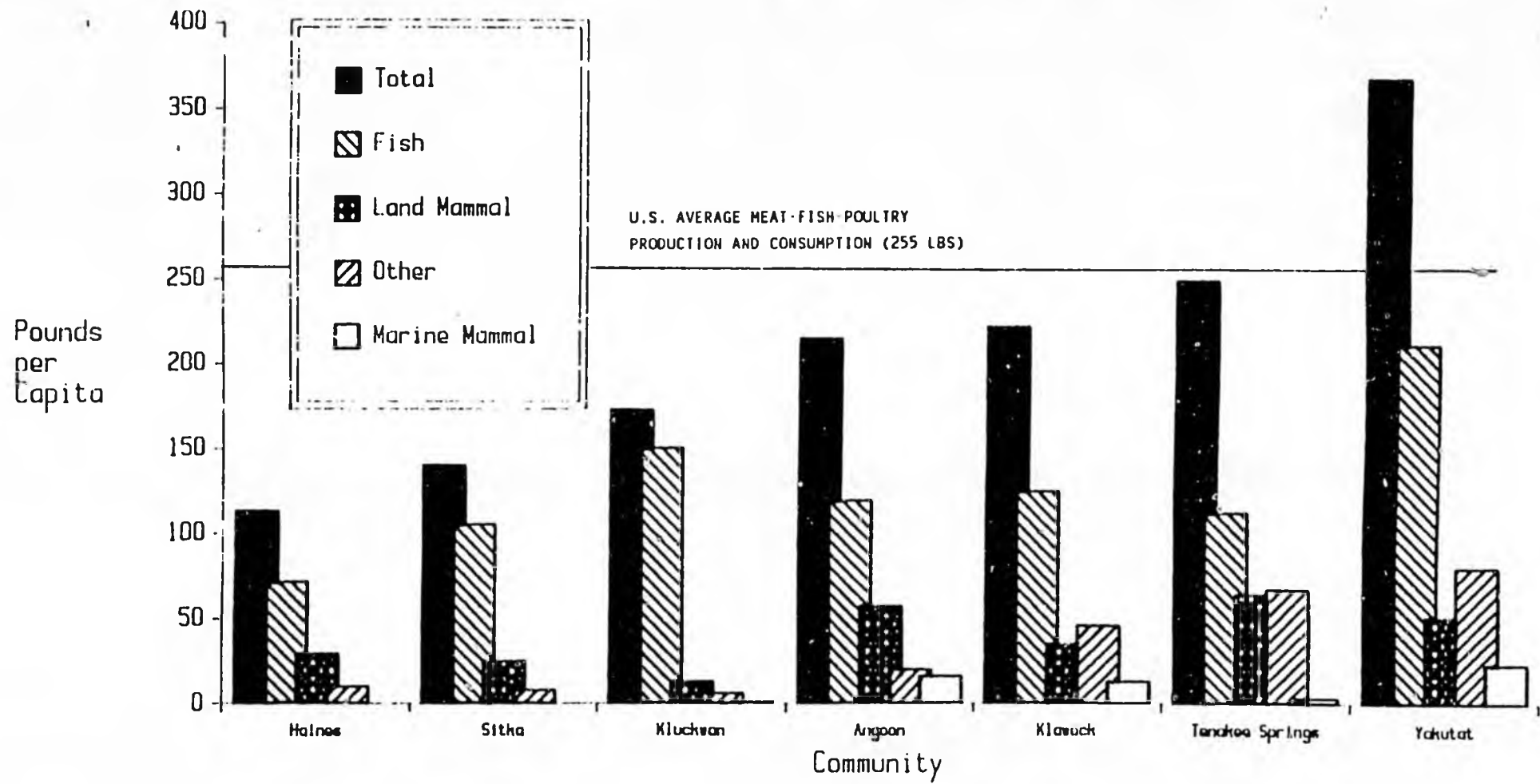
RESOURCE HARVEST, COPPER BASIN



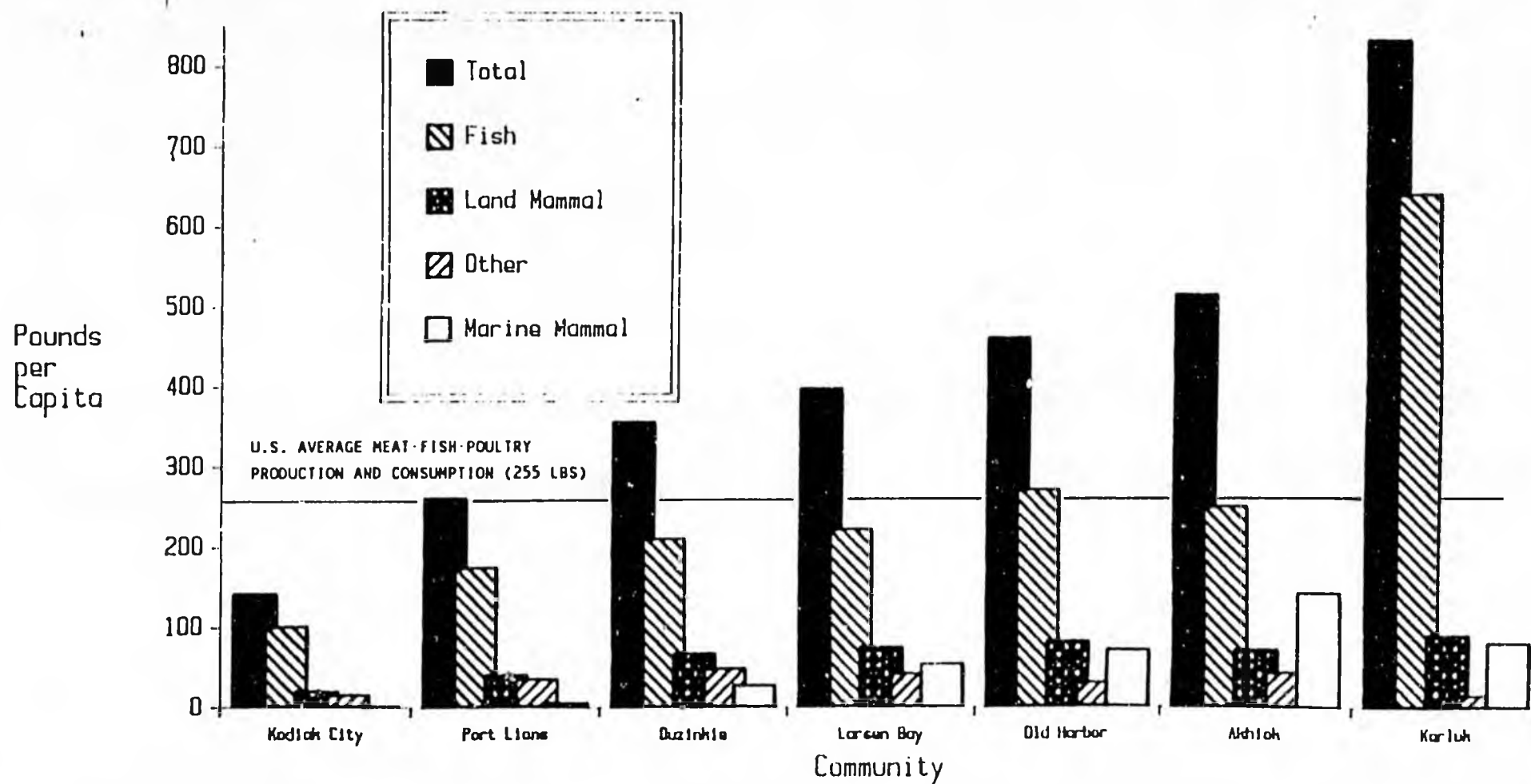
RESOURCE HARVEST, UPPER TANANA



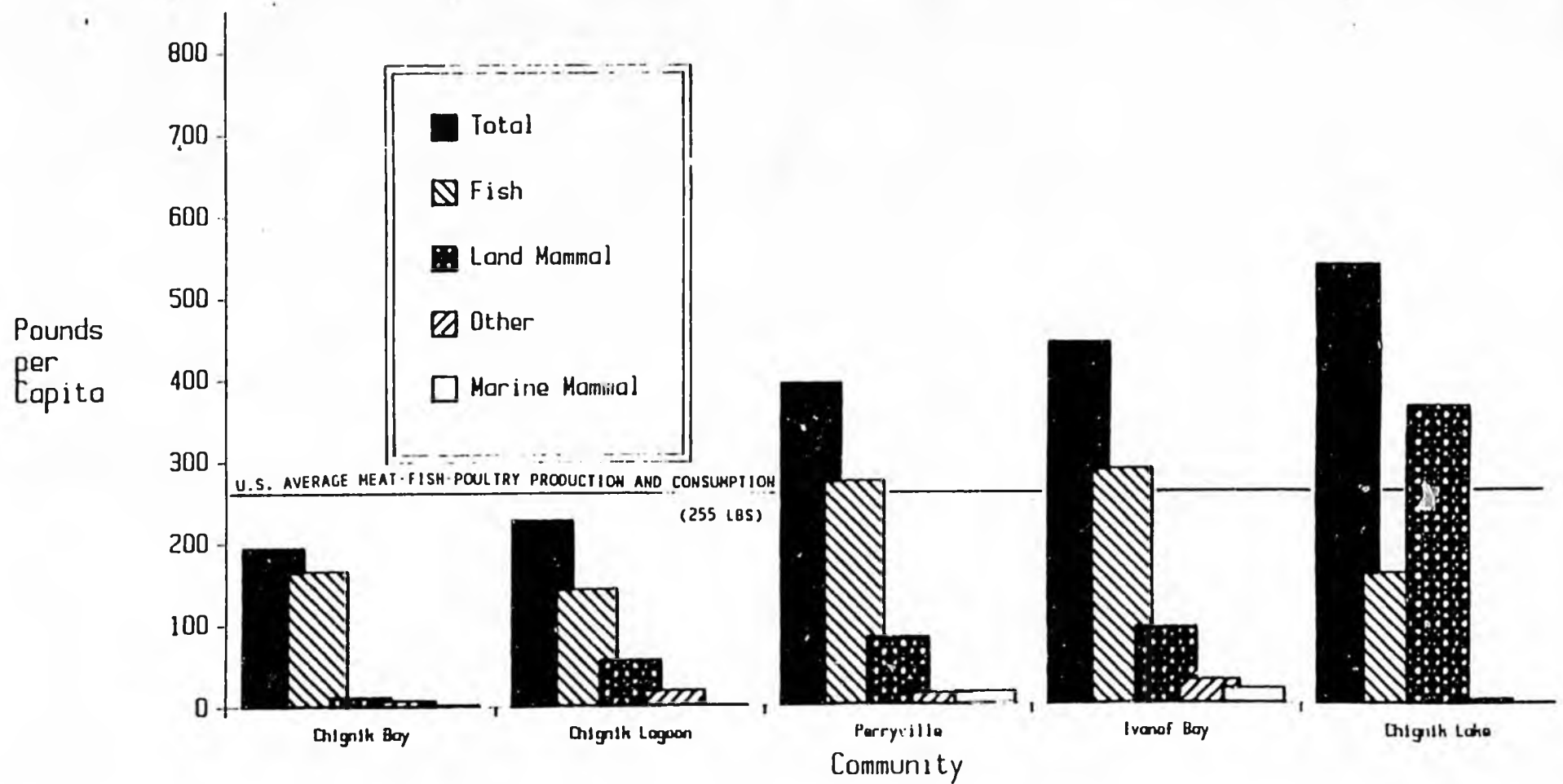
RESOURCE HARVEST, SOUTHEAST



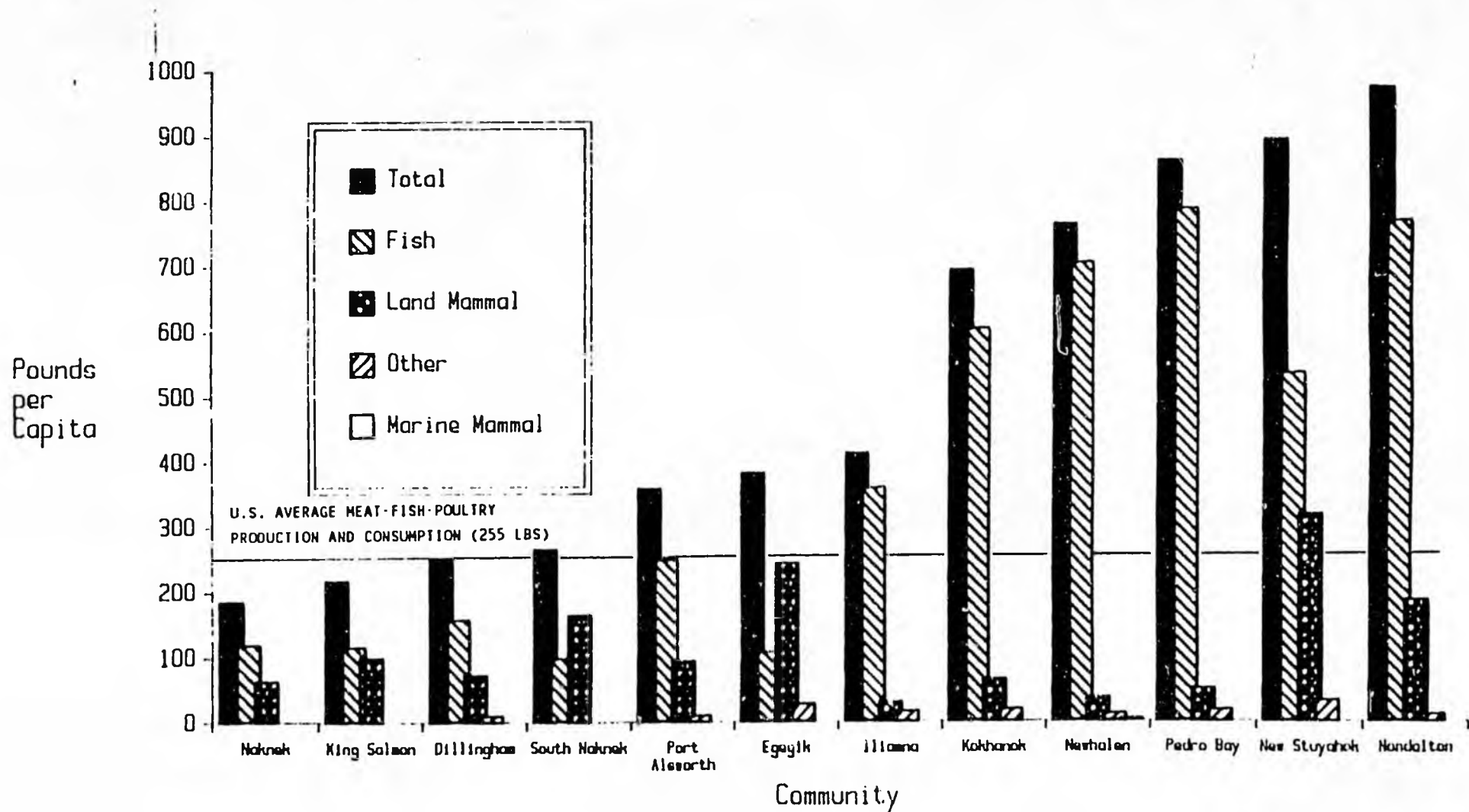
RESOURCE HARVEST, KODIAK ISLAND



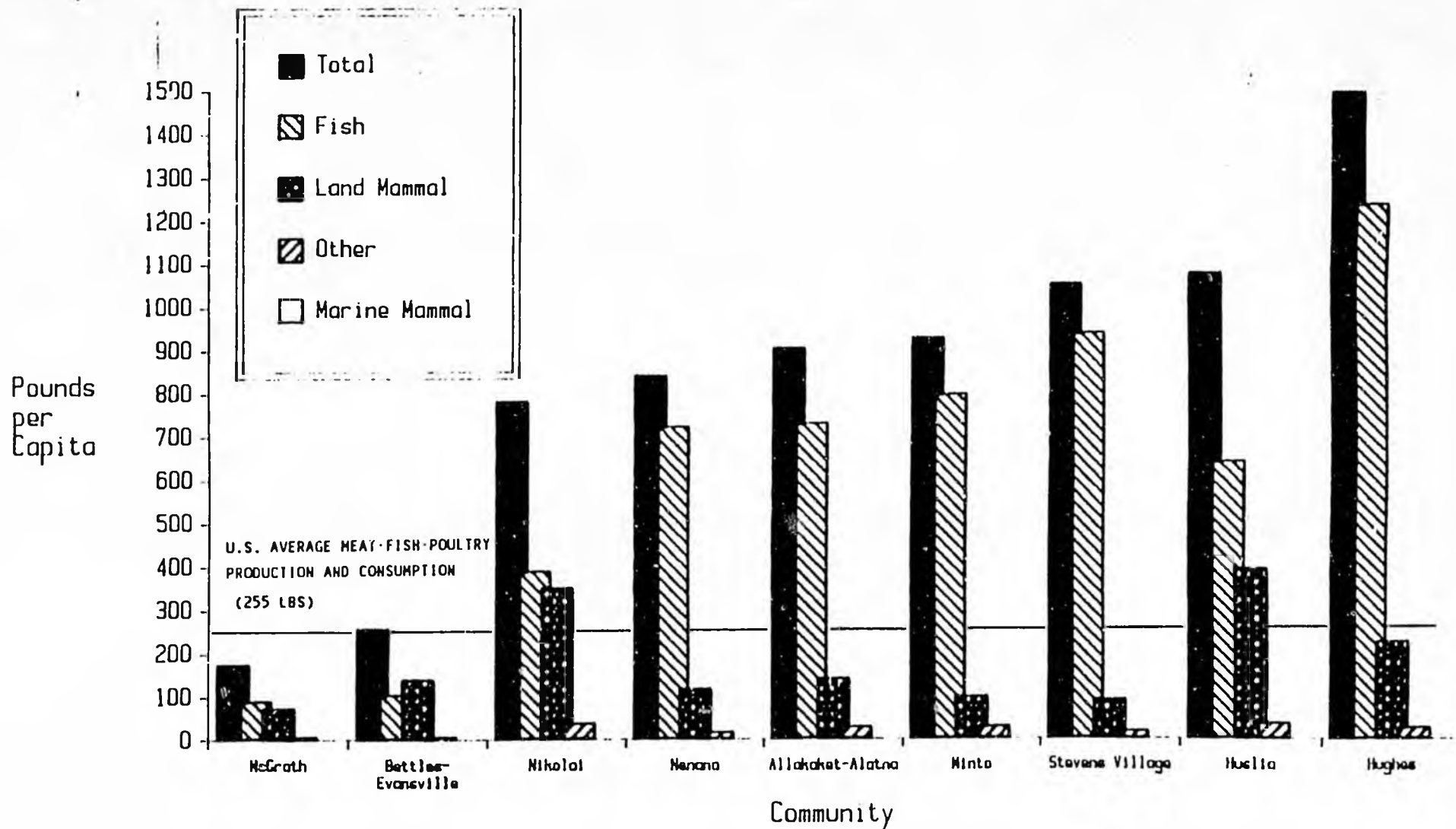
RESOURCE HARVEST, ALASKA PENINSULA



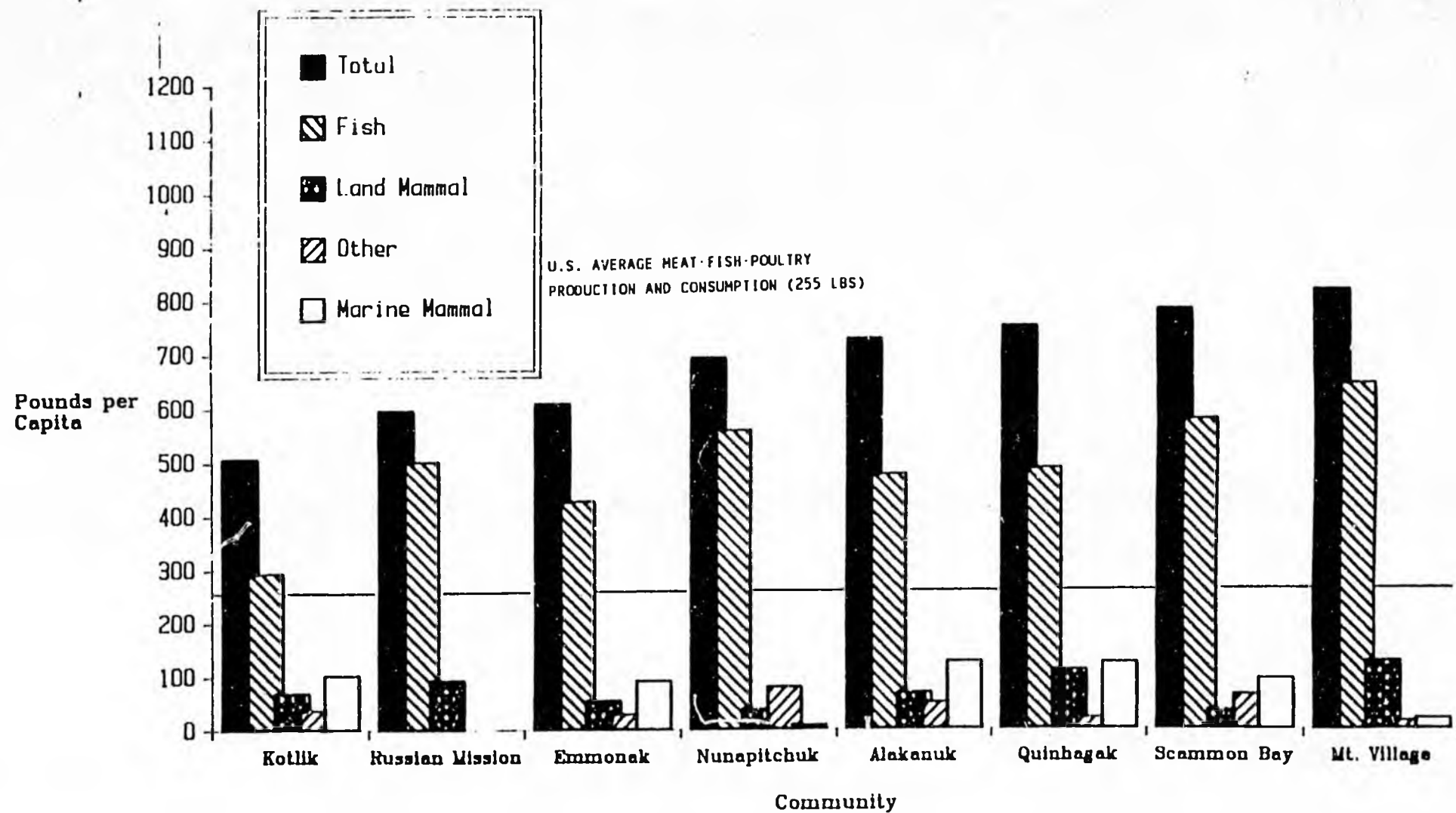
RESOURCE HARVEST, BRISTOL BAY-ILIAMNA



RESOURCE HARVEST, SUBARCTIC INTERIOR



RESOURCE HARVEST, YUKON-KUSKOKWIM DELTA



RESOURCE HARVEST, ARCTIC COAST

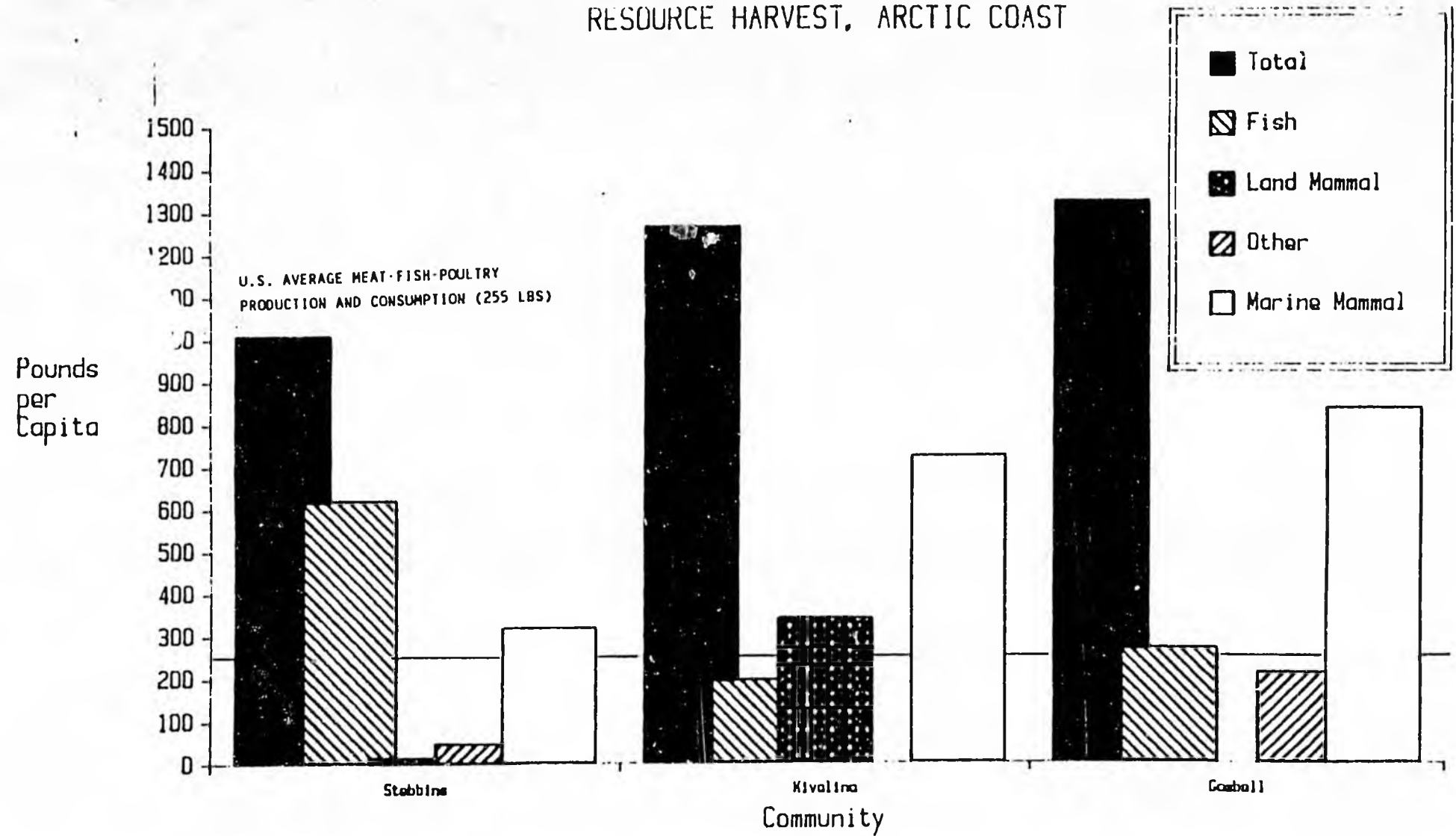


TABLE 1

SAMPLED COMMUNITIES BY
REGION AND SOURCEKenai Peninsula

Kenai	Reed 1985
Seldovia	Reed 1985
Ninilchik	Reed 1985
Homer	Reed 1985
English Bay	Stanek 1985
Port Graham	Stanek 1985

North Cook Inlet

Tyonek	Fall, Foster and Stanek 1984
Yentna	Fall, Foster and Stanek 1983

Southeast

Haines	Mills, George, Kookesh, and Sumida 1984
Kluckwan	Mills, George, Kookesh, and Sumida 1984
Sitka	Gmelch and Gmelch 1984
Yakutat	Mills and Firman 1985
Tenakee Springs	Kookesh 1985
Angoon	George 1985
Klawock	Ellanna and Sherrod 1985

Copper Basin

Cantwell	Stratton and Georgette 1984
Chickaloon	Stratton and Georgette 1984
Chistochina	Stratton and Georgette 1984
Chitina	Stratton and Georgette 1984
