

ALASKA LEGISLATURE COMMITTEE FILES 1985 - 1986 8672
4222.33 SRES SUBSISTENCE: PUBLICATIONS (file 1) - (file 2) 24

REPORT CONCLUSION

Policy Issues

This report contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this report but require legislative consideration. In debating these issues, the oversight committees should take into consideration the findings and recommendations presented in this report so the potential impact of policy changes can be evaluated.

Report Conclusion

In our opinion, the Guide Licensing and Control Board should be reestablished. The regulation and licensing of qualified guides is necessary to protect the public's health, safety, and welfare. The Board provides this service by establishing minimum qualification and experience requirements that provide reasonable assurance that persons licensed are both capable of safely conducting guided hunts and familiar with their prospective guiding areas. Assurance that those licensed act in a competent manner is also provided by active investigation of complaints and revocation or suspension of licenses where appropriate.

However, the following findings describe areas where weaknesses or conflicts exist. We have made recommendations which, if implemented, will improve the efficiency and effectiveness of the Board.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Guide Licensing and Control Board (GLCB) should develop a prioritized set of criteria to use in assigning both exclusive and joint-use guiding areas (EGAs).

Alaska Statute 08.55.040(a)(8) allows GLCB to:

Establish a quota of licensed operating guides who may operate within designated geographical units or subunits of the state and provide for an equitable and reasonable procedure for limiting the number of guides to that quota; preference shall be given to qualified available guides who reside within the designated game unit or subunit.

GLCB has implemented this provision through the establishment of both exclusive and joint-use guide areas (EGAs), which limit the number of guides who can conduct hunts in various regions of the State. The GLCB's authority to assign EGAs is supported by an April 1977 Attorney General memorandum which determined that GLCB's regulations and activities implementing exclusive guiding areas were within their statutory powers.

This limitation on the practice of guiding ostensibly provides public benefits by providing for better game management; promotion and enforcement of ethical guiding practices; enhancing the "wilderness" aspect of big game hunting experience by separating guided hunting parties; and allows for the separation of non-compatible forms of hunting. The limits are also designed to provide for a greater degree of safety to the guided hunter by allowing guides to become familiar with the terrain and seasonal weather conditions of their assigned area.

GLCB does not act consistently when considering the assignment of exclusive and joint-use guiding areas. The criteria on which any given area assignment decision is made varies from decision to decision. Additionally, GLCB often does not adequately document the basis on which they make their assignments. We found inconsistencies and contradictions in the way that GLCB applied the following criteria when awarding EGAs:

1. Game Management Information - GLCB does not consistently review game management information in their area assignment decisions. What game information they do consider usually is second hand and anecdotal, provided by applicants or current users (see Recommendation No. 2).

2. Demonstration of Experience - When applying for an EGA, applicants must demonstrate that they have had guiding experience in the applicable game unit. Guides demonstrate their experience through the submittal to GLCB of a Statement of Financial Remuneration (SFR) for each guided hunt. SFRs list the names of hunters, guides assisting in the hunt, game units hunted, and the type of game taken.

Under the Board's regulations, SFRs are the primary evidence of a guide's activity and familiarity with the game unit involved. However, we found instances where the Board awarded EGAs to guides with no SFRs in the appropriate game unit, while denying other EGA applicants because they had no SFRs on file demonstrating their experience or activity.

3. Transfers of guiding areas - GLCB has been essentially approving transfers of guiding areas with little or no consideration of any other criteria such as game management, objections of joint users, or experience of the guide receiving the transferred area (see Recommendation No. 3).

This inconsistency on the part of GLCB in its decision-making, along with the lack of proper documentation of its rationale, ultimately results in a loss of effective control over the activities and policy of the guiding industry.

During the past four years, hearing officers have repeatedly found Board decisions to be arbitrary and capricious with little or no support. In effect, the Board has abdicated much of its control over area assignments through its inconsistent application of criteria. Hearing officer decisions are beginning to effectively replace GLCB in setting quotas for guides. Essentially, GLCB has not fully met its statutory responsibility to adopt an equitable and reasonable procedure for the assignment of guide areas.

We believe GLCB's responsibility would be better met by identifying pertinent criteria to be used in area assignment decisions, assigning some priorities to those criteria, and applying them consistently.

Recommendation No. 2

GLCB should improve methods of obtaining game management information from independent sources, such as the Alaska Department of Fish and Game (ADFG).

One of the primary justifications for the whole concept of EGAs is to enhance overall management of the public's game resources. Guides are awarded exclusive or joint-use areas so that they have a long-term interest in managing the game

in their EGA. GLCB has adopted regulations [12 AAC 38.053(d) (1)] that require it to consider an area's ability "... to sustain an additional guided hunting operation, in terms of game populations, terrain, methods of hunting, and use by other guides and hunters."

As stated in Recommendation No. 1, we found that GLCB rarely considers independent information regarding game populations and management concerns when assigning EGAs. GLCB relies on information provided by applicants and guides operating in the region under consideration. Certainly, the assessment of an active registered guide is important and should be considered. However, whether coming from an applicant or current user, it must be recognized that the guide has a vested interest in how the information is presented and interpreted.

Oftentimes, information presented to the Board is conflicting, depending on the desire of the guide. New applicants for areas claim game is plentiful, and the area is under-utilized. Current users, on the other hand, emphasize game scarcity and hunting pressures.

If GLCB established better, more formal communications with ADFG they would better meet their regulatory and statutory obligation to enhance the management of the State's game resources. ADFG information may be no better than that of guides; however, it is more independent and more objectively developed. ADFG is charged with management of the State's game resources, and guided, non-resident hunters take up to an estimated 40% of the game in the State. We believe GLCB should attempt to improve communications and coordination with ADFG while taking steps to include their assessment of game populations and hunting pressures when considering assignment of EGAs.

Recommendation No. 3

GLCB should take more responsibility for area assignments by repealing regulations that allow a guide to designate to whom his EGA be reassigned.

Registered and master guides may each have a maximum of three EGAs. Typically, when a guide wishes to retire or perhaps become eligible for another, different EGA, he is allowed to turn back an existing EGA to the Board and designate the recipient of this reassignment. GLCB regulations currently allow, but do not necessarily require, this practice.

We found that these designated transfers override all other area assignment criteria. Essentially, GLCB has been automatically approving transfers of EGAs regardless of game management considerations, demonstration of experience

in the area by the transferee, and over the objections of affected joint users. Whereas GLCB evaluates, albeit inconsistently, regular area assignments, our review indicated they gave transfers much less scrutiny.