Copper Center	Stratton and Georgette 1984
E. Glenn Hwy	Stratton and Georgette 1984
Gakona	Stratton and Georgette 1984
Glenallen	Stratton and Georgette 1984
Gulkana	Stratton and Georgette 1984
Kenny Lake	Stratton and Georgette 1984
Lake Louise	Stratton and Georgette 1984
Lower Tonsina	Stratton and Georgette 1984
Matsu Glacier	Stratton and Georgette 1984
McCarthy	Stratton and Georgette 1984
Mentasta	Stratton and Georgette 1984
Nabesna Road	Stratton and Georgette 1984
N. Wrangell Mts	Stratton and Georgette 1984
Paxson-Sourdough	Stratton and Georgette 1984
Sheep Mt	Stratton and Georgette 1984
Slana	Stratton and Georgette 1984
S. Wrangell Mts	Stratton and Georgette 1984
Upper Tonsina	Stratton and Georgette 1984

TABLE 1 (CONTINUED)

Kodiak Island

Akhiok	Kodiak Area Native Association 1983
Karluk	Kodiak Area Native Association 1983
Kodiak City	Kodiak Area Native Association 1983
Larsen Bay	Kodiak Area Native Association 1983
Old Harbor	Kodiak Area Native Association 1983
Ouzinkie	Kodiak Area Native Association 1983
Port Lions	Kodiak Area Native Association 1983

Alaska Peninsula

Naknek	Morris 1985a
South Naknek	Morris 1985a
King Salmon	Morris 1985a
Chignik Bay	Morris 1985b
Chignik Lake	Morris 1985b
Chignik Lagoon	Morris 1985b
Perryville	Morris 1985b
Ivanof Bay	Morris 1985b
Egegik	Morris 1985b