We believe that this lack of scrutiny encourages the practice of guides selling their EGAs to other guides in violation of GLCB regulations. With the Board giving little review to transfers, they greatly increase the potential of EGAs being awarded based solely on economic consideration; i.e., can the designated recipient afford to buy the area from its holder? This potential abuse is contrary to GLCB's statutory responsibility of establishing quotas for guide areas in an equitable and reasonable manner. We feel that all qualified guides for the area should receive equal chance at receiving an EGA, regardless of their ability to "buy" the rights from the previous holder.

By not adequately reviewing transfers of guide areas, the GLCB is missing an opportunity to achieve one of its stated policy goals. In the Board's FY 85 annual report, they state one of their policy objectives is to not allow additional joint use in areas that already have enough guides operating.

We feel that it would be better if the EGAs were surrendered to the Board; the Board review pertinent and prioritized criteria to determine if the region would support one or more additional guide operations; then consider all applications for the area under a equitable and reasonable method of allocation. Such a method could take into consideration unique qualifications such as a son or daughter who had worked as an assistant to their father, or perhaps a registered guide, who had "apprenticed" in the region under the surrendering EGA holder and accordingly, is more knowledgeable of the area than other applicants. By following such a procedure the Board would promote compliance with its own regulation restricting the transfer of guiding area permits.

Recommendation No. 4

GLCB should adopt procedures to improve the administration of the oral portion of the registered guide examination.

The oral portion of the registered guide examination is arbitrary and inconsistent in content and grading. This is because the examination content and grading guidelines are left to the discretion of the individual examiners.

To qualify for licensure as a registered guide, an applicant must successfully pass the registered guide examination. This examination, which is prepared and administered by GLCB, is composed of two parts, a written and an oral section. Passage of the examination requires the applicant to obtain a score of 80% on both sections.

GLCB procedures require the oral portion of the registered guide examination to be administered by three examiners, consisting of a Board member and two master guides. Questions asked by the examiners are based on an oral exam sheet, which does not limit examiners to specific questions nor does it provide predetermined question grading values.

This allows individual examiners to emphasize whatever subject areas they wish in the questioning of applicants. Despite the lack of specific grading criteria on which to base examination scores, instances were noted in which applicants narrowly failed exams by combined examiner scores as high as 79%.

The inconsistency of exam content and grading is demonstrated by the following example. In February 1985, an applicant failed the oral portion of the examination. The reason for failure noted by the examiners was that the applicant needed more hunting experience in the field. Examiners recommended the applicant obtain specific area experience along with spring, late fall, and winter experience. One month later, the applicant took the oral examination again, and was passed by an examination committee made up of three different examiners.

GLCB appears to have demonstrated its own doubts regarding the validity of oral examination results. GLCB's regulation 12 AAC 38.010(c), states the failure to achieve a passing score on either section of the examination constitutes failure of the entire examination. However, on several occasions, after having been petitioned by applicants who passed the written portion of the exam while failing the oral portion, the Board waived the requirement that the written portion of the examination be retaken.

The lack of specific guidelines dictating the objective administration of the oral portion of the registered guide examination has resulted in inconsistent content and grading between individual examinations. The likelihood of exam passage is as much affected by who the examiners are and their individual judgement as it is by the knowledge and competence of the applicant.

Structured guidelines governing the administration of the oral portion of the registered guide examination should be implemented by GLCB. These guidelines need to provide examiners with specific directions as to examination questions to be asked and their assigned grading values. If implemented, structured guidelines will provide a more objective means of administering the examination. This will provide the Board with more of a fair and consistent test of applicant competence.

Recommendation No. 5

GLCB should seek both statutory and regulatory changes in order to improve the protection of the public from unethical guiding practices.

One of the primary purposes of licensing and regulating guides is to protect the public from unethical guiding practices. We identified regulations and statutes that serve to block effective consumer protection action on the part of GLCB and serves to protect guides at the expense of the public. We recommend that GLCB enhance its consumer protection responsibilities by taking the following actions:

- A. Pursue amendment of statutes that limit GLCB's authority to discipline guides for unethical activity.
- B. Adopt regulations and/or recommend legislation to require guides to post performance bonds.

Statutory Constraints to Effective Disciplinary Action

Alaska Statute 08.54.200(a)(1) does not allow the Board to consider complaints of unethical or incompetent guiding practices until receiving complaints from "... three or more clients [hunters] of separate [hunting] parties."

In the course of our review we found four instances where guides had two allegations of unethical guiding activity, as defined by GLCB's regulations, but still had not been brought before the Board for review. Law enforcement officials told us that the statute requiring three separate complaints was particularly onerous for effective resolution of consumer complaints. Law enforcement officials are put in the position of consumer ombudsman, trying to mediate and negotiate settlements of hunter-and-guide or guide-and-guide disputes.

GLCB's effectiveness and visibility would be enhanced if all allegations regarding unethical guide practices was brought to it for review on a case-by-case basis. It appears that the intent of the statute was to keep down the number of frivolous and unfounded complaints against guides. Other professional licensing boards listen to, and sort through, all cases and complaints, no matter how trivial, as a means of keeping apprised of the conduct of their licensees. We recommend that GLCB begin doing the same.

Bonding of Guides

Almost all hunters who use guiding services are non-residents, a large number from outside of the United States. As a result, when disputes arise between guides and hunters it is often very difficult and expensive for the complaining

hunter to seek legal remedies or implement administrative action. This difficulty is compounded by the three complaint requirement of the statutes discussed previously.

In the course of our review, we noted four cases where a non-resident hunter and guide were disputing the refundability of a deposit. One example, two out-of-state hunters sent in deposits of \$2,500 six months in advance of a hunt. Just prior to their departure for Alaska, the guide notified them that he would have to cancel their hunt. He offered to apply their deposits to a hunt the next year, but the hunters decided they wanted a refund. The guide did not respond to requests, and due to the statutory three complaint requirement, law enforcement officials were not able to bring the dispute before GLCB. The two hunters retained a Fairbanks attorney to pursue legal remedies, but soon abandoned the effort due to costs of litigation.

We recommend that GLCB pursue the necessary statutory and regulatory changes that would implement a mandatory requirement that guides post performance bonds. Performance bonds would allow hunters with legitimate grievances and claims against guides an easier, less expensive alternative in obtaining settlement of their claims. Guiding is a large industry in the State. It is important that GLCB do all it can to maintain the integrity of the guiding industry and uphold the reputation of the Alaskan guides with hunters outside of the State. The Board should recognize the unique type of consumer for guide services and take steps to adequately protect the interest of the out-of-state hunter/consumer.

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ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need as defined in the "sunset" law. These analyses are not intended to be comprehensive, but to address those areas we were able to cover during our review.

- I. The extent to which the board, commission, or program has operated in the public interest.
 - A. The Board has adopted regulations defining unethical conduct which clarify and strengthen the professional's responsibility to the public.
 - B. The Board does not consistently review the Department of Fish and Game game management information prior to assignment or transfer of an exclusive guiding area (EGA) (see Recommendation No. 1).
- II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.
 - A. Regulation 12 AAC 38.054(b) allows an EGA permit holder to designate the qualified guide to whom he wishes to transfer his guide area. These transfers often take precedence over other guide area assignment criteria such as joint user objections, experience in the game unit, or game management considerations (see Recommendation No. 3).
 - B. Alaska Statute 08.54.200(a)(1) does not allow the Board to consider complaints of unethical or incompetent guiding practices until receiving complaints from three or more clients of separate parties regardless of the potential magnitude of the unethical act (see Recommendation No. 5).
- III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.
 - A. Senate Bill No. 294, which was introduced in April 1985 by the Resources Committee, contains the following items which should enhance public protection if ratified:

1. An amendment to AS 08.54.010 would increase game management considerations in regulating guide activities (see Recommendation No. 2).
 2. An amendment to AS 08.54.040 and a proposed new section (AS 08.54.195) would require consistency in procedures used in allocating EGAs (see Recommendation No. 1).
 3. New sections would require those guides that contract with more than one client at a time (an outfitter) to maintain a surety bond of \$5,000 (see Recommendation No. 5).
 4. The bill would require closer supervision over assistant guides while in the field.
 5. Unethical activities would be amended to include unsafe or unsportsmanlike actions that are detrimental to the game resources of the State.
 6. Statutes dictating qualifications for, and restrictions on, transporters would be repealed. Many of the services now being provided by transporters would be subject to the proposed outfitter statutes contained in this bill.
- B. Additional portions of SB 294 which do not appear to us to be in the public's best interest are as follows:
1. Current law limits the number of Board members that have guide licenses to no more than three of the seven members. SB 294's amendment of AS 08.54.010 would require that at least three Board members be active guides. This amendment would increase the potential for expanding the number of industry members on the Board at the expense of public participation.
 2. Currently, AS 08.54.200(a)(1) does not allow the Board to consider complaints of unethical or incompetent guiding practices until receiving complaints from three or more hunters of separate parties. SB 294 contains an amendment of this statute which would require that these complaints be received within five years prior to the hearing date. This would compound those problems outlined in Recommendation No. 5.

3. Currently, AS 08.54.210(a)(6) makes it unlawful for a master or registered guide to employ or supervise more than three assistant guides at the same time.

SB 294 would repeal this statute and could allow a master or registered guide to employ more assistants than they are capable of effectively supervising. The experience and professional judgement of the master or registered guide may not be available to clients when needed.

Alaska Statute 08.54.141 of this bill also provides that assistant guides shall be supervised at all times while in the field on guided hunts. The potential problem noted above will depend on enactment of this new section and on the Board's interpretation of the term "supervised."

4. Enactment of amendments to AS 08.54.200(c)(3) may unnecessarily restrict those hunting statutes or regulations upon which the Board can take disciplinary action.

IV. The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

- A. The public is invited to attend Board meetings and to give their input about the workings of the Board. Notices of meetings are advertised in at least five newspapers throughout the State. In addition, guides are notified by registered mail of meetings that might affect them.
- B. Publication of meeting information does not always precede the meeting by a reasonable time period. We found that the public was given less than a one week notice for two of the last eleven Board meetings.
- C. Teleconference meetings are not being noticed publicly. This limits public input at those meetings and may legally jeopardize Board decisions and actions.

V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

- A. As stated under IV, the public is invited, by published notices in newspapers, to attend Board meetings to give their input about Board regulations or submit written testimony.
- B. Those problems noted in IV B and C above also represent potential problems in this public need area.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

- A. Since July 1983, ten complaints have been filed with the Ombudsman's Office concerning Board activity. Only one of these complaints, alleging improper denial of a registered guide license, was found to be justified.
- B. Since August 1984, 19 complaints against guides have been submitted to the Department of Commerce and Economic Development, Division of Occupational Licensing, for investigation. These cases appear to have been investigated in a reasonable fashion and are pending Board action or court rulings.
- C. As mentioned in III above and in Recommendation No. 5, AS 08.54.200(a)(1) does not allow the Board to consider complaints of unethical or incompetent guiding practices until receiving complaints from three or more hunters of separate parties.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

- A. As of September 1985, 46 master guides and 361 registered guides were licensed in Alaska. These individuals were required to pass both a written and an oral exam, as well as obtaining practical experience in the field, prior to licensure.
- B. The oral portion of the registered guide examination is arbitrary and inconsistent in content and grading. This is because the examination content and grading guidelines are left to the discretion of the individual examiners (see Recommendation No. 4).

VIII. The extent to which State personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity of interest.

A. The Board established 12 AAC 38.010(c) whereby an applicant for licensure who:

because of a language barrier, is unable to read and competently understand the English language may be excused from taking the written examination, and may be issued a license based on successful completion of the oral portion of the examination and demonstration of his capabilities and experience.

B. Regulations also provide that when assigning guide area permits,

the board will give preference to qualifying guides whose permanent residence is within the district in which the area is located.

IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

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APPENDIX A

GUIDE LICENSING AND CONTROL BOARD
REVENUES COMPARED WITH EXPENDITURES

June 30, 1985
(UNAUDITED)
(Note 1)

	<u>FY 83</u>	<u>FY 84</u>	<u>FY 85</u>
Revenues (Schedule 1, Note 2)	\$46,000	\$53,735	\$88,678
Expenditures (Note 3)	<u>21,663</u>	<u>13,483</u>	<u>11,777</u>
Excess of Revenues over Expenditures	<u>\$24,337</u>	<u>\$40,252</u>	<u>\$76,901</u>

Schedule 1
Types of Revenues
(Note 4)

<u>Revenues</u>	<u>Amount</u>	<u>Collection Time</u>
Master Guide License	\$150	Biennially
Registered Guide License	150	Biennially
Class-A Assistant Guide License	30	Biennially
Assistant Guide License	20	Biennially
Transporter License	10	Biennially
Application For A Guide Examination	25	With Application

Note 1

This revenue/expenditure comparison was prepared from available reports prepared by Occupational Licensing personnel. The records were not audited by us and, accordingly, we do not express an opinion on the Board's Revenues Compared with Expenditures.