Southwest

Nondalton	Behnke 1982; Morris 1985b
New Stuyahok	Wolfe et al. 1984
Dillingham	Schichnes and Chythook 1985
Iliamna	Morris 1985b
Kokhanok	Morris 1985b
Newhalen	Morris 1985b
Pedro Bay	Morris 1985b
Port Alsworth	Morris 1985b

Western

Alakanuk	Wolfe 1981
Emmonak	Wolfe 1981
Kotlik	Wolfe 1981
Mt. Village	Wolfe 1981
Stebbins	Wolfe 1981
Quinhagak	Wolfe et al. 1984
Nunapitchuk	Andrews 1985
Russian Mission	Pete 1985
Scammon Bay	Fienup-Riordan 1983

Arctic

Kivalina	Burch 1985
Gambell	Little and Robbins 1984

Yukon-Koyukuk

Allakaket-Alatna	Marcotte and Haynes 1984
Hughes	Marcotte and Haynes 1984
Bettles-Evans.	Marcotte and Haynes 1984
Huslia	Marcotte 1985
Stevens Village	Sumida 1986
Minto	Angell/s 1985

TABLE 1 (CONTINUED)

Upper Tanana

Tanacross	Haynes 1984
Tok	Haynes 1984
Tetlin	Halpin 1985

Urban

Anchorage	ADFG 1985; Mills 1984
Fairbanks	ADFG 1985; Mills 1984
Juneau	ADFG 1985; Mills 1984
Matsu	ADFG 1985; Mills 1984

1982 AVERAGE AND MEDIAN COMMUNITY INCOME ADJUSTED FOR COST OF LIVING DIFFERENTIAL,
 BASED ON AVERAGE TAXABLE INCOME REPORTED ON INCOME TAX RETURNS, ALASKA DEPARTMENT OF REVENUE

Region	Community	1982 Avg. Taxable Income	Median Community Income	Food Index Cost of Living	Adjusted Median Community Income
ANCHORAGE	FT RICHARDSON	12135	22709	100%	22709
	ELMENDORF AFB	13179			
	MOUNTAIN VIEW	15820			
	CHUGIAK	22309			
	GIRDWOOD	22709			
	ANCHORAGE	23590			
	EAGLE RIVER	24772			
	INDIAN MOUNTAIN CDP	25688			
	BIRD CREEK	25993			
FAIRBANKS	EIELSON AFB	12801	22698	110%	20635
	COLLEGE	21613			
	NORTH POLE	22197			
	ESTER	22698			
	FAIRBANKS	24178			
	CLEAR AFB	31467			
JUNEAU	JUNEAU	22968	23449	115%	20386
	DOUGLAS	23444			
	AUKE BAY	23752			
WILLOW-PALMER	WILLOW	19265	21879	109%	20072
	SUTTON	19408			
	PALMER	21879			
	WASILLA	23198			
	BIG LAKE	25996			
KETCHIKAN	KETCHIKAN	21693	21693	114%	19029
	WARD COVE	22667			
KENAI PENINSULA	ENGLISH BAY	9535	18524	119%	15566
	PORT GRAHAM	9535			
	SELDOVIA	15470			
	WHITTIER	15864			
	HOPE	16475			

	NINILCHIK	16766			
	ANCHOR POINT	16849			
	HOMER	17295			
	SEWARD	18524			
	CLAM GULCH	18944			
	MOOSE PASS	19732			
	STERLING	20715			
	KASLOF	21724			
	SOLDOTNA	22251			
	COOPER LANDING	22522			
	KENAI	23405			
COPPER BASIN	CHITINA	8979	15379	140%	10985
	SLANA	11645			
	TATITLEK	13504			
	GAKONA	15379			
	COPPER CENTER	17062			
	CORDOVA	19296			
	GLENALLEN	20054			
	PAXSON-SOURDOUGH	20538			
	VALDEZ	27587			
UPPER TANANA- PARKS HIGHWAY	TETLIN	4443	15334	110%	13940
	TANACROSS	6898			
	EAGLE	10576			
	CENTRAL	11656			
	DOT LAKE	12444			
	NORTHWAY	13304			
	MANLEY HOT SPRINGS	14076			
	CHICKEN	14618			
	TRAPPER CREEK	15334			
	CANTWELL	15365			
	MCKINLEY PARK	16538			
	CIRCLE	16876			
	TALKEETNA	16929			
	TOK	18334			
	NENANA	19517			
	DELTA JUNCTION	20673			
	HEALY	28907			
ALASKA PENINSULA- ALEUTIAN ISLANDS	NIKOLSKI	7171	17532	155%	1511
	AKUTAN	8834			

SOUTH NAKNEK	11747
PERRYVILLE	12688
CHIGNIK LAKE	12688
IVANOF BAY	12688
ATKA	13421
PORT HEIDEN	15830
KING COVE	15830
ST PAUL	16232
CHIGNIK BAY	17176
UNALASKA	17532
NAKNEK	17920
ST GEORGE	18257
FALSE PASS	18972
DUTCH HARBOR	19815
COLD BAY	20784
SAND POINT	22960
NELSON LAGOON	23924
CHIGNIK LAGOON	23937

SOUTHEAST	PORT ALEXANDER	5959	15902	146%	10892
	HYDER	6927			
	MEYERS CHUCK	6950			
	ELFIN COVE	7069			
	POINT BAKER	7530			
	HYDABURG	10297			
	ANGOON	11605			
	KLUKWAN	11605			
	TENAKEE SPRINGS	12129			
	PELICAN	12381			
	METLAKATLA	13060			
	HOONAH	13172			
	KAKE	15902			
	GUSTAVUS	16484			
	CRAIG	17002			
	MT EDGECUMBE	17289			
	YAKUTAT	17402			
	HAINES	17463			
	KLAWOCK	18751			
	PETERSBURG	19743			
	SKAGWAY	19809			

	SITKA	20392			
	THORNE BAY	20796			
	KASAAN	21232			
	WRANGELL	21301			
N. COOK INLET	TYONEK	11555	11555	140%	8254
	UPPER YENTNA	12101			
KODIAK ISLAND	KARLUK	7734	10453	148%	7063
	OUZINKIE	8157			
	OLD HARBOR	9234			
	LARSEN BAY	10453			
	AKHIOK	12112			
	PORT LIONS	17556			
	KODIAK CITY	19259			
ARCTIC COAST	BREVIG MISSION	6830	11682	200%	5841
	WALES	7257			
	KOYUK	7696			
	GOLOVIN	7822			
	ELIM	8175			
	SAVOONGA	8693			
	DIOMEDE	8816			
	KOLIGANEK	9034			
	TELLER	9087			
	GAMBELL	9448			
	SHISHMAREF	9855			
	WHITE MOUNTAIN	9942			
	SHAKTOOLIK	10150			
	KOBUK	10347			
	SELAWIK	10635			
	ST MICHAEL	10709			
	NOATAK	10920			
	NOORVIK	11682			
	BUCKLAND (ELEPHANT P	11747			
	KIVALINA	11839			
	SHUNGNAK	12173			
	KIANA	12302			
	DEERING	12781			
	AMBLER	13486			
	UNALAKLEET	14511			
	KOTZEBUE	18566			

ANAKTUVUK PASS	19637
NOME	19745
NUIQSUT	19866
POINT LAY	20893
WAINWRIGHT	21719
KAKTOVIK	23442
ATKASOOK/TIKIKLUK	24871
POINT HOPE	25907
BARROW	29406
FT WAINWRIGHT	12262

INTERIOR SUBARCTIC	VENETIE	5387	9389	200%	4695
	HUGHES	5687			
	KOYUKUK	5694			
	ALLAKAKET-ALATNA	6008			
	STEVENS VILLAGE	6555			
	ARCTIC VILLAGE	6658			
	NIKOLAI	6915			
	CHALKYITSIK	7253			
	HUSLIA	7356			
	MINTO	7415			
	RAMPART	7620			
	BEAVER	7856			
	KALTAG	8070			
	ANVIK	8490			
	STONY RIVER	9389			
	GRAYLING	9787			
	HOLY CROSS	10853			
	HULATO	12270			
	PEDRO BAY	12574			
	SHAGELUK	13241			
	LAKE MINCHUMINA	13528			
	TANANA	13943			
	FORT YUKON	14152			
	RUBY	16397			
	MCCRATH	16927			
	BETTLES-EVANSVILLE	17742			
	PORT ALSWORTH	20022			
	GALENA	21467			
	TAKOTNA	22285			

YUKON-KUSKOKWIM	CHUATHBALUK	5109	8892	200%	4446
DELTA	KIPNUK	5917			
	NEWTOK	6097			
	CHEFORNAK	6596			
	UPPER KALSKAG	6934			
	TUNUNAK	6942			
	NUNAPITCHUK	7133			
	KWETHLUK	7117			
	ATMAUTIAK	7199			
	GOODNEWS BAY	7531			
	QUINHAGAK	7547			
	NIGHTMUTE	7564			
	AKIAK	7606			
	CHEVAK	7746			
	PITKAS POINT	7774			
	TOKSOOK BAY	8019			
	KWIGILLINGOK	8040			
	PILOT STATION	8233			
	TUNTUTULIAK	8433			
	TULUKSAK	8612			
	AKIACHAK	8782			
	HOOPER BAY	8856			
	NAPAKIAK	8892			
	KASIGLUK	8958			
	EEK	8979			
	KONGIGANAK	9009			
	STEBBINS	9183			
	MEKORYUK	9800			
	NAPASKIAK	9822			
	SCAMMON BAY	9827			
	SLEETMUTE	9918			
	RED DEVIL	10020			
	KOTLIK	10035			
	LOWER KALSKAG	10290			
	FORTUNA LEDGE (MARSH	10427			
	PLATINUM	11626			
	ST MARYS	11973			
	ALAKANUK	12195			
	EMMONAK	12975			

	RUSSIAN MISSION	13217			
	MOUNTAIN VILLAGE	13362			
	CROOKED CREEK	14450			
	SHELDON POINT	15032			
	ANIAK	16169			
	BETHEL	18796			
BRISTOL BAY-ILIAMNA	PORTAGE CREEK	4559	8644	200%	4322
	NEW STUYAHOK	5882			
	HANOKOTAK	6435			
	CLARK'S POINT	7540			
	TOGIAK	7579			
	EKWOK	7837			
	NONDALTON	8560			
	NEWHALEN	8644			
	KOKHANOK	8644			
	LEVELOCK	9413			
	EGEGIK	10780			
	ALEKNAGIK	12118			
	ILIAMNA	13453			
	DILLINGHAM	16213			
	PILOT POINT	17865			
	KING SALMON	22032			

TABLE A
COST OF FOOD IN ALASKA:
CONSUMER PRICE INDEX

URBAN AREAS

Anchorage	100
Fairbanks	110
Juneau	115
Ketchikan	114
Palmer-Wasilla	109

NORTH KENAI PENINSULA

Homer	127
Kenai-Soldotna	110

SOUTHEAST

Hoonah	185
Petersburg	128
Sitka	114
Wrangell	119
Yakutat	182

COPPER BASIN-PRINCE WILLIAM SOUND

Cordova	164
Glenallen	140
Valdez	122

UPPER TANANA

Delta Junction	138
Northway	163
Tok	145

KODIAK ISLAND

Kodiak City	135
Larsen Bay	160

INTERIOR SUBARCTIC

Fort Yukon	226
McGrath	179
Tanana	248

TABLE A CONTINUED

ALASKA PENINSULA-ALEUTIAN ISLANDS

Dutch Harbor	155

BRISTOL BAY-ILIAMNA

Dillingham	172
King Salmon	209
Naknek	206

YUKON-KUSKOKWIM DELTA

Bethel	166

ARCTIC COAST

Barrow	195
Kaktovik	228
Kotzebue	176
Nome	181
Unalakleet	200

Source: These numbers represent the average of quarterly consumer price index information from June 1981 through December 1985 collected by the Cooperative Extension Service, University of Alaska and U.S. Department of Agriculture. Based on the cost of food at home for a week. Anchorage is the base adjusted at 100.



Fish & Game BULLETIN

Volume VIII, Nos. 5 & 6

May/June, 1985

ADF&G Issues Subsistence Regulations

Since the Legislature has not yet enacted adequate personal use and subsistence fishing and hunting legislation, the Alaska Department of Fish and Game, under instructions from the Board of Fisheries, has issued emergency fishing regulations for the 1985 season. During its March meeting, the board instructed ADF&G Commissioner Don Collinsworth to use his limited emergency authority to make the necessary changes in the regulations if the Legislature did not enact personal use and subsistence legislation to correct deficiencies with the current law as identified by the Alaska Supreme Court in its *Madison V. ADF&G* decision.

Under the emergency regulations, the Naknek, Iliamna drainage, Port Graham, English Bay, and Angoon subsistence fisheries will be open to all residents.

Cook Inlet personal use coho salmon fisheries will be subsistence fisheries in 1985. In Cook Inlet, the Eastside Beach personal use coho fisheries, largely composed of fish bound for the Kenai River, will become subsistence fisheries. The 1984 harvest level of 2,500 to 3,500 fish will be increased to 13,000, and the fishery will open on August 17 instead of mid-September. The harvest levels for all other personal use and subsistence fisheries will remain as published in current regulations.

The Copper River dip net and fishwheel fisheries will be subsistence fisheries open to all Alaskans. Alaskans may apply for either a dip net permit or a fishwheel permit, but not both.

As emergency regulatory changes, these regulations are for the 1985 season only. Subsistence permits are available at regional offices and at field stations in local areas. For additional information, contact your local Fish and Game offices.

Western Red King Crab Population Declines

Red king crab harvests from the western Gulf of Alaska, Aleutian Islands, and Bristol Bay areas have plummeted from 178 million pounds in 1980 to only 2.2 million pounds in 1983, causing concern on the part of both biologists and fishermen. In 1983 and 1984, additional

declines forced closure of several management areas to red king crab fishing.

It appears that young crab are not entering the fishery fast enough to replace adult males being harvested, but commercial fishing alone cannot account for the degree of decline observed. The parent year spawning stocks that gave rise to the present low abundance levels were reasonably healthy, pointing to some recent natural phenomena which may have affected crab survival over a vast geographic area.

Biologists measure abundance of legal males, undersized males, and females by using annual surveys, then make general predictions based on their findings. In general, stocks remain severely depressed with little hope for any short-term (two to three year) improvement. Bristol Bay is the only area showing some increase in abundance and attendant prospects for larger commercial harvests during the 1985 to 1987 period.

ADF&G Biologist to Study Yellowstone Grizzlies

John Schoen, a Juneau-based biologist, has been appointed by the Wildlife Society to serve on the Grizzly Bear Management Ad Hoc Technical Advisory Committee. This committee will prepare a grizzly bear management technical report dealing with management in general, but focusing on the Yellowstone National Park area. The ad hoc committee will also draft a position paper for submission to this fall's Wildlife Society meeting.