Note 2

Revenue amounts reported do not include revenue obtained from the sale of game tags or hunting licenses. They only include revenue obtained from fees required to obtain and/or renew guide licenses.

Note 3

Expenditures consist of direct costs resulting from Board activities. These include miscellaneous contractual, travel, and per diem costs incurred by Board members and the Board's licensing examiner. The amounts do not include the administrative expenditures of the Division of Occupational Licensing such as employee salaries or the expenditures made to other departments such as the Department of Law, which assist the boards and the Division.

Note 4

Amounts reflected are those established by statute for FY 85. Chapter 37, SLA 1985 provides that the Department of Commerce and Economic Development shall set license fees effective upon adoption of said regulations.

APPENDIX B

GUIDE LICENSING AND CONTROL BOARD
EXAMINATION STATISTICS

Number of Examinations Given in FY 1984-1985 (Note 1)

<u>Fiscal</u> <u>Year</u>	<u>Written Exam</u>		<u>Oral Exam</u>		<u>Total</u>
	<u>Passes</u>	<u>Fails</u>	<u>Passes</u>	<u>Fails</u>	
1984	22	13	26	7	41
1985	19	9	17	4	30

Note 1

Licensure as a registered guide requires a passing score on both a written and oral examination. Licensure as a master guide requires a passing score on an oral examination only. Licensure as assistant guides and transporters does not require examination.

APPENDIX C

GUIDE LICENSING AND CONTROL BOARD
ADMINISTRATIVE STATISTICS
September 30, 1985

Currently Licensed

Master Guides	46
Registered Guides	361
Class-A Assistant Guides	139
Assistant Guides	829
Transporters	141

Board Meetings Between
July 1, 1983 and June 30, 1985

July 17-22, 1983

October 25-26, 1983

December 7-13, 1983

March 12-17, 1984

December 13-14, 1984

February 9-17, 1985

March 18-19, 1985

BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811
PHONE: (907) 465-2534

December 23, 1985

Mr. Gerald L. Wilkerson
Legislative Auditor
Legislative Audit Division
Pouch W
Juneau, AK 99811

RECEIVED
DEC 24 1985
**LEGISLATIVE
AUDIT**

Dear Mr. Wilkerson:

Re: Preliminary Audit Findings
Guide Licensing and Control Board

Thank you for the opportunity to comment on your preliminary audit report on the Guide Licensing and Control Board.

Our position remains the same from previous correspondence in that, we concur with your findings and recommendations, and also support continuation of the board. We once again offer the following comments regarding your recommendations:

In reference to recommendation #1, it is important to note that many of the actions or decisions made by the Guide Licensing and Control Board were made upon advice and support of counsel from the Department of Law. This is done especially in relation to your finding that hearing officer decisions are replacing that of the Guide Licensing and Control Board where setting quotas for guides are concerned. However, we believe the board has demonstrated an honest effort to act accordingly within the parameters of what they perceived to be correct, based on legal advice.

Regarding recommendation #4, this matter was brought to the attention of the board by staff of the Division of Occupational Licensing during previous board meetings. Although the board did acknowledge the need to address this issue, no time was given to address the oral examination for registered guides.

Mr. Gerald L. Wilkerson

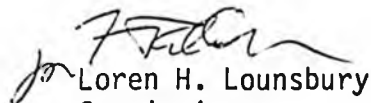
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December 23, 1985

We strongly support your suggestions in recommendation #5 and feel that, although performance bonds posted by master and registered guides may not be entirely adequate to rectify all complaints, it would certainly allow some means of restitution for injured parties from receiving unethical services.

Thank you once again for the opportunity to comment on your findings and for your cooperation.

Sincerely,


Loren H. Lounsbury
Commissioner

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The Legislature
Budget and Audit Committee
Jim Griffin, Auditor

DEC 19 1985

LEGISLATIVE
AUDIT

Recommendation #1

The Guide Licensing and Control Board (GLCB) uses the Statements of Financial Remunerations as proof of use and experience in areas when assigning Exclusive Guide Areas (EGA). There have been discrepancies in the past, the last year the GLCB have been adhering closely to the criteria of using SFRs. The GLCB seeks biological and Fish & Game surveys when they are available. This cannot always be done. Some areas Fish & Game haven't run surveys or recent surveys. Most of the time, the GLCB doesn't know which areas will be before them until the applicant comes before the GLCB with his application. This doesn't allow enough time to obtain the information. In cases that are held over and coming before the GLCB at a later date do allow time for soliciting biological information from the Fish & Game biologist located in the area involved. I have solicited Fish & Game information in several cases that are coming before the GLCB this next meeting in December 1985.

I hope to get a regulation passed that requires an applicant applying for an EGA to obtain this information from the Fish & Game for presentation to the GLCB.

Along these lines there also should be a regulation requiring the same criteria for a transfer be the same as a new applicant. That is to show proof of experience in the area as would a new applicant. And going farther, an applicant for a transfer from an EGA holder to himself show proof of working with the EGA holder for a certain time. One or two years. Co-signing SFRs could be used as proof as well as additional proof, either in EGAs or joint use areas.

Recommendation #2

Regulation (12 AAC 38.053 (D) (1) applies mostly to applications for joint use areas and EGAs being applied for by more than one guide. The proposal to pass a regulation requiring the applicant to obtain Fish & Game biological information on the area applied for will help in this area.

Recommendation #3

I do not agree that an EGA holder should have to surrender his EGA to the GLCB and not have the opportunity to transfer the EGA to a guide of his choice with the approval of the GLCB. There are many cases where an EGA holder has farmed his area, carefully not to over harvest, so has improved both game populations and size of the animals in the area. To enhance game populations and sportsmen enjoyment is one purpose of the GLCB. Financial investments should also be considered in transfers, land, buildings and equipment related to guiding in the area. A guide who has spent many years building up an area with improvements to game populations should certainly have something to say about who's care the area ~~XXXXXX~~ comes under. Son, ~~XXXXXX~~ Daughter, apprentice or a guide who is well qualified to guide in the area.

The GLCB has a policy not to issue a new applicant an area in joint use. In other words filing over an area that is already in joint use, or use by only one EGA holder. The GLCB is working to eliminate as much joint use as possible. This can only be done through natural attrition. The GLCB cannot choose two permit holders out of six joint users and pull their permits without due cause. I do think, and it has been the GLCB's policy the last two years. A Ega holder is convicted of some violation that merits revoking his area that is in joint use with others, that area will not be reassigned ~~XXXXXXXXXXXX~~ ..

Where the area is extremely large and doesn't have many joint users some leeway should apply to a new applicant. The guide losing the area should not have a say one way or the other in the matter. However, in cases such as this very careful scrutiny in all criteria must be made. One thing along these lines. At one time the intent of GLCB to review and reassess all EGAs. Considering size, utilization and condition of game populations. This was never done, primarily because time and budget restrictions wouldn't allow it.

Recommendation #4

Oral guide examinations;

There are inconsistencies in administering oral tests. The purpose of the oral test is to determine the applicant's practical field experience and knowledge of game habits, size and the area he is being tested for. Most of this is impossible to determine with a ~~XX~~ tightly held oral tests with set questions and answers. The examiner should have some flexibility but should not be allowed to wander far afield and asking impertinent questions. There should also be a standard time for the test, say 1 or 1½ hours. One ~~XX~~ problem that keeps cropping up is first aid. I propose that an applicant be required to have passed a first aid course within the year prior to taking the guide exam.

The GLCB has been trying to upgrade this portion of the guide test. Here again, the increasing number of applications for testing each meeting is also increasing the work load of the GLCB.

Recommendation #5

There should be some changes in Statute 08.54.200 (A) (1). The change should give the GLCB some flexibility on guide complaints. Taking in consideration of the severity of the complaint. Endangering life, flagrant game violations, and unethical practices, etc. The GLCB does have a guiding ethics regulation (12AAC 38.180) The complaints are slowly being corrected since the administration was consolidated in the Department of Commerce, Division of Occupational Licensing. The GLCB investigator is investigating all complaints that come in now.

We are trying to get a section in the new guide bill, (Senate Bill #294) to satisfy the change mentioned above. Bonding is already addressed in S294.

The bill also creates an outfitter's license and repeals the transporters license. This should help to alleviate the wide spread unlicensed guiding. These unlicensed guides are a big factor in guiding complaints.

The bill also goes into more detail on what guiding is. Enforcement people say the present bill doesn't explain guiding enough for them to make a case on ~~unknown~~ unlicensed guiding. The new bill should give them the tools they need to enforce that section.

The GLCB would like to conduct more work on all these programs and others as well.

It is very important to the guiding industry that the GLCB not be sun setted. If the guide bill is not extended or a new bill passed, the guiding industry will be plunged into a chaos that it could never recover from. Just about everyone with a super cub or 185 will become instant guides creating an impossible situation for game populations and sportsmen safety.

An addition to recommendation #4.

At this last GLCB meeting we appointed 2 master guides and a registered guide to study the oral test and make up a new one that would standardize the test. These men ~~were~~ all have an educational background.

Comments Regarding Interim Letter #1
Sunset review GLCB

Recommendation # 1.

I agree with all of Mr. McNutt's comments. In addition I might add. There have been a number of meetings to establish a point for awarding and transferring guiding areas. The suggested method that had the most merit was to award points for criteria relating to use of the area, financial investment in the area, residence alternate areas, etc. I would suggest that those who did so much work on this system be contacted and a system be finalized and approved. This will eliminate most of the criticism related to transfers.

Recommendation # 2.

Agree with Mr. McNutt.

Recommendation #3.

I completely agree with Mr. McNutt's comments and would like to add emphasis here. The assigned area concept will do more to elevate the quality of guiding in Alaska than any change in years. It gives the area holders a responsibility toward the area and game. Now through leases from the state and permits from the federal government, it will be possible for guides to build permanent structures in many areas. The guides will continue to increase their investments in areas. As the investment both in time and monetary increases so does the guides financial responsibility increase. After working for years to build a high quality operation it seems only just that upon retirement the permit holder would be able to choose his successor, who in nearly every case would be the most qualified person for the transfer no matter what selection criteria were used. There have been abuses of this in the past as there were some transactions that seemed to be merely real estate sales. The GLCB is aware of this and is taking a firm stance against real estate dealers. It would seem that guiding like any other business would allow a successful and ambitious business man to build some value into his business so that when it came time for retirement he would have something to sell. Because the guiding business involves land and resources that belong to the public, the burden of responsibility upon the area permit holder is great. aside from his investment in property and equipment the value lies in his concessionary right to the area and it's wildlife. If he has treated these right with regard and respect and obeyed all covenants both moral and legal it seems only right that he should be able to sell this right to another qualified individual of his Choosing. This would allow him to maximize the return for his investment.

Recommendation #4.

The GLCB commented on this in addition to Mr. McNutt's comments and covered it quite thoroughly.

Recommendation # 5.

Agree with Mr. McNutt.

Dear Sportsfisher,

The public hearings on subsistence law changes that we have demanded have been scheduled for August 14, 1985, in Anchorage. Senator Abood will be presiding on the State Affairs Committee for these hearings. Whether they will be delayed because of the impeachment proceedings remains to be seen. Watch the paper for public notices.

The following five points were sent to us by the statewide Alaska Outdoors Council of which we are a member. We have changed some wording, but the ASA Board of Directors concurs and feel that any change to the subsistence law must contain these five points.

Six additional position statements that your Board of Directors feel must be included in the law follow the AOC points. If you have any comments on additions, please contact Bob Hunter at 276-8134 (home). All points will be subject to change to enable a consensus with hunting needs, and to consolidate a position with Fairbanks, Juneau, Wasilla, etc. A united front is imperative. Your attendance and input at the committee hearings is important to successfully demonstrate that we are greatly concerned about the existing law.

GENERAL POINTS FOR CONSIDERATION AND CONCURRENCE - SUBSISTENCE

(FROM THE ALASKA OUTDOOR COUNCIL)

1. Licensing: A permit will be required for subsistence preference use. Licensing will be based on personal or household qualifications. No fee will be charged for this permit.
2. Limiting Qualifications: Qualifications for the permit will be very restrictive, requiring that (1) the wild resource taken be used for personal and household consumptive use only; and (2) the applicant must assert and establish that he needs the subsistence because it is reasonably necessary for his survival or the survival of his dependent household. The Board may initially qualify an area, then restrict further to a community, then groups, then families and individuals, as the situation and need arises...or otherwise pass a needs test as specified by the Boards.
3. Subsistence Seasons and Bag Limits: The permit holders will be subject to specific subsistence regulations on seasons, quotas, bag limits, etc. The opportunity to harvest will be given a preference, but no guarantee of harvest is intended.
4. Preference Not Priority: The preference will not be an absolute priority over sport, commercial, or recreational use. These latter uses need not necessarily be eliminated before subsistence preference use is restricted or regulated.
5. Trade and Barter: Trade provisions will be similar to those in current state law. Subsistence use may include trade, barter, or sharing for personal or family consumption of wild renewable resources and must be limited to the first exchange. No cash exchanges shall be included in subsistence use.