The Wildlife Society, an internationally recognized professional organization of wildlife biologists, selected three areas to study this year. The other areas being studied are use of non-toxic shot, and the relationship between wildlife and old growth forest. Biologists are chosen to serve on the committees based on their expertise and objectivity.

Schoen joined the Alaska Department of Fish and Game in 1977. He is best known for research done between 1978 and 1984 on the habitat requirements of Sitka blacktail deer. Schoen began a study of grizzly bears in northern southeast Alaska in 1981, currently heading a team of biologists which has marked or collared 35 bears in areas with pending mineral or timber development. The study is designed to assess the impacts of development on wild bears.

Orca Watch Underway

Watching for orca whales in the waters of Southeast may be incidental to an afternoon's fishing, but it can provide important information for scientists at the University of Alaska-Juneau. Dr. Lyle Hubbard, associate professor of biology and anthropology with UAJ's School of Fisheries and Science, is launching an orca watch in Southeast. The Alaska watch will tie in with that of a group of scientists from the Moclips Cetological Society of Friday Harbor, based in Puget Sound, Washington, who have been conducting killer whale research in Puget Sound and British Columbia for several years.

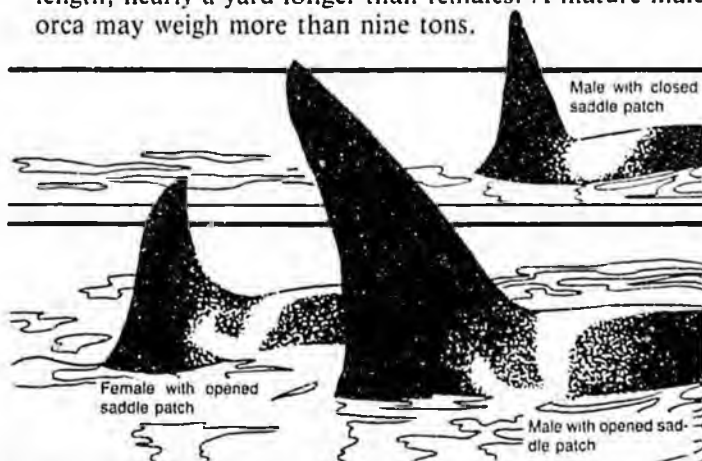
According to Hubbard, the whale watch is partially a response to Sea World's effort to capture 100 killer whales and retain ten for their show. Hubbard said that part of the problem with the Sea World capture was that there was so little information on the killer whale in Southeast.

"There was so little useful information on the killer. We don't know how many there are; we don't know about how man influences their behavior--or anything else about them. It didn't seem very smart to approve the request before we conducted a project like this," said Hubbard.

Last year, Governor Sheffield denied a request by Sea World to capture whales in Alaska waters. The state later joined a Sierra Club lawsuit against the National Marine Fisheries Service which ended with a federal judge revoking Sea World's federal permit. The Governor cited the lack of information on orca whales in his denial of the capture request.

Hubbard said the whale watch link with the Moclips scientists should help provide useful information on some of the patterns of migration, feeding, and other behavior including growth and development of individual orcas.

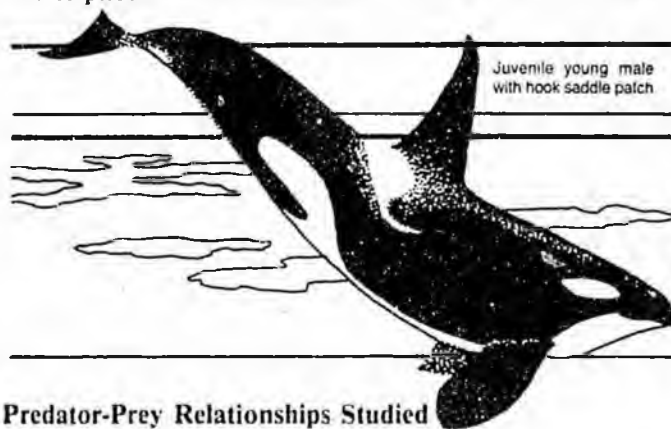
"We're asking people to note the day and time of any sighting, the exact location, direction of travel, and the number of whales in the pod. It would also be very helpful if they could identify the number of males, females, and juveniles," said Hubbard. Males have a taller dorsal fin than females, while females' dorsal fins are more curved. The calves have much shorter fins. Males average 23 feet in length, nearly a yard longer than females. A mature male orca may weigh more than nine tons.



"We would really like photos of the dorsal fin and saddle patch just behind the fin," said Hubbard. "We want

to identify individual whales and determine whether they travel up and down the coast in some sort of migrating pattern. If photos are unavailable," he added, "drawing of the saddle markings would help." The markings are peculiar to individual whales, much as fingerprints are to humans. Orca's saddle patches are open, closed, or hooked. While scientists would prefer clear photos, they caution against harassing the animals.

The information gathered should be given to Hubbard at the School of Fisheries and Science, 11120 Glacier Highway in Juneau. He will reimburse contributors for usable photos. For additional information call 789-4441.



Predator-Prey Relationships Studied

Predation on Tanner crab by Pacific cod and halibut in Alaska waters has been well-documented through the combined studies of the department and other fishery management agencies. Cod and halibut sampled during the summer and fall in the Gulf of Alaska near Tanner crab habitat commonly have from a few to several dozen dime-to quarter-size juvenile Tanner crabs in their stomachs. While stomach samples from cod and halibut obtained during the same time period have provided little evidence that cod and halibut are significant predators on king crab, cod fishermen in the Gulf of Alaska have reported red king crabs in cod stomachs during the late winter and early spring. These reports prompted biologists to research their observations that cod apparently prey heavily on red king crab during the softshell (molting) period.

In the spring of 1984 and 1985, department biologists conducted small-scale trawling studies in Kodiak Island waters to collect biological data on red king crab and simultaneously investigate predation by cod and halibut. Observations in the spring of 1984 confirmed that cod will prey on softshell crabs when both are in the same area. Up to 11 percent of the cod stomachs examined contained newly molted crabs or parts of several different crabs. Observations on halibut were too few to be conclusive, but one 130-pound halibut did contain one whole female adult red king crab and parts of three others.

Joint Scientific Venture a Success

Four United States scientists, including two ADF&G biologists, spent six weeks during March and April on a joint Soviet/American marine mammal research cruise in the Bering Sea. Data were gathered on the distribution, abundance,

and natural history of several species of marine mammals, including walrus, sea lions, and spotted, ringed, ribbon, and bearded seals. Biologists looked at the stomach contents of more than sixty walrus to learn more about their diet. They found that walrus in the American waters of the central Bering Sea were eating snails and Tanner crabs. Those animals living along the Soviet Koryak Coast were eating mainly large clams. The scientists also collected blood serum and cultures from walrus and seals and analyzed them for a variety of diseases.

The research was conducted aboard the Soviet commercial sealing vessel *Zakharova*, primarily along the Soviet Koryak Coast and in Karaginski Bay. From February to August, the *Zakharova* is used to harvest walrus and seals, the meat of which is sold to Soviet fur farms. The remainder of the year, the ship travels all over the world as a fishing vessel. The scientists traveled to and from the ship out of Dutch Harbor aboard the Soviet supertrawler *Mys Yudina*.

Spring's Arrival Late Across the State

Spring has come late to much of Alaska this year, and the annual return of geese to Creamer's Fields in Fairbanks is off-schedule as well. Although two Canada geese were spotted flying overhead on April 16, no significant number actually came to stay until April 25, when ten to twenty arrived. By May 1, there were a few hundred geese, ducks, and cranes in the fields, a number well below averages experienced in previous years.

In a big year, as many as 2,000 geese will stop to rest at Creamer's at one time. The past two years have been good for geese at Creamer's, with large numbers arriving between April 16 and 18. In other years, however, the total number has not exceeded 100. A late break-up, such as this year's, can cause serious problems for the geese. When traditional rest stops remain covered with snow and ice, the birds must expend far more energy than usual searching for food and trying to stay warm. Breeding could also be delayed because of the lack of open water.

Many species of migratory birds stop to rest at Creamer's Waterfowl Refuge each spring, including mallard and pintail ducks, sandhill cranes, and swans. Geese, ducks, and swans generally remain until the end of May when they move out to nesting grounds on the Yukon Flats. Sandhill cranes can usually be seen on the refuge throughout most of the summer.

Peregrine Falcon Recovery Program a Success

While the New York State/Alaska bald eagle transfer program has achieved positive results, the peregrine falcon project has been the most dramatic success of all national endangered species programs. The effort extends from the Atlantic to the Pacific oceans, and beyond. More than half of the state wildlife agencies and all federal wildlife and land management agencies have participated. The private sector has been active, including universities, foundations, conservation organizations, corporations, and tens of thousands of individuals. The total effort has been a model endangered species recovery program on which others have been fashion-

ed, including the California Condor program.

Before the release of captive-raised peregrines began, the falcon was completely lost from the eastern United States, an area where a population of at least 350 breeding pairs were believed to have resided. In the western United States, the falcon was totally lost from some areas and greatly reduced elsewhere. When the release effort began, only about ten percent of the original population probably still existed, and limited reproduction was occurring. By 1984, 27 breeding pairs were located in the eastern states, and more than 100 pairs should exist by 1988.

DDT levels have been blamed for much of the population decline peregrine falcons have experienced. These levels have now dropped, and the peregrines in the eastern states are laying eggs with shells of normal thickness. In the Rocky Mountain states, the peregrine numbers are increasing despite some continual DDT contamination and shell thinning. In Colorado, for example, the population has risen from four to thirteen egg-laying pairs. On the Pacific Coast, returning falcons are breeding in several areas, and the total population is rising. DDT levels remain high in many laying falcons, and increase in populations appears to be a response to releases rather than to a cleaner environment.

The department has a representative serving on the Peregrine Falcon Recovery Team, and he reports that Peregrine populations along the Alaska coast, on the North Slope of Alaska, and in the Aleutians remain healthy. Peregrine falcon populations are found throughout Alaska where habitat is suitable.

In other Pacific Coast states, California has made the strongest effort toward recovery of the peregrine falcon, and 120 breeding pairs per state are hoped for by 1995. Release will also be intensified in Nevada where five pairs are planned by 1995; at this point, release in the Pacific Coast states should no longer be needed.

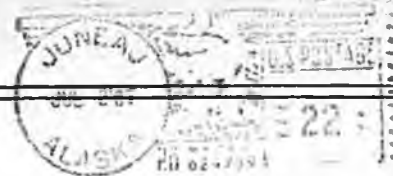
No Recovery In Sight for Some Shrimp Stocks

Most shrimp populations in the western Gulf of Alaska have declined severely during the past decade, despite efforts of department biologists to curtail the drop. In the late 1960's and 1970's, abundant shrimp stocks were rapidly exploited, with combined commercial harvests from the Kodiak and Alaska Peninsula areas peaking at 119 million pounds in 1976.

By the late 1970's, a dramatic decline in population abundance was evident. Commercial fishing was systematically cut back as stocks declined. In many cases, no fishing has been allowed on some stocks since the late 1970's.

In general, stocks have not responded to these protections, and most have continued to decline to their present, severely depressed levels. The most likely explanation for the continuing decline is that a combination of commercial fishing and high predator fish abundance have driven stocks down. Biologists speculate that the continued high levels of valuable commercial groundfish species such as Pacific cod and walleye pollock which prey on shrimp are responsible for keeping the shrimp levels low. When shrimp predators decline significantly, shrimp stocks are likely to recover.

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Board of Game Meets in Emergency Session

The Board of Game was called into emergency session on June 10 to address subsistence issues raised by the recent *Madison V. ADF&G* and *State V. Eluska* court decisions. The board was still meeting as this issue of the bulletin went to press. In the Madison decision, the Alaska Supreme Court determined that all Alaska residents qualify for subsistence privileges granted in the 1978 subsistence law. In situations where there are not enough animals available to provide for harvest by all residents who wish to hunt them and still protect the sustained yield of the resource, non-subsistence uses must be eliminated prior to any significant impairment of subsistence uses. This situation is called "Tier I."

If harvest of a game population must be further restricted, that population is said to be at "Tier II." Access to Tier II animals by hunters must be provided through a system of ranking which takes into account the hunter's customary and direct dependence on the resource as a mainstay of one's livelihood, local residency, and availability of alternative resources.

During this emergency meeting, the Board of Game has created a point system by which all Alaskans who wish to participate in Tier II hunts will be ranked. The department is rushing to complete the necessary forms and information sheets, however opening dates for some fall hunts may be affected by the need to rank all residents who wish to participate in those hunts. Some Alaskans may be eliminated from certain hunts by Tier II scoring even though they previously could participate in limited registration hunts or received opportunities through permit drawings.

The remainder of this emergency meeting is being taken up with the development of a set of subsistence regulations for fall hunts, statewide. The Attorney General and the Chief Prosecutor have said that the board must have subsistence regulations in place before violators of hunting regulations can be prosecuted. Further information on the board's decisions will be forthcoming.

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PART #30 - FEDERAL SUBSISTENCE RESOURCE MANAGEMENT PROGRAM

Subpart A - General Provisions

30.1 Purpose

The regulations in this part are intended to define the operation of the Federal Subsistence Resource Management Program as established by the Secretary of the Interior to manage subsistence activities within the State of Alaska.

30.2 Authority

The regulations in this part are issued pursuant to the Secretary of the Interior's authority in Section 814 of the Alaska National Interest Lands Conservation Act (94 Stat. 2371, Pub. L. 96-487) to prescribe such regulations as are necessary and appropriate to carry out his responsibilities to provide for subsistence uses by rural Alaska residents of wild, renewable resources of public lands.

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30.3 Applicability and scope

(a) The regulations in this part apply to all actions taken by Federal agencies, including agencies other than those within the Department of the Interior, with regard to managing subsistence activities.

(b) As provided in Title VIII of ANILCA, the management of subsistence activities shall be carried out by the State, as long as the program operated by the State is in compliance with ANILCA. Active management of subsistence activities by Federal agencies shall not take place unless the Secretary determines that:

(1) The State program is not in compliance with ANILCA; and

(2) The proper discharge of the Secretary's responsibilities under ANILCA requires that Federal agencies assume control over subsistence activities.

30.4 Definitions

The following definitions shall apply to all regulations contained in this part:

(a) The term "subsistence uses" shall mean the customary and traditional

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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. For the purposes of this paragraph;

(1) The term "rual Alaska residents" shall mean those persons domiciled in a community or area of the State of Alaska in which the customary and traditional use of fish, wildlife, or other renewable resources for personal or family consumption is a principal characteristic of the economy of the community or area.

(2) The term "family" shall mean all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis;

(3) The term "barter" shall mean the exchange of fish or wildlife or their parts taken for subsistence uses:

(1) For other fish, wildlife or their parts; or

(ii) For other food or for nonedible items other than money, if the exchange is of a limited and noncommercial nature.