ALASKA SPORTFISHING ASSOCIATION INPUT - SUBSISTENCE

(1) POSITION STATEMENT

Subsistence harvests should be based on meeting the protein needs and, in some cases, significant cultural needs of the harvesters. One species should be substitutable for another comparable species, and harvest should occur on those species that are most abundant and best able to withstand the harvest.

BACKGROUND

The need for the Board of Fisheries to be able to shift subsistence harvests to the most abundant species is statewide in application. However, it is most clearly demonstrated by the existing Cook Inlet situation. Current law stipulates that subsistence harvests are based on "customary and traditional" harvest patterns. The courts, as in the Tyonek case in Cook Inlet, ruled that harvests originally were a spring fishery on King Salmon, and thus the Board of Fisheries could not shift to a more abundant species of salmon for the Tyonek fishery.

The history of modern subsistence in Cook Inlet is that it was chiefly conducted by commercial fishermen who already owned gill nets. These people fished for subsistence early in the season until sufficient salmon were available to harvest commercially. They then fished commercially until the late fall, when they again subsistence fished for their winter food supply. In recent years the Board of Fisheries allocated early and late runs to sport fishermen and the large mid-season runs to commercial interests. The result, at least in Cook Inlet, was that subsistence fisheries are directed upon the small runs given to sport fishermen rather than the huge mid-season runs which have a commercial priority.

A classic example is the fall Kenai Silver run, which has a long-term average harvest of 13,200 fish. Currently, the subsistence allocation from this run is 13,000 Silvers...essentially the entire run.

(2) POSITION STATEMENT

Certain areas exist where the fishery resources are so sensitive that the efficient harvest methods associated with subsistence fishing (gill nets?) would destroy those resources. The Board of Fisheries must continue to have the authority, upon a formal finding of fact, to close such areas to subsistence fishing while still allowing less efficient methods, such as pole and line.

BACKGROUND

An example of this problem is the trophy Rainbow trout streams of the Illiamna Lake Drainage. Trout in these streams grow very slowly with some

large trout being over 10 years of age. These trout also occur in limited numbers. Counts by Alaska Department of Fish and Game personnel have, during some years and in some streams, found less than 1,000 adult trout. About 1975 one gill net, set illegally during one night, caught nearly ten percent of the adult Rainbow trout in Lower Talaric Creek. The Board of Fisheries has recognized the fragile state of the Rainbow trout resource in that area, and current regulations allow only one Rainbow trout to be taken per day; no bait or treble hooks are allowed to reduce incidental hooking mortality. Gill nets have been banned in and near these streams for approximately 10 years. However, since subsistence fisheries were allowed in these areas at one time, the Madison decision appears to grant priority to the use of subsistence gill nets over pole and line angling.

(3) POSITION STATEMENT

That the definition of subsistence gear in AS 16.05.940(22) is proper and should not be amended. That definition does not normally allow pole and line to be used as subsistence gear.

BACKGROUND

We strongly believe that pole and line should not be included for subsistence use for several reasons:

- (1) The present problem with subsistence is principally that one Alaskan has been given priority over another Alaskan based solely on where he lives. We disagree with that concept. Including pole and line users in subsistence would simply increase the problem by giving more people a priority. We call for a major reduction in the number of people having a priority or preference. We have, since 1978, disagreed with the concept of giving priority to one person over another. Adding pole and line would be nothing more than giving sport fishermen a priority over commercial users. We reject that premise.
- (2) Pole and line subsistence users would create an enforcement nightmare. How would we distinguish between subsistence harvesters and sport (non-resident?) fishermen?

(4) POSITION STATEMENT

That a set of personal-use fishing regulations is needed to allow the harvest of fish, when they occur in numbers excess to escapement and commercial/consumptive needs.

BACKGROUND

In many areas of the state, large numbers of fish (commonly salmon) occur which are excess to spawning needs and are not harvested by commercial, subsistence, or sport fishermen. Personal-use regulations may be an ideal tool for the Board of Fisheries to allow the harvest of the fish on an equal

priority basis with other user groups. Personal-use regulations were created by the Board of Fisheries for exactly this purpose. However, the Madison decision vastly expanded subsistence qualifications, and personal-use harvesters have now been included in subsistence with a priority over other users. The legislature should enact personal-use regulations, by statute, to permit harvest of fisheries resources on an equal priority basis.

(5) POSITION STATEMENT

Rainbow/Steelhead trout shall not be subject a subsistence priority. The Board of Fisheries shall continue to have the authority to allocate the harvest of this species to any user group without priority on a case by case basis.

BACKGROUND

Despite Alaska's reputation as having some of the world's best Rainbow fishing, Rainbow trout in this state are limited both in number and location. Only in Bristol Bay and Cook Inlet do major numbers of Rainbow trout occur. For 1983, the latest year for which complete catch data exist, the entire statewide Rainbow harvest was less than 175,000 fish. Approximately 125,000 of these fish were from Cook Inlet waters, and over half of the statewide total were small stocked trout from lakes adjacent to urban centers.

Rainbow trout in Alaska are not only limited in number, they are slow-growing, and stocks are very easily damaged. In recognition of these facts, the Board of Fisheries regulates wild Rainbow stocks with very stringent bag limits, in many cases allowing only one trout per day.

(6) POSITION STATEMENT

Subsistence fishing in Cook Inlet waters should be limited to the areas adjacent to English Bay, Port Graham, and Tyonek, as previously designated by the Board of Fisheries. All other non-commercial net fishing in Cook Inlet should be conducted under personal-use regulations.

BACKGROUND

This is the only recommendation of the Alaska Sportfishing Association relating to a specific area of the state. We must face the fact that Cook Inlet is unique. Over half the state's population resides in this drainage. Most of these people have access only to Cook Inlet fishery stocks. According to Fish and Game data, approximately 140,000 sport fishermen and several thousand commercial fishermen utilize Cook Inlet fisheries, in addition to persons wishing subsistence fishing privileges.