(b) The term "subsistence activities": shall mean the taking, for subsistence uses as defined in paragraph (a) of this section, of fish or

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wildlife resources of:

(1) Federally owned lands; and

(2) Lands not federally owned, but within the exterior boundaries of a conservation system unit, national recreation area, national conservation area, new national forest, or forest addition, as established by ANILCA.

(c) The term "Program" shall mean the Federal Subsistence Resource Management Program, as described in this part and established by the Secretary of the Interior to manage the taking of fish and wildlife resources of the public lands for subsistence uses.

(d) The term "ANILCA" shall mean the Alaska National Interest Lands Conservation Act (94 Stat. 2371, Pub. L. 96-487).

(e) The term "Federal Board" shall mean the Federal Subsistence Resource Management Board, as established by this part.

(f) The term "park monument" shall mean those national monuments under the management of the National Park Service.

(g) The term "fish and wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk,

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crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or part thereof.

(h) The terms "take" or "taking", as used with respect to fish or wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

(i) The term "Secretary" shall mean the Secretary of the Interior or any official designated to act for the Secretary in carrying out his responsibilities under ANILCA.

30.5 Policy

(a) Consistent with sound management principles and the conservation of healthy populations of fish and wildlife, the utilization of the public lands in Alaska is to cause the least adverse impact possible on rural Alaska residents who depend upon subsistence uses of the resources of such lands.

(b) Consistent with the management of fish and wildlife in accordance with recognized scientific principles, rural Alaska residents engaged in a subsistence way of life shall be provided an opportunity to do so, pursuant to applicable State and Federal law.

(c) Nonwasteful subsistence uses of fish, wildlife, and other wild renewable resources by rural Alaska residents shall be the priority

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consumptive uses of such resources over other consumptive uses permitted on public lands pursuant to applicable State and Federal law.

(d) Whenever it is necessary to restrict subsistence activities in order to assure the continued viability of fish or wildlife populations, priority for subsistence uses shall be implemented through appropriate limitations based on the following criteria:

(1) Customary and direct dependence upon the resource as the mainstay of livelihood;

(2) Local residency; and

(3) Availability of alternative resources.

(e) Except as otherwise provided by Federal law, Federal agencies responsible for managing subsistence activities and for protecting the continued viability of all wild, renewable resources in Alaska, shall cooperate with adjacent landowners and land managers, including Native Corporations, appropriate State and Federal agencies, and other nations.

Subpart B - Program Structure

30.10 Program diagram.

The figure printed below is a diagrammatic representation of the structure of the Program, showing its component parts and the flow of information, recommendations, and decisions.

(Diagram to be inserted at this point)

30.11 Use of State entities.

The Program shall utilize the existing State system of local fish and game advisory committees, regional fish and game councils, the Board of Fisheries, and the Board of Game. When appropriate, these State entities will coordinate with the individual Federal agencies responsible for the management of subsistence activities and with the Federal Board.

30.12 Local fish and game advisory committees.

(a) The regulations in this section shall define the establishment,

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responsibilities, and functions of local fish and game advisory committees with respect to their position in the Program. The committees may also perform functions not relating to the Program, as provided by State laws and regulations.

(b) Local fish and game advisory committees shall be established and administered in accordance with applicable State laws and regulations. In the event that the Secretary determine that, in order to fulfill the requirements of Section 805 of ANILCA, advisory committees in addition to those established by the State are required, the Secretary shall establish and administer such necessary committees in the same manner as prescribed in State laws and regulations.

(c) A local fish and game advisory committee may perform the following:

(1) Develop regulatory proposals for submission to the appropriate Board of Fisheries or Game.

(2) Evaluate regulatory proposals submitted to it and make recommendations to the appropriate Board.

(3) Provide a local forum for fish and wildlife conservation and use.

(4) Advise the appropriate regional council regarding the conservation, development, and use of fish and wildlife resources.

(5) Work with the appropriate regional council to develop

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subsistence management plans and harvest strategy proposals.

(6) Cooperate and consult with interested persons and organizations, including government agencies, to accomplish (1) - (5) of this paragraph.

30.13 Regional Fish and Game Councils.

(a) The regulations in this section shall define the establishment, responsibilities, and functions of the regional fish and game councils with respect to their position in the Program. The councils may also perform functions not relating to the Program, as provided by State laws and regulations.

(b) Regional fish and game councils shall be established and administered in accordance with applicable State laws and regulations.

(c) Each regional fish and game council is authorized to perform the following:

(1) Hold public meetings on fish and wildlife matters.

(2) Elect officers.

(3) In consultation with the local fish and game advisory committees in its region and with the Alaska Department of Fish and Game, review,

evaluate, and make recommendations to the Boards of Fisheries and Game on any existing or proposed regulation, policy, management plan, or any other matter relating to the use of fish and wildlife within its region.

(4) Submit to the Boards of Fisheries and Game and the Secretary, by November 15 of each year, an annual report, containing:

(i) An identification of current and anticipated subsistence uses of fish and wildlife populations within the region.

(ii) An evaluation of current and anticipated subsistence needs for use of fish and wildlife populations within the region.

(iii) A recommended strategy for the management of fish and wildlife populations within the region to accommodate the identified fish and wildlife uses and needs.

(iv) Recommendations concerning policies, standards, guidelines, and regulations to implement the strategy.

(d) A council shall provide a forum for, and assist its local fish and game advisory committees in obtaining the opinions and recommendations of people interested in fish and wildlife matters so as to achieve the greatest possible local participation in the decision-making process. If differences of opinion exist among the committees, the council shall attempt to develop areas of compromise and to reach a regional consensus on matters of

controversy.

(e) A council will, in its discretion, present recommendations concerning the conservation, regulation, management, and use of fish and wildlife resources within its region, along with the evidence upon which the recommendations are based, to the appropriate Board.

(f) A council will, in its discretion, make recommendations to the Boards of Fisheries and Game on the creation, consolidation, distribution, or operation of the committee system.

30.14 State Boards of Fisheries and Game.

(a) In compliance with State laws and regulations, the State Boards of Fisheries and Game promulgate regulations for the conservation, development and utilization of Alaska's fish and wildlife resources.

(b) With respect to the Program, these State Boards may perform the following functions:

(1) Review, comment upon, and take action on the recommendations of local fish and game advisory committees, regional fish and game advisory councils, and Federal agencies.

(2) Request input from the public, local committees, regional

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councils, and Federal agencies concerning subsistence uses of fish and wildlife,

(3) Make recommendations to Federal agencies and the Federal Board concerning the Program.

(c) Restrictions or other limitations established by the Boards of Fisheries and Game to govern the taking of fish and wildlife on lands under their jurisdiction, including but not limited to seasons, permit and license requirements, and quantity limits, may be adopted by the Secretary to regulate subsistence activities, to the extent that such measures are not in conflict with ANILCA or other applicable Federal laws and regulations.

30.15 Alaska Department of Fish and Game.

The Alaska Department of Fish and Game conducts research and provides information relative to fish and wildlife resources and subsistence uses of these resources to the State Boards of Fisheries and Game, the regional councils, local committees, and Federal agencies. With regard to the Program this information will supplement that which is available from Federal and other sources.

30.16 Federal monitoring.

As required by Section 806 of ANILCA, Federal agencies, on behalf of the

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Secretary, shall monitor the functions of the local advisory committees and regional councils in providing for a preference for subsistence activities. The actions of the State Boards of Fisheries and Game with respect to subsistence uses shall also be monitored by the Federal agencies. Such monitoring shall include active participation in the hearings, meetings, and other public participation activities of the committees, councils, and boards and the submission of recommendations to these bodies relevant to subsistence activities.

30.17 Park and park monument subsistence resource commissions.

(a) The regulations in this section shall define the establishment, responsibilities, and functions of park and park monument subsistence resource commissions with respect to their position in the Federal Subsistence Resource Management Program.

(b) In accordance with the procedures defined in paragraph (c), a subsistence resource commission shall be established for each of the following areas of the National Park System:

Aniakchak National Monument

Cape Krusenstern National Monument

Denali National Park

Gates of the Arctic National Park

Kobuk Valley National Park

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Lake Clark National Park

Wrangell-St. Elias National Park

(c) Each commission shall be composed of the following:

(1) Three members to be appointed by the Secretary.

(2) Three members to be appointed by the Governor of the State of Alaska.

(3) Three members to be appointed by the regional fish and game advisory council for the region in which the park or park monument is located. Each such member shall be a member of either the regional advisory council or of one of the local fish and game advisory committees within the region, and shall also be engaged in subsistence uses within the park or park monument.

(d) A subsistence resource commission shall annually:

(1) Consult with local committees and the regional council concerning subsistence hunting within the park or park monument.

(2) Conduct, in the vicinity of the park or park monument, one or more public hearings concerning subsistence hunting.

(3) Make recommendations to the Secretary for changes in the

subistence hunting program for the park or park monument.

30.18 Federal Land Management Agencies.

In accordance with ANILCA, other applicable Federal laws, and the regulations in this part, each Federal agency having a responsibility for the management of public lands shall:

(a) Monitor the operation of the Program as it pertains to the fish and wildlife resources of the lands for which it is responsible.

(b) Manage subsistence activities on lands under its administration, if the Secretary assumes control of these activities in accordance with Section 30.3 (b) of this part.

(c) Develop such agency-specific regulations as are required to carry out agency responsibilities under the Program.

30.19 Federal Subsistence Resource Management Board.

(a) The Federal Board shall be composed of the following officials:

(1) Regional Director, Fish and Wildlife Service. Chair and Lead Official for development and implementation of the Program.

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- (2) Area Director, Bureau of Indian Affairs.
- (3) State Director, Bureau of Land Management.
- (4) Regional Director, National Park Service.
- (5) Regional Forester, Forest Service.

(b) The responsibilities of the Federal Board shall be to coordinate interagency implementation of the Program, to review recommendations of other entities within the Program, to develop policies and procedures necessary to provide for operation of the Program, and to recommend to the Secretary such regulations as are necessary to carry out the functions of the Federal Board and discharge the Secretary's responsibilities under Title VIII of ANILCA.

30.20 Federal Regulations

(a) The regulations contained in Subparts A, B, and C of this part define the program as it will operate under conditions in which the State manages subsistence activities.

(b) In the event that, in accordance with Section 30.3 (b) of this part, the Secretary assumes control of subsistence activities, the regulations in this part shall be supplemented by such additional regulations as he finds are

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required to implement Federal control of such activities.

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Subpart C - General Requirements

30.30 Licenses, permits, harvest tickets, tags, and fees

(a) All persons engaged in subsistence activities must comply with State procedures and conditions regarding licenses, permits, harvest tickets, tags, and the payment of fees.

(b) No person may refuse, upon request from a State or Federal law enforcement officer, inspection of licenses, permits, harvest tickets, tags, or other pertinent documents, or any apparatus designed to be, or capable of being used, to take fish or wildlife.

30.31 Rural residents

(a) Subsistence activities conducted pursuant to the provisions of this part are limited to rural Alaska residents, as defined in Section 30.4(b)(1) of this part and in accordance with supplementary criteria established for this purpose by the Federal Board.

(b) In units of the National Wildlife Refuge System and the National Park

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System in Alaska, subsistence activities shall be further limited to local rural residents, as designated by the appropriate Federal land management agency.

30.32 Aircraft use

(a) Except as otherwise provided in this section or in regulations established by Federal land management agencies, the use of aircraft of any type for access to or from public lands for subsistence activities is prohibited. This prohibition applies to all aircraft use, including access to areas to be used; transportation of participants, equipment, supplies, and fish or wildlife taken; and searching for available fish or wildlife.

(b) In extraordinary cases where no reasonable alternative exists, Federal land management agencies may permit, subject to specified terms and conditions, an eligible subsistence user to use aircraft for access to or from public lands for subsistence activities. Such an exception may be granted only in extraordinary cases where no reasonable alternative exists, based upon a determination that the location of the subsistence resources depended upon and the difficulty of surface access, or other emergency situation, requires such relief. Such extraordinary cases will be rare and shall not permit aircraft to become a routine means of access to subsistence resources.

30.33 Commercial activities

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No person may purchase, sell, or barter fish, wildlife, or the parts or products thereof if the fish or wildlife was taken in subsistence activities, except as follows:

(a) Handicraft articles made of nonedible byproducts of fish or wildlife taken for personal or family consumption may be sold.

(b) Fish or wildlife or their parts may be bartered for other fish or wildlife or their parts for personal consumption; for other food; or for nonedible items other than money, if the exchange is of a limited and noncommercial nature.

(c) Customary trade not constituting a significant commercial enterprise shall be permitted, subject to the provisions of such regulations as may be necessary to further define customary trade.

30.34 Penalties

A person who is convicted of violating a provision of any regulation in Subparts C, D, E, or F of this part shall be subject to the penalties prescribed by Federal laws or regulations applicable to the lands on which the violation occurred.

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Subpart D - Subsistence Hunting and Trapping

30.50 Definitions

(a) The following definitions shall apply to all regulations contained in this subpart:

(1) "Airport" means an airport listed in the Federal Aviation Agency Alaska Airman's Guide and chart supplement.

(2) "Animal" means those species with a vertebral column (backbone).

(3) "Bag limit" means the number of any one species permitted to be taken by any one person in the unit or portion of a unit in which the taking occurs; however, additional numbers of a species may be taken in another designated open unit or portion of a unit where a greater limit on that species is prescribed. In no case may the total or cumulative bag for one person exceed the limit set for the unit or portion of a unit in which the additional animals are taken; a subsistence bag limit and a general bag limit for the same species are not cumulative.

(4) "Big game" means black bear, brown and grizzly bear, bison, caribou, deer, elk, mountain goat, moose, musk oxen, mountain or Dall sheep, wolf and wolverine.

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(5) "Bow" means long bow, recurve bow, or compound bow, but not crossbow.

(6) "Broadhead" means an arrowhead with two or more steel cutting edges having minimum cutting diameter of not less than seven-eighths inch.

(7) "Brow tine" means a tine on the front portion of a moose antler, typically projecting forward from the base of the antler toward the nose.

(8) "Bull moose" means any male moose.

(9) "Closed season" means the time when wildlife may not be taken.

(10) "Cub bear" means a brown or grizzly bear in its first or second year of life, or a black bear (including cinnamon and blue phases) in its first year of life.

(11) "Dire emergency" means a situation in which a person

(i) Is in a remote area.

(ii) Is involuntarily experiencing an absence of food required for sustenance.

(iii) If wild game food is not immediately taken and consumed, will be unable to perform the functions necessary for survival, leading to a high risk of death or serious and permanent health problems; and

(iv) Cannot expect to obtain alternative food sources in time to avoid the consequences described in (iii) of this sub paragraph.

(12) "Domicile" means the location of a person's primary residence;

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evidence of domicile may include, but is not limited to, the following:

(i) Statements made to obtain a license to drive, hunt, fish, or engage in an activity regulated by a government entity.

(ii) Affidavit of the person, or of other persons who may know of that person's domicile.

(iii) Place of voter registration.

(iv) Location of residences owned, rented, or leased.

(v) Location of storage of household goods.

(vi) Location of business owned or operated.

(vii) Residence of spouse and minor children or dependents.

(viii) Governments to which taxes are paid.

(ix) Whether the person has claimed residence in another location for the purpose of obtaining benefits provided by the governments in that location.

(13) "Drawing permit" means a permit issued in a limited number to people who are selected by means of a lottery held for all people submitting valid applications for such permits and who agree to abide by the conditions specified for each hunt.

(14) "Falconry" means the sport of taking wildlife by means of trained raptors.

(15) "Full curl horn" means the horn of a mature male mountain or Dall sheep, the tip of which has grown through 360 degrees of a circle described by the outer surface of the horn, as viewed from the side.

(16) "Fur animal" means coyote, arctic fox, red fox, lynx, raccoon, red squirrel, wolf, or wolverine, except domestically raised fur animals; "fur animals" is a classification of animals subject to taking with a hunting

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license.

(17) "Fur bearer" means beaver, coyote, arctic fox, red fox, lynx, marten, mink, weasel, muskrat, river (land) otter, sea otter, raccoon, red squirrel, flying squirrel, marmot, wolf or wolverine.

(18) "Highway" means the driveable surface of any constructed road.

(19) "Household" means that group of people domiciled in the same residence.

(20) "Hunting area" for a species means that portion of a game management unit where a season and a bag limit for that species are set.

(21) "Motorized vehicle" means a motor-driven land, water or air conveyance.

(22) "Open season" means the time when wildlife may be taken; each period prescribed as an open season includes the first and last days of the period prescribed.

(23) "Permit hunt" means a hunt for which permits are issued on a drawing or registration basis.

(24) "Person" means a natural person and does not include a corporation, company, partnership, firm, association, organization, business trust or society.

(25) "Poison" means any substance which is toxic or poisonous upon contact or ingestion.

(26) "Registration permit" means a hunting permit issued to a person who agrees to the conditions specified for each hunt; permits are issued in the order applications are received and are issued:

(1) Beginning on a date announced by the Alaska Department of Fish and Game and continuing throughout the open season, or until the season is

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closed by emergency order when a harvest quota is reached; or

(11) Beginning on a date announced by the Alaska Department of Fish and Game and continuing until a predetermined number of permits have been issued.

(27) "Regulatory year" means July 1 through June 30.

(28) "Sealing" means placing a mark or tag on a portion of an animal by an authorized representative of the Department of Fish and Game; "sealing" includes collecting and recording information concerning the conditions under which the animal was harvested and measurements of the specimen submitted for sealing or surrendering a specific portion of the animal for biological information.

(29) "Seven-eighths curl horn" means the horn of a mature mountain sheep, the tip of which has grown through seven-eighths of a circle (315 degrees), described by the outer surface of the horn, as viewed from the side.

(30) "Skin" means any tanned or untanned hide of an animal, including its claws.

(31) "Small game" means all species of grouse, hares, rabbits, ptarmigan and waterfowl, cranes and Wilson or jacksnipe.

(32) "Tine" or antler point refers to any point on an antler whose length is at least one inch, and, is greater in length than in width, measured in a straight line across the base.

(33) "Transport" means shipping, carrying, importing, exporting, or receiving or delivering for shipment, carriage or export.

(34) "Unclassified game" means all species of game not otherwise classified in the definitions.

(35) "Unit" means one of the 26 geographical areas listed under game

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management units in the Alaska Department of Fish and Game's codified hunting, trapping and guiding regulations and the Game Management Unit Map of Alaska.

(36) "Year" means calendar year unless another year is specified.

30.51 Methods of taking wildlife.

(a) All big game may be taken as follows:

(1) With a shotgun, muzzle-loading rifle, or rifle or pistol using center-firing cartridges.

(2) With a crossbow, except that a crossbow may not be used to take big game in areas restricted to taking by bow and arrow only.

(3) With spears that are hand held or thrown.

(4) With a longbow, recurve bow, or compound bow capable of casting a broadhead-tipped arrow at least 175 yards horizontally, which collectively are termed "bow and arrow" for the purposes of these regulations. Arrows must be tipped with broadheads, and arrow and broadhead together must weigh at least one ounce (437.5 grains). Broadheads may not be barbed.

(5) Black bears may be taken with the use of bait; however

(i) Only biodegradable materials may be used for bait; only the heads, bones, viscera, or skin of legally harvested fish and wildlife may be used for bait.

(ii) No person may use bait within one-quarter mile of a publicly maintained road or trail.

(iii) No person may use bait within one mile of a house or other permanent dwelling, or within one mile of a developed campground or developed

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recreational facility.

(iv) A hunter using bait shall clearly mark the bait station with a sign which displays the hunter's name and current address, phone number, and hunting license number.

(v) A hunter using bait shall remove litter and equipment from the bait station site when hunting is completed.

(6) Black bears may not be hunted using dogs.

(7) A motor driven boat underway may be used in taking wolves and coyotes in all units, and caribou in Unit 23.

(b) Small game and unclassified wildlife may be taken by any method unless prohibited in paragraph (f)

(c) Fur animals may be taken while hunting by any method unless prohibited in paragraph (f)

(d) Fur bearers may be taken while trapping by any method unless prohibited in paragraph (f), Section 30.54 of this part, or in State regulations.

(e) Waterfowl, snipe and cranes may be taken only:

(1) With a shotgun not larger than 10 gauge, and which is plugged to a three shell capacity, or less.

(2) With a bow and arrow.

(3) With a trained raptor, controlled by a falconer who holds a permit under State regulations.

(f) The following methods of taking game are prohibited:

(1) By shooting from, on, or across a highway.

(2) With the use of poisons except with the written consent of the Federal Board.

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addition to the prohibitions in Section 30.51 of this part:

- (a) With the use of a dog, trap snare, net or fish trap; or aircraft.
- (b) By disturbing dens.

30.54 Unlawful methods of trapping fur bearers.

The following methods and means of trapping fur bearers are prohibited in addition to the prohibitions in State regulations:

- (a) Disturbing or destroying dens (except that muskrat pushups or feeding houses may be disturbed in course of trapping).
- (b) Disturbing or destroying beaver houses.
- (c) Taking beaver by any means other than steel traps or snares, except that firearms may be used to take beaver in Unit 18 from April 1 through June 10, and in Units 8 and 23.
- (d) Taking beaver by persons under 11 years of age.
- (e) Taking river (land) otter with steel traps having a jaw spread of less than five and seven-eighths inches during the closed season on mink and marten in the same game management unit.
- (f) With the use of a dog, net or fish trap (except a blackfish or fyke trap).
- (g) Trapping by methods other than with a snare, trap, mesh, or other implement designed to entrap animals other than fish.

30.55 Unlawful methods of hunting waterfowl, snipe, and cranes.

(a) The following methods and means of taking waterfowl, snipe, and cranes are prohibited in addition to the prohibitions in Section 30.51 of this part:

(1) With a rifle or pistol.

(2) From a motor-driven boat unless the motor has been completely shut off and the boat's progress from the motor's power has ceased.

(3) From any mechanical vehicle; however, a power or sailboat may be used as a means of retrieving dead or injured birds.

(b) A hunter may pluck waterfowl in the field, but must leave one fully feathered wing or the head attached while transporting the waterfowl.

(c) No person may take waterfowl from sunset to one-half hour before sunrise.

30.56 Local restrictions on taking wildlife.

(a) In addition to statewide restrictions on taking wildlife, the following restrictions apply locally as specified:

(1) In Units 1 through 5, no person may take big game, except wolves, from a boat.

(2) In Jim Creek in Unit 14(C) upstream from the confluence of the Swan Lake outlet stream, no person may take waterfowl or transport waterfowl, parts of waterfowl, waterfowl hunters, or waterfowl hunting gear, with the use

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of a motorized vehicle.

(3) No person may take a wolf in Units 12 and 20(E) during April and October with a steel trap or snare smaller than 3X.

30.57 Unlawful possession or transportation of wildlife.

(a) No person may possess, transport, or place into the possession of another, any wildlife or parts of wildlife that the person has taken in violation of these regulations.

(b) No person may possess or transport wildlife or parts of wildlife received from a person who took the items contrary to these regulations, if the person receiving the items knows, has reason to know, or should know that the item was taken in violation of these regulations.

(c) No person may possess or transport wildlife or parts of wildlife that the person knows were taken in violation of these regulations.

30.58 Evidence of sex and identity.

(a) No person may possess or transport a mountain sheep unless both horns accompany the animal.

(b) If the taking of an animal, except sheep, is restricted to one sex,

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no person may possess or transport the carcass of the animal which does not have sufficient portions of the external sex organs attached to indicate conclusively the sex of the animal. However, this section does not apply to the carcass of a big game animal which has been cut and placed in storage or otherwise prepared for consumption upon arrival at the location where it is to be consumed.

(c) If a moose bag limit includes an antler size or configuration requirement, no person may possess or transport the moose carcass or its parts unless both antlers accompany the carcass or its parts. A person possessing a set of antlers with less than the required number of brow tines on one antler must leave the antlers naturally attached to the unbroken, uncut skull plate; however, this paragraph does not apply to a moose carcass or its parts that has been cut and placed in storage or otherwise prepared for consumption after arrival at the place where it is to be stored or consumed.

30.59 Marked or tagged wildlife.

A person who takes an animal that has been marked or tagged for scientific studies must, within a reasonable time, notify State or Federal officials with the date when, and the place where, the animal was killed. Any ear tag, collar, radio, tattoo, or other identification must be retained with the hide until it is sealed, if sealing is required, and in all cases any identification equipment must be returned.

30.60 Sealing of bear skins and skulls.

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(a) No person may possess, transport, or export from Alaska, the skin or skull of a bear, whether taken inside or outside of Alaska, unless the skin and skull have been sealed by an authorized representative within 30 days of the taking, or a lesser time if requested. Seals must remain on the hides while in Alaska or until the tanning process has commenced. A brown bear taken in Unit 8 may not be transported from that unit until it has been sealed.

(b) A person who possesses a bear skin and skull must bring the skin and skull for sealing to an authorized representative and must complete a report on the appropriate form provided. A skin and skull accompanied by a completed temporary sealing form signed by the person who took the bear shall be considered properly tendered for sealing if it is received by an authorized representative within 30 days from the time of taking.

(c) The hide and skull of a bear must accompany each other until a rudimentary premolar tooth has been removed from the skull and both the skull and the hide have been sealed.

(d) As used in this section, "bear" means brown and grizzly bear in all units, and black bear (including the cinnamon and blue color phases) in Units 1 through 7, 11 through 16, and 20.

(e) No person may falsify any information required to be set forth, either on the sealing form provided or on the temporary sealing form.

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(a) No person may possess, transport, or export from the state, the untanned skin of a marten (in Units 1 through 5 only), or the untanned skin of a lynx, river (land) otter, wolf or wolverine, whether taken inside or outside the state, unless each skin has been sealed according to the following schedule:

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SPECIES/METHOD OF TAKING

LATEST DATE FOR SEALING

Wolf and wolverine by hunting

60th day from date of taking.

Wolf and wolverine by trapping

30th day following close of
trapping season for the species
in the unit where taken.

Lynx by hunting

30th day following close of
lynx hunting season in the unit
where taken.

Marten (Units 1-5 only), Lynx,
and River (Land) Otter, by trapping

30th day following close of
trapping season for the species
in the unit where taken.

(b) The sealing periods in (a) of this section may be reduced.

(c) A person who takes a species listed in (a) of this section must bring the skin for sealing and must complete a report on a form. The long bones of the left front leg (radius and ulna bones) must remain naturally attached to the hide of any wolf taken in Units 20, 23, 24, and 26 until the hide is sealed.

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(a) The use of wildlife as food for dogs or fur bearers, or as bait, is prohibited except for the following:

- (1) The hide, skin, viscera, or bones.
- (2) The skinned carcass of a bear, fur bearer, or fur animal.
- (3) Hare, rabbit, and red squirrels.
- (4) Legally taken unclassified wildlife.

30.63 Salvage of meat, furs, and hides.

(a) Subject to additional requirements set out for a specific unit, the following parts of any carnivore taken must be salvaged for human use:

- (1) The hide of a wolf, wolverine, coyote, fox, or lynx.
- (2) The hide and skull of a brown/grizzly bear.
- (3) The hide and skull of a black bear taken in a game management unit in which sealing is required.
- (4) Either the hide or the meat of a black bear taken in any game

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management unit in which sealing is not required by regulation.

(b) Any animal killed or injured by a vehicle is the property of the State. The operator of a motor vehicle that collides with a big game animal resulting in death or injury to the animal must notify the State Troopers or Division of Fish and Wildlife Protection as soon as possible.

(c) The meat of caribou taken in Units 22 through 26, and in Units 18 and 21 north of the Yukon River, must be removed immediately from the field.

(d) Salvage of meat from wildlife (1) The following definitions shall apply to this paragraph:

(i) "Wild fowl" means species of wild fowl for which seasons or bag limits have been established by State or Federal law.

(ii) "Edible meat" means, in the case of big game animals, the meat of the ribs, neck, brisket, front quarters as far as the juncture of the humerus and radius-ulna (knee), hindquarters as far as the distal joint of the tibia-fibula (stifle joint) and that portion of the animal between the front and hindquarters; in the case of wild fowl, the meat of the breast; however, "edible meat" of big game or wild fowl does not include: meat of the head; meat that has been damaged and made inedible by the method of taking; bones, sinew and incidental meat reasonably lost as a result of boning or a close trimming of the bones; or viscera.

(2) It is unlawful for a person who kills an animal or species of wild fowl to fail to salvage for human consumption the edible meat of the animal or fowl. Failure to salvage from a big game animal at least the hindquarters as

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far as the distal joint of the tibia-fibula (stifle joint) will result in the imposition of additional fines and penalties.

(3) Failure to salvage or possess the edible meat may not be a violation if due to circumstances beyond the control of a person, including theft of the animal or fowl, unanticipated weather conditions or other acts of God, or unavoidable loss in the field to another wild animal.

(4) It is unlawful for a person to possess the horns or antlers of a big game animal that was killed after the opening of the current or most recent lawful season for that animal unless the person also possesses the edible meat of the animal. However, this does not apply to the acquisition of the horns or antlers as a gift after the edible meat of the big game animal was salvaged, or the edible meat is no longer present due to personal consumption.

30.64 Feeding of Wildlife.

No person may intentionally feed a bear, wolf, fox or wolverine, or intentionally leave human food or garbage in a manner that attracts these animals. This does not apply to bait used for trapping fur bearers or hunting black bears consistent with this subpart.

30.65 Taking cub bears and female bears with cubs prohibited.

No person may take a cub bear or a female bear accompanied by a cub bear.

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30.66 Emergency taking of wildlife.