Regulations promulgated by the Board of Fisheries, after passage of the 1978 subsistence law, restricted gill net subsistence fishing to remote villages of Cook Inlet. These regulations successfully avoided the intense conflict which resulted when priority mandated subsistence gill netting was opened in high-use waters accessible to the Cook Inlet highway systems.

We have no objection to continued subsistence harvests by any Alaskan in the three communities noted above. However, in basic fairness to all Alaskans living in Cook Inlet and to avoid the inevitable future chaotic controversy associated with priority mandated gill net fisheries, in the remainder of Cook Inlet subsistence fisheries should not be permitted. We wish to make clear that we believe that gill net, or dip net fisheries, may be desirable in certain times and for sites in Cook Inlet waters. However, it is critical that these fisheries be permitted on a non-priority basis by the Board of Fisheries under personal-use regulations.

SUBSISTENCE
Publications

(FILE 2)

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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 accommodate 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 accommodate a subsistence priority; (2) areas and/or species where subsistence and other uses overlap, and some adjustment or refinement may be necessary to adequately accommodate 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.
(p. 2; line 13-15)

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?

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 whenever 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.

QUESTION 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"?

ADL: (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 "Subsistence 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.
(P. 5; Line 22)

"Division" should be "Section".

ADL: No response necessary.

ALS: No comment.

QUESTION 10.
(P. 5;
Line 22-23)

What special authority, if any, does this give the subsistence section for directing or prioritizing 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:
examples.

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

22 (6) other information considered necessary by the division of
23 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 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

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

(14)

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

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

(B) for other food or for nonedible items other than

(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 subsis-
19 tance 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 Mershikoff 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

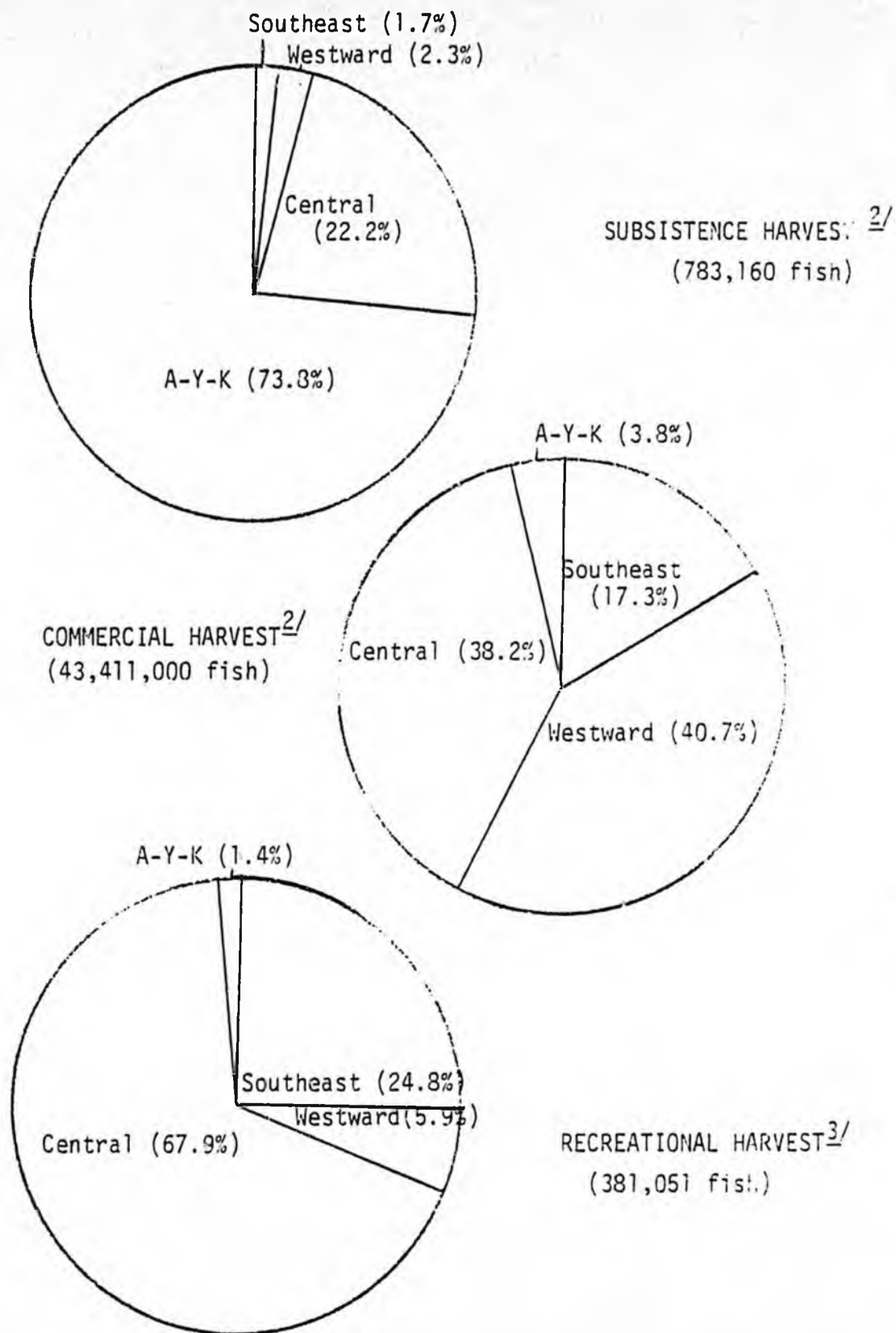
3 = high use; 2 = medium use; 1 = low use; 0 = no use