Nothing in this subpart prohibits a person from taking wildlife for food during a closed season in case of dire emergency. Whenever it is reasonable to do so, all edible portions of the meat of an animal so taken must be salvaged and all portions surplus to the alleviation of the dire emergency must be surrendered to the State.

30.67 Taking of wildlife in defense of life or property.

(a) Nothing in this subpart prohibits a person from taking wildlife in defense of life or property if:

(1) The necessity for the taking is not brought about by harassment or provocation of the animal or an unreasonable invasion of the animal's habitat;

(2) The necessity for the taking is not brought about by the improper disposal of garbage or a similar attractive nuisance; and

(3) All other practicable means to protect life and property are exhausted before the animal is taken.

(b) Wildlife taken in defense of life or property is the property of the State. A person taking such wildlife is required to salvage immediately the meat, or, in the case of a black bear, wolf, wolverine, or coyote, the hide and surrender it to the State immediately. In the case of brown or grizzly

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bear, the hide and skull must be salvaged and surrendered to the State immediately. The person taking the wildlife must notify the Alaska Department of Fish and Game of the taking immediately and must submit a written report of the circumstances of the taking of wildlife in defense of life or property to the Department within 15 days of the taking.

(c) As used in this section, "property" is limited to:

- (1) A dwelling, permanent or temporary.
- (2) An aircraft, boat, automobile, or other means of conveyance;
- (3) A domesticated animal.
- (4) Other property of substantial value necessary for the livelihood or survival of the owner.

30.68 Endangered species.

(a) The following wildlife species are endangered in Alaska:

Eskimo curlew	<u>Numenius borealis</u>
Aleutian Canada goose	<u>Branta canadensis leucopareia</u>
American peregrine falcon	<u>Falco peregrinus anatum</u>
Arctic peregrine falcon	<u>Falco peregrinus tundrius</u>
Short-tailed albatross	<u>Diomedea albatrus</u>

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Subpart E - Subsistence Fishing

30.80 Subsistence fishing permitted.

Aquatic plants and finfish other than salmon may be taken for subsistence purposes at any time on public lands, by any method, unless restricted by the regulations in this part. Salmon may be taken for subsistence purposes only as provided in this part.

30.81 Types of legal gear.

- (a) All gear shall be operated in a manner conforming to its basic design.
- (b) The size of meshes of a gill net shall be substantially consistent.
- (c) All references to mesh size in the regulations are considered to be "stretched measure."

(d) Unless otherwise provided, the following are legal types of gear for subsistence fishing:

(1) A gill net is a net primarily designed to catch fish by entanglement in the mesh and consisting of a single sheet of webbing hung between cork line and lead line, and fished from the surface of the water.

(2) A set gill net is a gill net that has been intentionally set, staked, anchored or otherwise fixed.

(3) A drift gill net is a drifting gill net that has not been intentionally staked, anchored or otherwise fixed.

(4) A purse seine is a floating net designed to surround fish and

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which can be closed at the bottom by means of a free-running line through one or more rings attached to the lead line.

(5) A hand purse seine is a floating net designed to surround fish and which can be closed at the bottom by pursing the lead line; pursing may only be done by hand power, and a free-running line through one or more rings attached to the lead line is not allowed.

(6) A beach seine is a floating net designed to surround fish which is set from and hauled to the beach.

(7) Power gurdy troll gear consists of a line or lines with lures or baited hooks which are drawn through the water by a gurdy.

(8) Hand troll gear consists of a line or lines with lures or baited hooks which are drawn through the water from a vessel by hand trolling, strip fishing or other types of trolling, and which are retrieved by hand power or hand powered crank and not by any type of electrical, hydraulic, mechanical or other device or attachment.

(9) A fishwheel is a fixed, rotating device for catching fish which is driven by river current or other means of power.

(10) A ring net is a bag-shaped net suspended from a circular or rectangular frame.

(11) A longline is a stationary buoyed or anchored line or a floating, free drifting line with lures or baited hooks attached.

(12) A fyke net is a fixed, funneling (fyke) device used to entrap fish.

(13) Diving gear is any type of hard hat or skin diving equipment.

(14) A grappling hook is a hooked device with flukes or claws and attached to a line and operated by hand.

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(15) A dip net is a bag-shaped net suspended from a frame, which may not exceed five feet in diameter, the frame is attached to a single handle and is operated by hand.

(16) Jigging gear consists of a line or lines with lures or baited hooks which are operated during periods of ice cover from holes cut in the ice and are drawn through the water by hand.

(17) A spear is a shaft with a sharp point or fork-like implement attached to one end, used to thrust through the water to impale or retrieve fish and is operated by hand.

(18) A lead is a length of net employed for guiding fish into a seine or a length of net or fencing employed for guiding fish into a fishwheel, fyke net or dip net.

(19) An abalone iron is a flat device used for taking abalone and which is more than 1 inch (25 mm) in width and less than 24 inches (61 cm) in length and with all prying edges rounded and smooth.

(e) Gill nets used for subsistence fishing for salmon may not exceed 50 fathoms in length, unless otherwise specified by the regulations in particular areas.

(f) Taking or molesting fish by any means, or for any purpose, is prohibited within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction.

(g) The use of explosives and chemicals is prohibited.

(h) Subsistence fishing by the use of a line attached to a rod or pole is prohibited except when fishing through the ice in the Kotzebue-Northern, Norton Sound-Port Clarence, Yukon, Kuskokwim and Bristol Bay areas.

(i) Each subsistence fisherman shall plainly and legibly inscribe his

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first initial, last name, and address on his fishwheel, or on a keg or buoy attached to gill nets and other unattended subsistence fishing gear.

(j) No person may use a gill net web that contains less than 30 filaments in the taking of salmon for subsistence purposes.

30.82 Unlawful possession of subsistence finfish.

No person may possess, transport or place into the possession of another person, raw or unprocessed subsistence-taken fish or their parts that the person has taken contrary to State or Federal law or regulation.

30.83 Bristol Bay area

(a) Description. The Bristol Bay area consists of all waters of Bristol Bay including drainages enclosed by a line from Cape Newenham to Cape Menshikof.

(b) Fishing seasons and weekly fishing periods. (1) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Bristol Bay area.

(2) Within any district, salmon may only be taken during open weekly commercial salmon fishing periods except as follows:

(i) During the period from June 15 through 9:00 a.m., July 17, salmon for subsistence purposes may be taken in the Nushagak district from the Department of Fish and Game regulatory marker two statute miles below Bradford

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Point to a marker at Red Bluff on the west shore of Wood River, only during the following periods: 9:00 a.m. Monday to 9:00 a.m. Tuesday, 9:00 a.m. Wednesday to 9:00 a.m. Thursday, 9:00 a.m. Friday to 9:00 a.m. Saturday.

(ii) During the period from June 23 through 9:00 a.m. July 17, salmon for subsistence purposes may be taken in the Naknek, Egegik and Ugashik rivers only during the following period: 9:00 a.m. Tuesday to 9:00 a.m. Wednesday and 9:00 a.m. Saturday to 9:00 a.m. Sunday.

(3) Subsistence fishermen should check with the National Park Service before fishing in Naknek Lake.

(c) Lawful gear and gear specifications. (1) Within any district, salmon, herring, and capelin may only be taken by drift and set gill nets.

(2) Outside the boundaries of any district, salmon may only be taken by set gill net, except that salmon may also be taken by spear in the Togiak River excluding its tributaries.

(3) The maximum lengths for set gill nets used to take salmon are as follows:

(i) In the Naknek, Egegik and Ugashik Rivers, and in Naknek Lake as described, set gill nets may not exceed 10 fathoms in length.

(ii) In the remaining waters of the area, set gill nets may not exceed 25 fathoms in length.

(4) No part of a set gill net may be operated within 300 feet of any part of another set gill net, except that in the Nushagak district from the Department of Fish and Game regulatory marker two statute miles below Bradford Point to a marker at Red Bluff on the west shore of Wood River, no part of a set gill net may be operated within 100 feet of any part of another set gill

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net.

(5) No set gill net may obstruct more than one-half the width of a stream.

(6) Each set gill net must be staked and bouyed.

(7) No person may operate or assist in operating subsistence salmon net gear while simultaneously operating or assisting in operating commercial salmon net gear.

(d) Waters closed to subsistence fishing. (1) Except for the western shore of the Newhalen River, waters used by salmon are closed to the subsistence taking of fish within 300 feet of a stream mouth.

(2) Gill nets are prohibited in that portion of the Naknek river upstream from Sovonaski.

(3) Subsistence fishing with nets is prohibited in the following waters and within one-fourth mile of the terminus of those waters during the period from September 1 through June 14:

Lower Talarik Creek	Roadhouse Creek	Nick G. Creek
Middle Talarik Creek	Alexi Creek	Copper River
Upper Talarik Creek	Tazimina River	Kakhonak River
Pete Andrew Creek	Young's Creek	Gibraltar River
Zacker Creek	Chekok Creek	Dennis Creek
Newhalen River	Tomokok Creek	Belinda Creek

(e) Subsistence fishing permits. (1) Salmon, trout and char may only be taken under authority of a subsistence fishing permit.

(2) Only one subsistence fishing permit may be issued to each

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household per year.

(3) Subsistence salmon fishing permits for the Naknek River drainage will be issued only to those persons domiciled in the Naknek and Kvichak River drainages.

(4) Subsistence salmon fishing permits for the Iliamna-Lake Clark drainages will be issued only to persons domiciled in the Iliamna-Lake Clark drainages.

(f) Marking of subsistence taken salmon. After August 20, no person may possess coho salmon for subsistence purposes in the Togiak River section and the Togiak River drainage unless the head has been immediately removed from the salmon. It is unlawful to purchase or sell coho salmon from which the head has been removed.

(g) Subsistence bag and possession limits. The total annual possession limit for a subsistence salmon fishing permit issued for the fisheries described is 200 sockeye salmon.

30.84 Aleutian Islands area

(a) Description. The Aleutian Islands area includes all waters of Alaska west of the longitude of the tip of Cape Sarichef, east of 172 degrees E., and south of 54 degrees 36' N.

(b) Fishing seasons. (1) In the Unalaska district, salmon may be taken at any time except within 24 hours before and within 12 hours following each open weekly commercial salmon fishing period within a 50 mile radius of the area open to commercial salmon fishing, or as may be specified on a subsistence

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fishing permit.

(2) In the Akutan, Umnak and Adak districts, salmon may be taken at any time.

(3) Fish other than salmon may be taken at any time unless restricted under the terms of a subsistence fishing permit.

(c) Lawful gear and gear specifications. (1) Salmon may be taken by seine and gill net, or with gear specified on a subsistence fishing permit.

(2) Fish other than salmon may be taken at any time unless restricted under the terms of a subsistence fishing permit.

(d) Waters closed to subsistence fishing. The waters of Unalaska Lake (at Unalaska Village), its drainages and the outlet stream, and within 500 yards of its terminus are closed to subsistence fishing.

(e) Subsistence fishing permits. (1) Salmon, trout and char may be taken only under the terms of a subsistence fishing permit, except that a permit is not required in the Akutan, Umnak and Adak districts.

(2) Not more than 250 salmon may be taken for subsistence purposes unless otherwise specified on the subsistence fishing permit.

(3) A record of subsistence caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence caught fish and must be returned.

30.85 Alaska Peninsula area

(a) Description. The Alaska Peninsula area includes all Pacific Ocean waters of Alaska between a line extending southeast (135 degrees) from the tip

of Kupreanof Point and the longitude of the tip of Cape Sarichef, and all Bering Sea waters of Alaska east of the longitude of the tip of Cape Sarichef and south of the latitude of the tip of Cape Menshikof.

(b) Fishing seasons. (1) Salmon may be taken at any time except within 24 hours before and within 12 hours following each open weekly commercial salmon fishing period within a 50 mile radius of the area open to commercial salmon fishing, or as may be specified on a subsistence fishing permit.

(2) Fish other than salmon may be taken at any time unless restricted under the terms of a subsistence fishing permit.

(c) Lawful gear and gear specifications. (1) Salmon may be taken by seine and gill net, or with gear specified on a subsistence fishing permit.

(2) No set gill net may exceed 100 fathoms in length.

(d) Waters closed to subsistence fishing. The following waters are closed to subsistence fishing for salmon:

(1) Russell Creek and Nurse Lagoon and within 500 yards outside the mouth of Nurse Lagoon.

(2) Trout Creek and within 500 yards outside its mouth.

(3) Inshore of a line from the Pacific Pearl dock to Black Point including the inlet and Humboldt Creek.

(e) Subsistence fishing permits. (1) Salmon, trout and char may be taken only under the authority of a subsistence fishing permit.

(2) Not more than 250 salmon may be taken for subsistence purposes unless otherwise specified on the subsistence fishing permit.

(3) A record of subsistence caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence caught fish and must be returned no later than October 31.

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30.86 Chignik area

(a) Description. The Chignik area includes all waters of Alaska on the south side of the Alaska Peninsula enclosed by 156 degrees 20'13" W., (the longitude of the southern entrance to Imuya Bay near Kilokak Rocks) and a line extending southeast (135 degrees) from the tip of Kupreanof Point.

(b) Fishing seasons. Fish may be taken at any time, except as may be specified by the subsistence fishing permit.

(c) Lawful gear and gear specifications. Salmon may be taken by seines and gill nets, or with gear specified on a subsistence fishing permit, except that in Chignik Lake, salmon may not be taken with purse seines.

(d) Waters closed to subsistence fishing. Salmon may not be taken in the Chignik River, upstream from the weir site or counting tower, in Black Lake, or any tributary to Black and Chignik Lakes.

(e) Subsistence fishing permits. (1) Salmon, trout and char may only be taken under the authority of a subsistence fishing permit.

(2) Not more than 250 salmon may be taken for subsistence purposes unless otherwise specified on the subsistence fishing permit.

(3) A record of subsistence caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence caught fish and must be returned no later than October 31.

30.87 Kodiak area

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(a) Description. The Kodiak area includes all waters of Alaska south of a line extending east from Cape Douglas (58 degrees 52' N.), west of 150 degrees W., north of 55 degrees 30' N.; and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (156 degrees 20'13" W.).

(b) Fishing seasons. Salmon may be taken for subsistence purposes from 6:00 a.m. until 9:00 p.m. from June 1 through July 30.

(c) Lawful gear and gear specifications. (1) Unless restricted by this section or under the terms of a subsistence fishing permit, fish may be taken by gear listed in Section 30.84(d) of this part.

(2) Salmon may be taken only by gill net and seine.

(3) Subsistence fishermen must be physically present at the net at all times the net is being fished.

(d) Waters closed to subsistence fishing. The following locations are closed to the subsistence taking of salmon:

(1) All waters of Mill Bay and all those waters bounded by a line from Spruce Cape to the northernmost point of Woody Island, then to the northernmost point of Holiday Island, then to a point on Near Island opposite the Kodiak small boat harbor entrance and then to the small boat harbor entrance.

(2) All freshwater systems of Little Afognak River and Portage Creek drainage in Discoverer Bay.

(3) All waters closed to commercial salmon fishing in the Barbara Cove, Chiniak Bay, Slatery Cove, Pasagshak Bay, Monashka Bay and Anton Larsen Bay and all waters closed to commercial salmon fishing within 100 yards of the terminus of Selief Bay Creek and north and west of a line from the tip of Last

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Point to the tip of River Mouth Point in Afognak Bay.

(4) All waters 300 yards seaward of the terminus of Monks Creek.

(e) Subsistence fishing permits. (1) A subsistence fishing permit is required for taking salmon, trout and char for subsistence purposes.

(2) A subsistence salmon fishing permit allows the holder to take 25 salmon plus an additional 25 salmon for each member of the same household whose names are listed on the permit. An additional permit may be obtained if it can be shown that more fish are needed.

(3) All subsistence fishermen shall keep a record of the number of subsistence fish taken each year. The number of subsistence fish taken shall be recorded on the reverse side of the permit. The record must be completed immediately upon landing subsistence caught fish and must be returned by February 1 of the year following the year the permit was issued.

30.88 Cook Inlet area

(a) Description. The Cook Inlet area includes all waters of Alaska enclosed by a line extending east from Cape Douglas (58 degrees 52' N.) and a line extending south from Cape Fairfield (148 degrees 40' W.).

(b) Description of district and subdistricts. (1) Districts and subdistricts are as described in State regulations, 5 AAC 21.200.

(2) In addition to (1) of this paragraph, the Tyonek subdistrict includes those waters of the Northern district within mean lower tide from a point one mile south of the southern edge of the Chuitna River south to the easternmost tip of Granite Point.

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(c) Fishing seasons and weekly fishing periods. (1) Unless restricted or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Cook Inlet area.

(2) Salmon may be taken for subsistence purposes only as follows:

(1) In the Tyonek subdistrict:

(A) From June 1 through June 15 from 4:00 a.m. to 8:00 p.m. on Tuesdays, Thursdays and Fridays.

(B) From June 16 through October 30 from 6:00 a.m. to 6:00 p.m. on Saturdays.

(C) The season described in (B) of this subparagraph shall not open until July 1 if 4,200 king salmon are taken before June 16.

(ii) In the Port Graham subdistrict from June 1 through June 15, from 6:00 a.m. Monday until 6:00 a.m. Wednesday, and from 6:00 a.m. Thursday, until 6:00 a.m. Saturday.

(d) Lawful gear and gear specifications. (1) Salmon may be taken only as follows:

(i) In the Tyonek subdistrict by set gill nets not exceeding 10 fathoms in length, six inches in mesh size and 45 meshes in depth.

(ii) In the Port Graham subdistrict by set gill nets not exceeding 35 fathoms in length, six inches in mesh size and 45 meshes in depth.

(iii) No part of a set gill net may be set or operated within 600 feet of any part of another set gill net.

(2) No person may operate or assist in the operation of subsistence salmon net gear on the same day that person operates or assists in the operation of commercial salmon gear.

(3) Smelt may be taken only with gill nets and dip nets. Gill nets

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used to take smelt may not exceed 50 feet in length and two inches in mesh size.

(4) Gill nets may not be used in fresh water, except for the taking of whitefish in the Tyonek River drainage.

(e) Waters closed to subsistence fishing. (1) All salt water is closed to the taking of finfish, except for the Tyonek and Port Graham subdistricts.

(2) Salmon may not be taken in waters described in 5 AAC 39.290.

(3) Trout, grayling, char, and burbot may not be taken in fresh water.

(f) Subsistence fishing permits. (1) Only one subsistence salmon fishing permit may be issued to each household per year.

(1) Subsistence salmon fishing permits for the Tyonek subdistrict will be issued only to those persons domiciled in the village of Tyonek.

(1i) Subsistence salmon fishing permits for the Port Graham subdistrict will be issued only to those persons domiciled in the villages of Port Graham and English Bay.

(2) Whitefish may be taken only in the Tyonek River drainage.

(g) Marking of subsistence taken salmon. (1) No person may possess salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) have been immediately removed from the salmon.

(2) It is unlawful to purchase or sell salmon from which both lobes of the caudal fin (tail) have been removed.

(h) Subsistence bag and possession limits. The total annual possession limit for each subsistence salmon permit is as follows:

(1) There is no total annual possession limit for holders of Port Graham subdistrict subsistence salmon fishing permits; subsistence salmon

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catches must be recorded.

(2) Twenty-five (25) salmon for the head of household and 10 salmon for each dependent of the permit holder.

(3) In addition to the limits in (2) of this paragraph; the holder of a Tyonek subdistrict subsistence salmon fishing permit may take 70 king salmon.

30.89 Prince William Sound area

(a) Description. The Prince William Sound area includes all waters of Alaska between the longitude of Cape Fairfield and the longitude of Cape Suckling.

(b) Description of districts and subdistricts. The Upper Copper River District consists of all waters of the mainstem Copper River from the mouth of Slana River downstream to an east-west line crossing the Copper River at the upstream side of Haley Creek as designated by regulatory markers:

(1) The Chitina Subdistrict consists of waters of the Upper Copper River District downstream of the downstream edge of the Chitina-McCarthy Road Bridge and the east side of the Copper River from the upstream edge of the bridge to an regulatory marker located one quarter of a mile upstream of the bridge.

(2) the Glennallen Subdistrict consists of all remaining waters of the Upper Copper River District.

(c) Fishing seasons. (1) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Prince William Sound area.

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(2) Salmon may be taken in the Upper Copper River District only as follows:

(i) In the Glennallen Subdistrict, from June 1 through September 30.

(ii) In the Chitina Subdistrict, only when that subdistrict is open to personal use salmon fishing.

(iii) When the Copper River subsistence fishery is closed or restricted because of an inadequate escapement of sockeye or chinook salmon. The fishery may be reopened September 1 for the taking of coho salmon.

(d) Lawful gear and gear specifications. (1) Salmon may be taken only by the following types of gear:

(i) In the Glennallen Subdistrict by fishwheels or dip nets.

(ii) In the Chitina Subdistrict by dip nets when the personal use salmon fishery is open in that subdistrict.

(2) Fishwheels used for subsistence fishing may not be rented, leased, or otherwise used for personal gain. Subsistence fishwheels must be removed from the water at the end of the permit period. Each permittee may operate only one fishwheel at any one time. No person may set or operate a fishwheel within 75 feet of another fishwheel. No fishwheel may have more than two baskets.

(3) The permit holder (permittee) must personally operate the fishwheel or dip net. A subsistence fishwheel or dip net permit may not be loaned or transferred.

(4) A wood or metal plate at least 12 inches high by 12 inches wide, bearing the permit holder's name and address in letters and numerals at least one inch high, must be attached to each fishwheel so that the name and address

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are plainly visible.

(e) Waters closed to subsistence fishing. (1) All tributaries of the Copper River and waters of the Copper River not in the Upper Copper River District are closed to the taking of salmon.

(2) Crosswind Lake is closed to all subsistence fishing.

(3) Salmon may not be taken in any area closed to commercial salmon fishing.

(4) Salmon may not be taken in the Chitina Subdistrict, or in any portion of the subdistrict, when those waters are closed to personal use salmon fishing.

(5) Salmon may not be taken on the east side of the Copper River from the upstream edge of the Chitina-McCarthy Road Bridge upstream to the ADF&G regulatory marker located one quarter of a mile upstream of the bridge.

(f) Subsistence fishing permits. (1) Except as provided in this paragraph, fish other than salmon and freshwater fish species may be taken for subsistence purposes without a subsistence fishing permit.

(2) Salmon and freshwater fish species may be taken only under the authority of a subsistence fishing permit.

(3) Only one subsistence fishing permit will be issued to each household per year.

(4) Subsistence salmon fishing permits for the Upper Copper River District will be issued only to persons domiciled in Game Management Units 11, 13-A, 13-B, 13-C and 13-D as described in State regulation, (5 AAC 90.010), in the Jacksina River drainage to its confluence with the Nabesna River, and in the communities of Tetlin, Northway, Dot Lake, Tanacross, and Tok. The following apply to Upper Copper River District subsistence salmon fishing

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permits:

(i) Only one type of gear may be specified on a permit.

(ii) Only one permit per year may be issued to a household.

(iii) Permits must be returned to the department no later than October 31, or a permit for the following year may be denied.

(5) The total annual possession limit for an Upper Copper River District subsistence salmon fishing permit is as follows:

(i) Thirty (30) salmon for a household with one person.

(ii) Sixty (60) salmon for a household with two persons.

(iii) Ten (10) salmon for each additional person in a household over those specified in (ii) of this subparagraph.

(iv) Upon request, permits for additional salmon will be issued with the following limits:

(A) No more than a total of 200 salmon for a permit issued to a household with one person.

(B) No more than a total of 500 salmon for a permit issued to a household with two or more persons.

(g) Marking of subsistence taken salmon. No person may possess salmon taken under the authority of an Upper Copper River District subsistence fishing permit unless the dorsal fin has been immediately removed from the salmon.

(h) Subsistence bag and possession limits. (1) Possession limits for salmon in the Upper Copper River District are described in subparagraph (f) (5) of this section.

(2) In locations open to commercial salmon fishing and in conformance with commercial salmon fishing regulations, the annual subsistence salmon

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limit is as follows:

- (i) Fifteen (15) salmon for a household with one person.
- (ii) Thirty (30) salmon for a household with two persons.
- (iii) Ten (10) salmon for each additional person in a household over those specified in (2) of this subsection.
- (iv) No more than five king salmon may be taken per permit.

30.90 Yakutat area

(a) Description. The Yakutat area includes all waters of Alaska between the longitude of Cape Suckling and the longitude of Cape Fairweather.

(b) Fishing seasons. (1) Unless restricted in this part, or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Yakutat area.

(2) Salmon may not be taken during the period commencing 48 hours before an opening until 48 hours after the closure of an open commercial salmon net fishing season. This applies to each river or bay fishery individually.

(c) Lawful gear and gear specifications. Fish may be taken by gear listed in Section 30.81 (d) of this part, unless restricted in this section or under the terms of a subsistence fishing permit.

(d) Subsistence fishing permits. Salmon, trout and char may be taken only under authority of a subsistence fishing permit.

(e) Marking of subsistence taken salmon. Subsistence fishermen must remove the dorsal fin from subsistence caught salmon when taken.

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30.91 Southeastern Alaska area

(a) Description. The Southeastern Alaska area includes all waters between a line projecting southwest from the westernmost tip of Cape Fairweather and Dixon Entrance.

(b) Description of districts and sections. Districts and sections are as described in State regulation (5 AAC 33.200).

(c) Fishing seasons. Unless restricted in this section or under the terms of a subsistence fishing permit, fish may be taken in the Southeastern Alaska area at any time.

(d) Lawful gear and gear specifications. Fish may be taken by gear listed in Section 30.81 (d) of this part, except as may be restricted under the terms of a subsistence fishing permit and except as follows:

(1) In District 13, Redoubt Bay, gill net or seine gear may not be used to take salmon in any waters of the bay closed to commercial salmon fishing.

(2) Set gill nets may not be used to take salmon except in the mainstream and side channels, but not the tributaries, of the Chilkat River from the latitude of Zimovia Point to one mile upstream of Wells Bridge.

(3) Beach seines and gaffs only may be used to take coho salmon from Salt Lake and Mitchell Bay from August 1 through October 31.

(e) Waters closed to subsistence fishing. The following waters are closed to subsistence salmon fishing.

(1) District 1:

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(1) Mahoney Creek in George Inlet.

(ii) Naha Bay: Roosevelt Lagoon and within one statute mile of the falls at the outlet of Roosevelt Lagoon.

(2) District 11: The Taku River drainage.

(3) In District 15: Lynn Canal including Chilikat, Chilikoot and Lutak inlets, during the closed period of the commercial salmon net fishery in the district.

(f) Subsistence fishing permits. (1) Salmon, trout and char may be taken only under authority of a subsistence fishing permit.

(2) Permits will not be issued for taking king or coho salmon, except for king and coho salmon in the Chilkat River adjacent to Klukwan and for coho salmon as provided in subparagraph (d) (3) of this section.

(3) In the Chilkat River north of the latitude of Zimovia Point, the subsistence fishing permit holder shall be physically present at the net while it is fishing.

(4) Subsistence salmon fishing permits for the fishery provided for in subparagraph (d) (3) of this section will be issued only to those persons domiciled in Angoon and only one permit will be issued for a household. The number of coho salmon that may be taken on a permit will be specified by the Alaska Department of Fish and Game after it has assessed the level of effort that will be involved in that fishery.

(5) Permits may be issued specifying times, areas, species and numbers of fish that may be taken.

(g) Marking of subsistence taken salmon. Subsistence fishermen shall remove the dorsal fin from all salmon when taken.

(h) Subsistence fishing policy for the Juneau, Petersburg, Wrangell, Sitka

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and Ketchikan road systems. Salmon streams flowing across or adjacent to the road systems of Juneau, Petersburg, Wrangell, Sitka and Ketchikan support only limited runs of salmon. Harvestable numbers of salmon in excess to the spawning escapement needs for those streams are normally of such a small magnitude that these numbers alone are not sufficient to support the consumptive demands of those communities. Therefore, permits allowing the use of nets shall not be issued for streams along the road systems of those communities.

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Subpart F - Procedures for Issuance of Annual Regulations

30.100 General provisions

(a) Purposes and scope: The rules of this subpart apply to the issuance of annual regulations establishing seasons and bag and possession limits for subsistence activities. The rules in this part are supplemented by 36 C.F.R. Part 13 and 50 CFR Part 36, containing subsistence regulations specific to the National Park System and the National Wildlife Refuge System, respectively.

(b) Regulation development: The Federal Board shall recommend to the Secretary of the Interior annual regulations governing subsistence activities. The Federal Board will develop regulations in consideration of the following:

(1) The policies established by ANILCA to provide for a preference for subsistence uses of fish and wildlife, as set out in Section 30.5 of this part.

(2) Public input, scientific information, and recommendations received from the general public and from agencies and bodies such as local advisory committees, park and park monument subsistence resource commissions, regional councils, the State Boards of Fisheries and Game, the Alaska Department of Fish and Game, and Federal land management agencies.

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(3) Applicable non-conflicting State and Federal laws and regulations.

30.101 Subsistence hunting and subsistence trapping seasons and bag limits.

This section provides for annual hunting and trapping seasons and bag limits on big game, small game, fur animals, fur-bearers and unclassified game, and the units portion of units to which they apply.

Note: For Federal Register citations affecting annual regulatory schedules for this section, see the List of CFR Sections Affected in the Finding Aids section of this volume.

30.102 Subsistence fishing seasons and taking and possession limits.

This section provides for annual fishing seasons and taking and possession limits for aquatic plants and finfish, and the areas to which they apply.

Note: For Federal Register citations affecting annual regulatory schedules for this section, see the List of CFR Sections Affected in the Finding Aids section of this volume.