Preferred use if allocation necessary

** recommended use

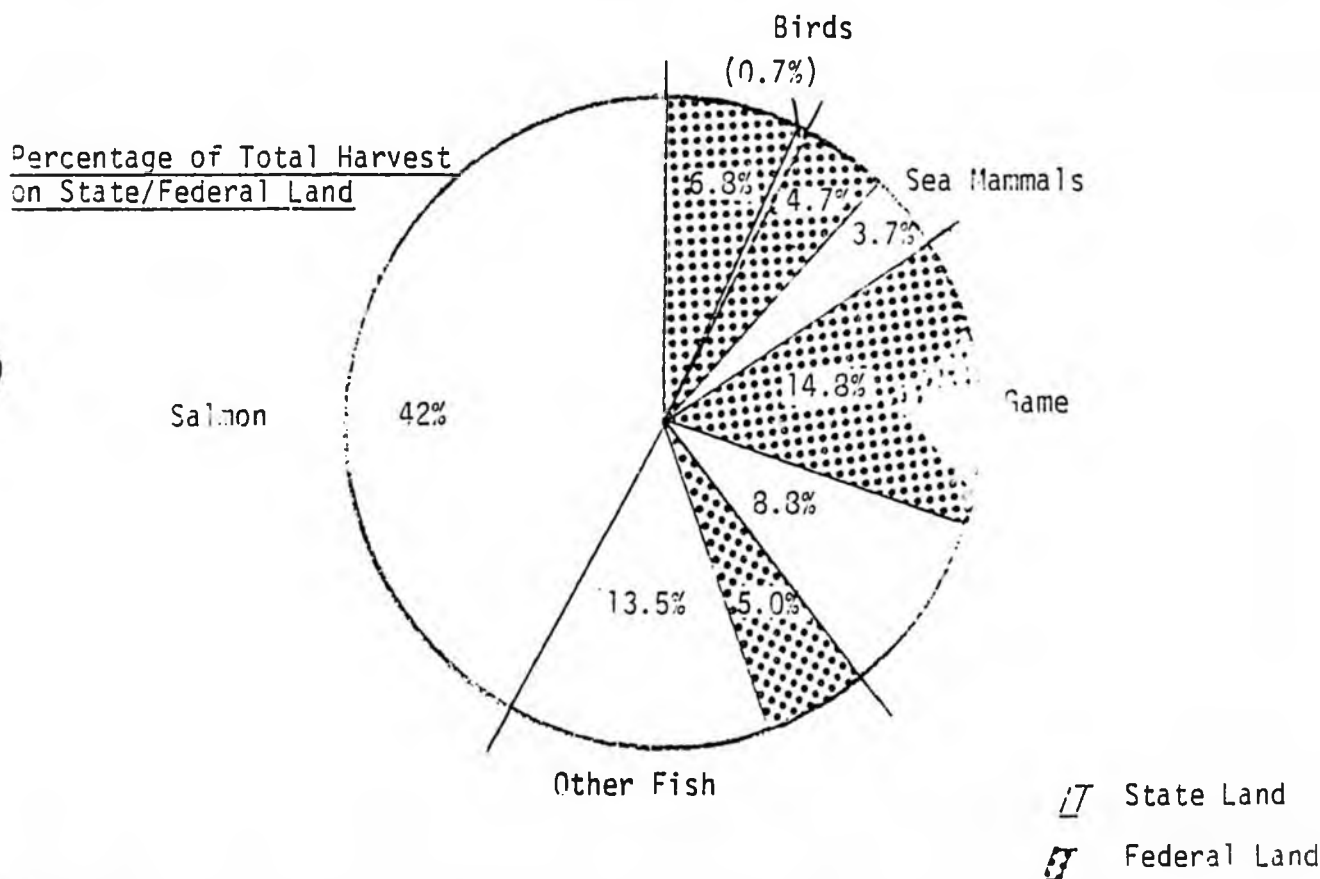
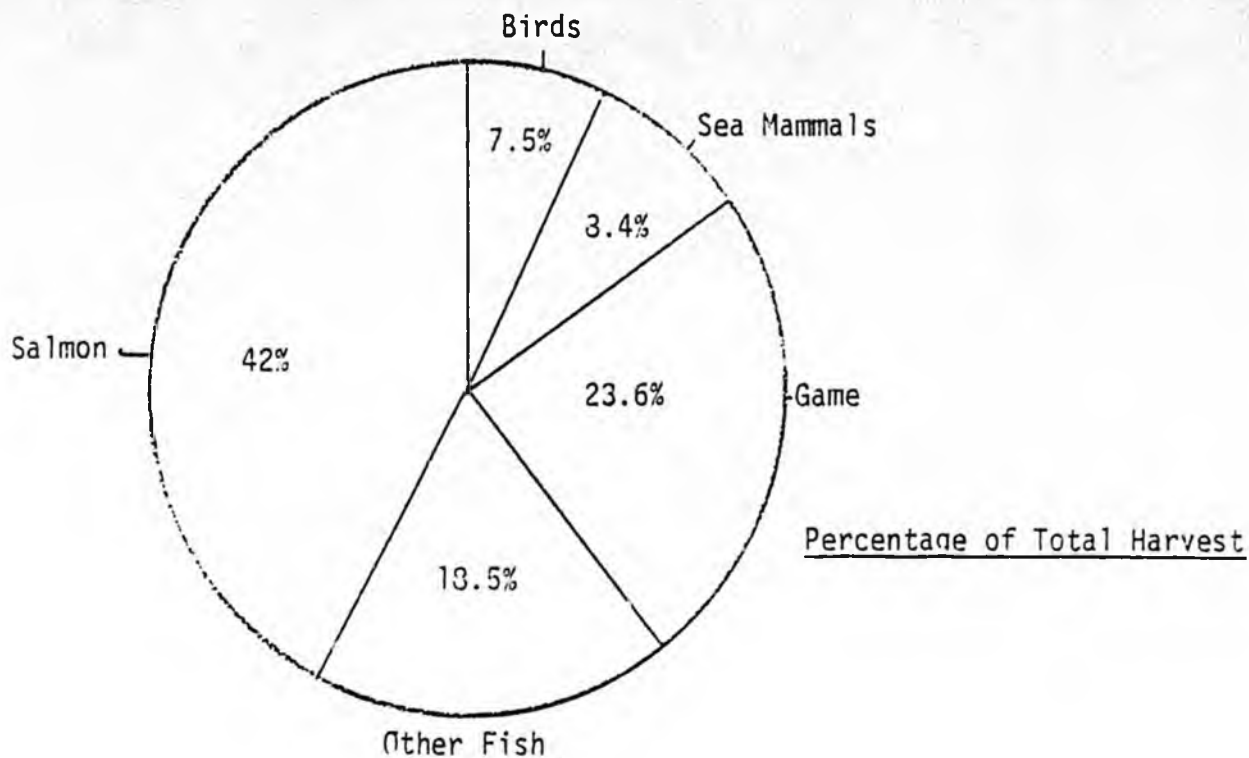
* compatible secondary use

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

TERRESTRIAL MAMMALS.....	40
MARINE MAMMALS.....	71
BIRDS.....	83
SALMON.....	86
FRESHWATER FISHERY SPECIES.....	107
MARINE FINFISH.....	132
SHELLFISH.....	143

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).
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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
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*** "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	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).
	Feb. 15-Apr. 15	

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).
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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.